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

+ LPA 2630/2005

NORTH DELHI POWER LTD. Appellant
Through: Mr. Dhruv Mehta, Senior
Advocate with Mr. B.B. Jain,
Mr. Anupam Varma, Mr. Nikhil
Sharma, Mr. Jibrin Tak,
Mr. Rahul and Mr. Sameer
Abhyanker, Advocates

versus

M.C.D. Respondent
Through: Ms. Madhu Tewatia with Ms. Sidhi
Arora and Ms. Adirath Singh,
Advocates for MCD.
Ms. Zubeda Begum, Advocate for
GNCT of Delhi

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Reserved on : 11th October, 2013
Date of Decision: 09th December, 2013

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present letters patent appeal has been filed challenging the judgment and order dated 25th July, 2005 passed by learned Single Judge in W.P.(C) 3913/2004 titled as *Municipal Corporation of Delhi Vs. North Delhi Power Limited*.

2. The primary issue that arises for consideration in the present appeal is whether the 8080 sq. mtrs. of vacant plot of land near sub-station Civil Lines Zone occupied by the appellant is owned by the Government of NCT of Delhi (hereinafter referred to as 'the Government') and is immune from payment of property tax under Article 285 of Constitution of India read with Section 119 of the Delhi Municipal Corporation Act, 1957 (for short "DMC Act").
3. On 26th March, 2003, the Deputy Assessor and Collector of respondent-MCD issued an assessment order for the assessment years 2002-2003 and 2003-2004 determining the rateable value of vacant plot of land measuring 8080 sq. mtrs. near the sub-station Civil Lines at Rs.58,53,960/- w.e.f. 1st April, 2002. Property tax of Rs.17,54,670/- was levied.
4. On 3rd January 2004, the appellant's appeal against the assessment order under Section 169 of DMC Act was allowed by the Additional District Judge, Tis Hazari Courts, Delhi. The Additional District Judge held that the vacant plot of land in question belonged to the Government, who in turn had allowed the appellant to use the same on licence basis. He further held that as the land was owned by the Government, it was exempted from property tax under Section 119 of the DMC Act.
5. Upon a writ petition CWP No.3913/2004 being filed by respondent No.1, the learned Single Judge by virtue of the impugned order, allowed the same holding that as the appellant was successor of the erstwhile Delhi Vidyut Board (hereinafter referred to as 'DVB'), it could not be said that the appellant was not liable to pay the property tax. The learned Single Judge further held that a tenancy within the meaning of Section 120(1) of the DMC Act with an entitlement to let in terms of Section 120(1)(c) was

created in favour of the appellant in respect of the land since the licence could not be shown to be for a finite period and there was no restriction on the use of the land.

6. Mr. Dhruv Mehta, learned senior counsel for the appellant submitted that the vacant plot of land in question was property of the Union of India and as per Section 119 of the DMC Act was exempted from property tax. Section 119 of the DMC Act reads as under:-

"119. Taxation of Union properties:- (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, lands and buildings being properties of the Union shall be exempt from the property taxes specified in section 114:

Provided that nothing in this sub-section shall prevent the Corporation from levying any of the said taxes on such lands and buildings to which immediately before the 26th January, 1950, they were liable or treated as liable, so long as that tax continues to be levied by the Corporation on other lands and buildings.

(2) Where the possession of any land or building, being property of the Union, has been delivered in pursuance of section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) to a displaced person, or any association of displaced persons, whether incorporated or not, or to any other person [hereafter in this sub-section and the proviso to sub-section (1) of section 120 referred to as the transferee, the property taxes specified in section 114 shall be leviable and shall be deemed to have been leviable in respect of such land or building with effect from the 7th day of April, 1958 or the date on which possession thereof has been delivered to the transferee, whichever is later, and such property taxes shall, notwithstanding anything contained in the proviso to sub-section (1) of section 126 or any other provision of this Act, be recoverable with effect from that day or date, as the case may be."

7. According to Mr. Mehta, the Delhi Electricity Reforms Act, 2000 (for short “DERA, 2000”) was enacted with a view to unbundle DVB into three kinds of successor entities, viz., the Generation Company, the Transmission Company and the Distribution Companies. He submitted that for the purpose of transfer of properties of the erstwhile DVB, Section 15 of DERA, 2000 provided for framing of Rules in accordance with Section 60 and in accordance with Section 15(1) of DERA, 2000, upon unbundling, all properties of DVB stood vested in the Government.

8. Mr. Mehta stated that the Delhi Electricity Reform (Transfer Schemes) Rules, 2001 which provided for transfer of the properties and personnel of the erstwhile DVB amongst the successor entities w.e.f. 1st July, 2002, was notified under Sections 15, 16 and 60 of the DERA, 2000 on 20th November, 2001.

9. Mr. Mehta contended that in accordance with Rules 4(1) and 5(1)(f) read with Rule 5(3) of the Scheme, the assets of the Distribution Undertaking as specified in Schedule F of the undertaking stood transferred to the appellant, subject to the restrictions and limitations specified in the rules and the Schedule. He stated that Schedule F to the Transfer Scheme specified the assets transferred to the Appellant, but carved out a specific exception in respect of land forming part of the undertaking by way of the proviso contained therein.

10. According to Mr. Mehta, the resultant position was that the land which vested in the Government continued to remain vested in it. He submitted that by virtue of Section 119(1) of the DMC Act, the vacant plot of land being the property of the Government, was the property of Union of India and was exempted from property tax.

11. Mr. Mehta pointed out that in terms of Rule 12(1) of the Transfer Scheme, the Government had by way of its letter no. F.(43)/2006/Power/155 dated 29th January, 2010 clarified to the respondent-MCD that it was the owner of the land. He stated that the Government had reiterated this position in its counter affidavit dated 14th February, 2012 filed in W.P.(C) 3460/2011.

12. Mr. Mehta submitted that despite noting the specific submission of the appellant based on Section 119(1) of the DMC Act, learned Single Judge had not appreciated the same and considered the said submission as being based on Section 119(2) of the DMC Act while rejecting it.

13. Mr. Mehta, therefore, submitted that the property in question was property of the Union under Section 119 and exempted from property tax and consequently, no other question remained for examination in the present appeal as the impugned assessment order was based on the erroneous premise that the appellant was the owner of the property. In support of his submission, Mr. Mehta relied upon the judgment of the Supreme Court in ***Housing & Urban Development Corporation Ltd. Vs. MCD & Ors., (2001) 1 SCC 455.***

14. Without prejudice to the aforesaid submission, Mr. Mehta submitted that if the property was not exempted from property tax under Section 119 of DMC Act, tax was not leviable in the hands of the appellant under Section 120 of the DMC Act on account of the fact that the appellant was a mere licensee of the property. Section 120 of DMC Act reads as under:-

"120. Incidence of property taxes:- (1) The property taxes shall be primarily leviable as follows:—

(a) if the land or building is let, upon the lessor;

(b) if the land or building is sub-let, upon the superior lessor;

(c) if the land or building is unlet, upon the person in whom the right to let the same vests:

Provided that the property taxes in respect of land or building, being property of the Union, possession of which has been delivered in pursuance of section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), shall be primarily leviable upon the transferee.

(2) If any land has been let for a term exceeding one year to a tenant and such tenant has built upon the land, the property taxes assessed in respect of that land and the building erected thereon shall be primarily leviable upon the said tenant, whether the land and building are in the occupation of such tenant or a sub-tenant of such tenant.

Explanation.—The term "tenant" includes any person deriving title to the land or the building erected upon such land from the tenant whether by operation of law or by transfer inter vivos.

(3) The liability of the several owners of any building which is, or purports to be, severally owned in parts or flats or rooms, for payment of property taxes or any instalment thereof payable during the period of such ownership shall be joint and several."

15. According to Mr. Mehta, the interest of the appellant was that of a mere licensee of the plot as could be established from the following terms of the license as stated in the Transfer Scheme:-

- (i) Land was not to form part of the assets (of undertaking) transferred under the Scheme.
- (ii) The land was to be held as licensee of the Government for a consolidated amount of Rs. 1 per month.
- (iii) The license was only to subsist during the period that the appellant had sanction or license or authorisation to undertake the

distribution business.

- (iv) As and when the license (for distribution business) was revoked, the license to the appellant in respect of such land was also to stand cancelled.

16. Mr. Mehta submitted that the terms of the license in respect of the vacant plot were wholly governed by the proviso to Schedule F of the Transfer Scheme. According to him, this was evident from Rule 11 of the Transfer Scheme.

17. Mr. Mehta submitted that the “license for distribution business” referred to was the license issued under Section 20 of the DERA, 2000. The relevance of the license issued by the DERC to the issue in this appeal was only for the purpose of showing that the said license is a pre-condition for the license of the plot in question. In support of his submission that the Transfer Scheme only created a license in favour of the appellant in respect of the land in question, Mr. Mehta relied upon Supreme Court’s judgements in *Mangal Amusement Park Pvt. Ltd. & Anr. Vs. State of M.P. & Ors.*, (2012) 11 SCC 713, *B.M. Lall Vs. Dunlop Rubber Co. (I) Ltd.*, AIR 1968 SC 175 and *Associated Hotels of India Ltd. Vs. R.N. Kapoor*, AIR 1959 SC 1262.

18. Mr. Mehta submitted that Section 120(1)(a) & (b) of the DMC Act did not apply since neither the plot had been let/sub-let, nor was the appellant lessor/superior lessor thereof. He further submitted that Section 120(1)(c) of the DMC Act did not apply as the appellant did not have the right to let. Mr. Mehta reiterated that the terms of license (read with Rule 5(3) of the Transfer Scheme) did not permit the appellant to let the vacant plot. He further submitted that Section 120(2) only applied to a tenant who

had constructed upon the land and the period of whose tenancy exceeded one year. According to Mr. Mehta, the appellant being a mere licensee, it could not be said to be a tenant within the meaning of this provision.

19. Mr. Mehta pointed out that the learned Single Judge had based his finding on the observation that there was no restriction on the appellant carrying out construction. In this regard, he submitted that the license terms expressly stated that the license was only for the purpose of carrying out distribution business in accordance with the license governed by Section 20 of the DERA, 2000 which did not envisage any construction on vacant land allotted to the appellant.

20. On the other hand, Ms. Madhu Tewatia, learned counsel for respondent-MCD stated that Parts I, II and III of Schedule F of the Transfer Scheme contained the details of assets and liabilities that had been transferred to the appellant-NDPL. These included residential colonies/roads/shops/buildings/dispensaries/laboratories etc. and a whole bundle of assets to be used in the business of distribution of electricity within its area of command, but did not include land and/or land rights as the same had stood transferred and vested in the Holding Company-Delhi Power Company Limited (hereinafter referred to as 'Holding Company/DPCL').

21. Ms. Tewatia further stated that under Rule 5(5), the transferee/NDPL had issued shares and instruments worth Rs.368 crores in favour of the Holding Company/DPCL as specified in Schedule F and had agreed to share its receivables with the Holding Company/DPCL. She contended that the Holding Company/DPCL under the Transfer Scheme was liable for all liabilities including contingent liabilities of the Board.

22. Consequently, she submitted that by virtue of Rules 3, 4 and 5 as well as Schedules F and G of the Transfer Scheme, the entire land and land rights which initially belonged to the DVB and thereafter to the Government, stood re-transferred to and vested in the Holding Company/DPCL.

23. Ms. Tewatia further submitted that the Holding Company/DPCL being a separate juristic entity was entitled to hold and dispose of property/proprietary rights etc. She submitted that the ownership of the land and other assets clearly vested with DPCL for which consideration had been paid. According to her, Government company could not be equated with Union's and State's property. She emphasised that no part of the erstwhile DVB's land remained with the Government so as to be entitled for exemption under Article 285 of the Constitution of India and Section 119 of the DMC Act. In support of her submission, she relied upon a judgment of the Supreme Court in the case of ***Municipal Commissioner of Dum Dum Municipality & Ors. vs. Indian Tourism Development Corporation & Ors.***, (1995) 5 SCC 251, the relevant portion of which reads as under:-

"34. Reference may be made in this connection to the decision of this Court in Western Coalfields Ltd. v. Special Area Development Authority [(1982) 1 SCC 125] . Certain government companies incorporated under the Companies Act, the entire share capital whereof was held/owned by the Government of India claimed exemption from State taxation under Article 285(1) of the Constitution. The said plea was rejected by this Court holding that merely because the entire share capital is owned by the Government of India it cannot be held that companies themselves are owned by the Government of India. It was observed that the companies which are incorporated under the Companies Act have a corporate personality on their own distinct from that of the Government of India and that the lands and buildings are vested in and

owned by the companies whereas the Government of India only owns the share capital. Reliance was placed upon certain decisions of this Court including the decision in APSRTC. We are of the opinion that the said principle applies equally in the case of a statutory corporation. The statutory corporation is constituted by or under a statute as against the companies (including government companies) which are registered under and governed by Indian Companies Act, 1956.

35. For all the above reasons, we are of the opinion that the International Airports Authority of India is a statutory corporation distinct from the Central Government and that the properties vested in it by Section 12 of the Act cannot be said to have been vested in it only for proper management. After the date of vesting, the properties so vested are no longer the properties of the Union of India for the purpose of and within the meaning of Article 285. The vesting of the said properties in the Authority is with the object of ensuring better management and more efficient operation of the airports covered by the Act. Indeed that is the object behind the very creation of the Authority. But that does not mean that it is a case of limited vesting for the purpose of better management. The Authority cannot, therefore, invoke the immunity created by Article 285(1) of the Constitution. The levy of property taxes by the relevant municipal bodies is unexceptionable."

24. She submitted that the issue of levy of property tax was no longer *res integra* as it stood covered by the judgment of this Court in ***Delhi Transco Ltd. vs. MCD, (2006) Law Suit (Del) 409*** wherein it was held that no part of the transferred undertaking/assets belonging to the erstwhile DVB and vested by the Government in DISCOMs/Corporate entities under the transfer scheme remained in the hands of the Government including land and land rights.

25. She also stated that there was no document/deed or order evidencing transfer/allotment of land to the appellant as a licensee under the Government by virtue of the proviso to Schedule F of the Transfer Scheme. She pointed out that the appellant had exclusive possession of the land in question and there was no embargo imposed on it with regard to the right to use the land for distribution business. According to her, no mode or manner of enjoyment of property had been circumscribed by the statute and there were no restrictions or limitations of any kind imposed either by means of a lease or licence deed or allotment letter and the transferee entities were free to use the same in any manner they liked in order to carry on their business which included construction thereon and the right to give on licence for the purpose of its distribution business.

26. Ms. Tewatia stated that only the regulatory deed which had been placed on record was the licence issued under Section 20 of DERA, 2000 for doing distribution business in Delhi granted to appellant by the Delhi Electricity Regulatory Commission (for short "DERC"). She pointed out that with the approval of the DERC and not the State, the appellant could transfer by sale/lease/exchange or otherwise under the provision of Clause 5.2.d. the undertaking or its utility including land in whole or in part. The relevant portion of the licence relied upon by the learned counsel for respondent-MCD is reproduced hereinbelow:-

"2. Definitions

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***xiv. "Delhi Power Company Limited"** means the company, wholly owned (directly or indirectly) by the Government of the National Capital Territory of Delhi, incorporated under the Companies Act, 1956 having its registered office at Shakti*

Sadan, Kotla Marg, New Delhi – 110 002, which is designated as the holding company in terms of the Transfer Scheme;

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*xvi. “**Distribution Business**” means the Authorised business of the Licensee for distribution of electricity in the Area of Supply or to any consumer or any class of consumers in an area other than the Area of Supply, if so authorised by the Commission by special or general permission;*

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*xviii. “**Distribution System**” means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers, and includes the Distribution Assets described in Schedule F of the Transfer Scheme;*

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*xxxi. “**License**” means this licence under which the Licensee is Authorised to conduct the Licensed Business;*

*xxxii. “**Licensee**” means North Delhi Power Limited in its capacity as operator of the Licensed Business;*

*xxxiii. “**Licensed Business**” means the business of Distribution and Retail Supply of electricity as Authorised under this Licence;*

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*xxxvi. “**M/S NORTH DELHI POWER LIMITED**” or “**the Company**” means North Delhi Power Limited, a company incorporated under the Companies Act, 1956, and having its*

registered office at Sub-station building, Hudson lane, Kingsway Camp, New Delhi – 110 009;

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xxxviii. **“Other Business”** means business of the Licensee other than the Licensed Business;

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liii. **“Transfer”** shall include the sale, exchange, gift, lease, licence, loan, securitisation, mortgage, charge, pledge or grant of any other encumbrance or otherwise permitting of any encumbrance to subsist or parting with physical possession or any other disposition or dealing;

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lx. **“Utility”** means the electric lines or electrical plant, and includes all lands, buildings, works and materials attached thereto belonging to any person acting as a generation company or licensee under the provisions of the DERA;

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5.2 The Licensee shall not, without the general or special approval of the Commission:

a. purchase or otherwise acquire electricity for distribution and retail supply except in accordance with this License and on the tariffs and terms and conditions as may be approved by the Commission; or

b. undertake any transaction to acquire, by purchase or takeover or otherwise, the utility of any other Supplier; or

c. merge its utility with the utility of any other Supplier; or

d. transfer – by sale, lease, exchange or otherwise – the undertaking or its utility, either in whole or any part thereof; or

e. enter into any agreement or arrangement with any other person to get any part of the Licensed Business undertaken, except the appointment of Franchisees;

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5.5 The Licensee may, subject to the provisions of Section 51 of the Electricity Act, 2003 and the directions issued by the Commission in this regard, engage in any Other Business with prior intimation to the Commission :

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11. Transfer of Assets

11.1 The Licensee shall not, without the written permission of the Commission, in a single transaction or a set of related transactions, Transfer or assign any asset whose book value at the time of the proposed Transfer exceeds Rs.30,00,000.00 (Rupees thirty lacs only) or such other amount as may be notified by the Commission from time to time :

Provided that in case of any emergency condition, such transfer or assignment, can be carried out between the Licensees in the National Capital Territory of Delhi without prior approval. The Licensee shall immediately after such a transaction submit before the Commission the detailed facts about the situation and the details of the transaction explaining to the satisfaction of the Commission the transfer and the emergency condition warranting such a transfer or assignment :

Provided further that the Licensee shall not under any circumstance transfer, relinquish, assign any right / interest / possession of any land and building of any value without the prior written approval of the Commission.

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11.3 The Licensee may also transfer or assign any asset where the asset in question was acquired and used by the Licensee exclusively or primarily in connection with any Other Business that it has been Authorised to carry on pursuant to Clause 5.5 and does not constitute a legal or beneficial interest in land, or otherwise form part of the Distribution System or is not otherwise an asset required for the Licensed Business."

27. According to her, the aforesaid licence deed showed that appellant had been granted proprietary rights subject to certain restrictions.

28. Ms. Tewatia also pointed out that land was in exclusive possession of appellant for last more than ten years and subsequent to the assessment years appellant had, in fact, constructed a permanent 66 KV Grid sub-station, which clearly showed that appellant had been bestowed with the right to construct/effect permanent structures as well as transfer/lease the assets re-transferred to it by the Government for the purpose of distribution business.

29. She submitted that exclusive use of the land and subsequent construction thereon after 2002 indicated permanence and proprietary rights as opposed to mere temporary use and a licence as was sought to be urged by the learned counsel for appellant.

30. Ms. Tewatia drew attention of this Court to a judgment of the Supreme Court in the case of ***Pradeep Oil Corporation vs. Municipal Corporation of Delhi & Anr. (2011) VI AD (SC) 330*** wherein it was held that as the petitioner was in possession of the land in question, it was liable to pay the property tax. She pointed out that in the aforesaid judgment the Supreme Court had itself distinguished the judgment in ***Housing & Urban Development Corporation Ltd.*** (supra) relied upon by learned senior

counsel for the appellant. The relevant portion of *Pradeep Oil Corporation* (supra) is reproduced hereinbelow:-

"1. Whether an agreement for erection of oil storage tank together with pump house, chowkidar cabins, switch room, residential rooms and verandah for storing oil decanted from the railway tankers, which bring petroleum products to the site at which they are decanted, would amount to lease or license, is one of the several questions which falls for consideration in these appeals, which has arisen out of a Full Bench decision rendered by the High Court of Delhi at New Delhi while disposing a batch of petitions bearing Nos. LPA 53, 54, 55, 57 and 58/1987.

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19. A bare perusal of the grant in question reveals that in the grant, the appellant herein i.e. grantee has been described as licensee. But in our considered view the mere use of the word "licensee" would not be sufficient to hold the grant in question as a license. Simply using the word "licensee" would neither be regarded as conclusive nor determinative. In terms of Clause (1) of the said indenture the licensee was to have the use of a piece of land for maintaining a depot for petroleum goods received through railways but thereby his rights to deal with the property and the goods brought thereon had not been taken away. Clearly, an embargo has been placed as regards the user of the construction made thereon to the extent that the same would be used solely for the storage of petroleum products but such restriction by itself can also be imposed in a case of lease. The grant in question clearly states that the constructions are to be made as per specifications approved by the Chief Inspector of Explosives which condition was also otherwise governed by the provisions of Explosives Act. Further, the pipelines are required to be laid at railway levels or demised in favor of the grantee, where for expenses are to be paid by it. It further states that the pipelines are to be laid underground in such a manner that vehicles can pass over that.

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34. *It is true that there are indeed certain restrictions which have been imposed by the Administration with regard to the construction of the building storage tank, etc., but in our considered view such restrictions are not decisive for the purpose of determining as to whether a document is a lease or license as such restrictions could also be imposed in case of a lease as well. In **Glenwood Lumber Co. Ltd. v. Philips, 1904-1907 All ER (Reprint) 203**, it was held:*

“In the so-called license itself it is called in differently a license and a demise, but in the Act it is spoken of as a lease, and the holder of it is described as the lessee. It is not, however, a question of words, but of substance. If the effect of the instrument is to give the holder an exclusive right of occupation of the land though subject to certain reservations or to a restriction of the purposes for which it may be used, it is in law a demise of the land itself.”

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38. *By reason of the provisions of the DMC Act, the MCD is required to render several services as specified therein for the purpose whereof, tax is required to be imposed both on land as also on building. The definition of “land” and “building” as provided in the DMC Act must be given its full effect. As mentioned hereinbefore in the case of **Municipal Corporation of Greater Bombay case (supra)**, even an oil tanker has been held to be building.*

39. *The tax is imposed upon the holders of land and building by the MCD which is compensatory in nature. The word “letting out” in the context of the grant therefore must receive its purposive meaning. The MCD renders services and the benefits of such services are being taken by all concerned, viz., the owner of the land or building. Even a person who is in possession of a land or building, whether legal or illegal, takes benefits of such services rendered by*

the MCD. The MCD for the purpose of realization of tax is not concerned with the relationship of the parties. It is concerned only with imposition and recovery of tax which is payable on all lands and buildings in accordance with law. The exceptions thereof have been enumerated in the Act itself. Section 119 of the MCD Act is one of such provisions. Such an exemption clause, as is well known, must be construed strictly. Section 119 of the MCD Act would apply if the lands and buildings are the properties of Union of India. The MCD has the right to levy the property tax in terms of Section 114 of the MCD Act in the manner as specified therein.

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*41. The learned counsel for the appellant has placed strong reliance on the decision of this Court in **HUDCO v. MCD; (2001) 1 SCC 455** to contend that land belonging to the government is immune from the payment of property tax by virtue of section 119(1) of the DMC Act and Article 285 of the Constitution of India. In the HUDCOs case vacant land of the government, prior to execution of the lease deed in favour of HUDCO, was sought to be taxed and that no building had been constructed by HUDCO. HUDCOs own case was that interest in land could pass only on execution of lease and construction thereon under section 120(2) of the MCD Act. MCD had invoked Section 120(1) DMC Act to fasten liability on HUDCO and not under Section 120(2) DMC Act after construction was made by HUDCO and lease deed executed by the government. In that case, this Court has held that vacant land belonging to the Government was not taxable by virtue of section 119 DMC Act and Article 285 of the Constitution of India. However, in our considered view, the case at hand is totally different. The HUDCO judgment dealt with the case where vacant land belonging to the lessor/Government and in regard where to no lease deed had been executed and no construction had been made by the lessee/HUDCO. The land belonging to*

the central government was sought to be taxed under section 120(1) of the DMC Act which fastens liability on the lessor. Since land belonged to UOI the same was exempted from payment of tax until the lease deed was executed and construction made thereon by HUDCO-under Section 120(2).

42. Incidence to pay tax under section 120(2) DMC Act is with regard to a composite assessment of land and buildings as section 120(2) talks of a composite assessment only. In the present case vacant land or property of Railways is not sought to be taxed as was in the case of HUDCO Vs. MCD under section 120(1) DMC Act, but property tax/Composite Assessment is sought to be made on the installations/storage depots having been constructed by the appellant-by virtue of Section 120(2) DMC Act. It is important to notice that w.e.f. the date of execution of lease deed and construction made thereon by HUDCO, HUDCO has been paying the property tax. HUDCOs case is therefore not applicable."

31. Ms. Tewatia contended that the appellant also had a right to let the property and therefore, the liability to pay tax clearly fell on the appellant under Section 120(1)(c) and after construction the incidence to pay tax fell on the appellant under Section 120(2).

32. She drew this Court's attention to the Government of India's Office Memorandum No.N-11025/26/2003-UCD dated 17th December, 2009, issued after pronouncement of the judgment dated 19th November, 2009 by the Apex Court in ***Rajkot Municipal Corporation & Ors. vs. Union of India*** in ***Civil Appeal No(s). 9458-9463/2003***, wherein it was stated that Union properties were liable to pay service charges. The underlying intent of the O.M. was that the Government properties avail municipal facilities in cities where they are situated and therefore, they must pay revenue to the local

bodies. The relevant portion of the aforesaid Office Memorandum dated 17th December, 2009 is reproduced hereinbelow:-

"Subject: Payment of service charges to local bodies in respect of Central Government properties--Supreme Court Order in Civil Appeal No.9458-63/2003-Rajkot Municipal Corporation & Others Vs. UOI & Others....."

The undersigned is directed to State that the Hon'ble Supreme Court vide its order dated 19.11.2009 disposed of the Civil Appeal No.9458-63/2003 - filed by Rajkot Municipal Corporation & Others Vs. UOI & Others (copy enclosed) relating to payment of service charges by Central Government Departments to Urban Local Bodies, with the following directions:-

(1) The UOI & its Departments will pay service charges for the services provided by appellant Municipal Corporations. No Property Tax will be paid by UOI but service charges calculated @ 75%, 50% or 33 1/3% of Property Tax levied on property owners will be paid, depending upon utilization of full or partial or Nil services. For this purpose agreements will be entered into UOI represented by concerned Departments with respective Municipal Corporation....."

33. Ms. Zubeda Begum, learned standing counsel appearing on behalf of Department of Power, Government of NCT of Delhi, who appeared at our request, submitted that as per provisions of the Delhi Electricity Reform (Transfer Schemes) Rules, 2001, land had not been transferred to any of the entities figured in Schedule A (PPCL), B (IPGCL), C (DTL), D (BYPL), E (BRPL) and F (TPDDL). She stated that they all were entitled to use the land as a licensee of the Government on payment of a consolidated fee of Rupee 1/- per month during the period the transferees had a license for

undertaking generation, transmission and distribution business. She further submitted that no part of land was to form part of the assets of these licensees and the fee received from all these licensees after reform was to be deposited with the Government as Government was the owner of the land.

34. Though Ms. Zubeda Begum admitted that under Schedule G of the Transfer Scheme the DPCL assets included land and land rights, but she submitted that the land had been shown in DPCL balance sheet on “going concern” basis, being a 100% owned company of Government of NCT of Delhi. However, according to her, the ownership of land and land rights vested with Government of NCT of Delhi only.

35. Further, Ms. Zubeda Begum drew attention of this Court to the Cabinet Decision No. 579 dated 6th January, 2001, which reads as under:-

“ Treatment of land leased to DVB

SBI Caps, in their Report have made no recommendation that the land owned/in possession of the DVB, should be alienated to the new companies. The land in possession of the DVB is earmarked for the purpose of electricity generation, transmission and distribution and cannot be used for any other purpose without bringing about change in “land in use” by the competent authority.

In the circumstances, the recommendations made by SBI Caps, which read as follows are recommended for acceptance by the Govt. of NCT of Delhi.

The ownership of the land shall be retained by the State Government. Such land should be merely provided on license to the successor entities. In the Transfer Scheme for effecting unbundling, it would be clearly specified that the above land could only be used by the successor entities for the sole purpose of electricity generation, transmission or distribution. Further,

the period of license for the use of land would be equal to the period for which the successor entities would have been granted a supply license by the regulatory commission.”

36. Ms. Zubeda Begum stated that the Law Department of Government of NCT of Delhi had also opined that in view of the above Cabinet Note, it was clear and categorical that ownership of land in question vested with the Government. She pointed out that thereafter a meeting was taken by the then Chief Secretary, Delhi on 16th November, 2010 wherein it was mutually agreed by DISCOMS and MCD as follows:-

- a) It was mutually agreed that in light of the GNCTD letter dated 29th January, 2010 to MCD and Office Memorandum dated 15/17 December, 2009 of Ministry of Urban Development, Govt. of India, property tax was not payable by Power utilities.*
- b) The Govt. land/properties in accordance with Ministry of U.D., Govt. of India O.M. dated 15/17.12.2009, Power utilities would pay service charges on the covered area @ 75% of the property tax (as applicable on utilities i.e. factor of 2) with effect from 29.01.2010 only. All Power utilities would self assess the service charges and make the payment to MCD accordingly.*

37. Ms. Zubeda Begum pointed out that the Department of Power, Government of NCT of Delhi had in fact filed an affidavit on 10th December, 2012 before this Court on the issue of property tax in W.P.(C) No. 3460 of 2011 titled as North Delhi Power Limited Vs. Municipal Corporation of Delhi & Others wherein it was reiterated that DISCOMs were not owners of the land and properties of erstwhile DVB and all these properties of the Government of NCT of Delhi were “properties of the Union” and thus exempted from property tax under Section 119 of the DMC Act. However, she stated that as per Ministry of Urban Development,

Government of India O.M. dated 15/17 December, 2009, power utilities like the appellant had to pay service charges on the covered area @75% of the property tax (as applicable on utilities i.e. factor of 2).

38. In rejoinder, Mr. Mehta admitted that the appellant had resiled from the understanding reached between the parties on 16th November, 2010 as respondent-MCD had subsequently asked for payment of service charge from the year 2002 and not from 2010.

39. Mr. Mehta clarified that he had referred to the Minutes of Meeting convened by the Government and the letters written by the Government only to buttress his arguments that property tax was not leviable. In any event, he submitted that there was no statutory basis to levy service charge. According to him, the only controversy before this Court is whether the property tax was leviable on appellant's vacant property and the same must be decided by this Court in accordance with law.

40. Mr. Mehta also relied upon the diagrammatic representation of financial restructuring annexed with the Information Memorandum Brochure issued by Government of NCT of Delhi to contend that ownership of land was to remain with the State and only liabilities were to be transferred to the Holding Company.

41. Mr. Mehta submitted that the judgment of the learned Single Judge in *Delhi Transco Ltd. & DPCL* (supra) was not binding upon the parties as appellant was not a party to the said writ petition. In the alternative, he submitted that the judgment of the learned Single Judge required re-consideration.

42. Mr. Mehta lastly submitted that this Court while interpreting DERA 2000 and the Transfer Scheme should not lose sight of the big picture,

namely, that privatisation of energy sector was initiated when there was a power crisis in Delhi. According to him, the intent of privatisation was to ensure that citizens of Delhi get continuous supply of energy at economical and competitive rates.

43. Having perused the paper book and heard the learned counsel for parties, this Court is of the view that it is first essential to outline the relevant facts.

44. On 3rd November, 2000, the DERA, 2000 passed by the Legislative Assembly came into force. According to its object clause, the Act was passed to provide for *"the constitution of an Electricity Commission, restructuring of the electricity industry (rationalization of generation, transmission, distribution and supply of electricity), increasing avenues for participation of private sector in the electricity industry and generally for taking measures conducive to the development and management of the electricity industry in an efficient, commercial, economic and competitive manner in the National Capital Territory of Delhi and for matters connected therewith or incidental thereto"*. The relevant provisions of DERA, 2000 are reproduced hereinbelow:-

"1. Short title, extent and commencement--

xxx xxx xxx

(3) *It shall be deemed to have come into force on the 3rd day of November, 2000.....*

14. Incorporation of companies for the purpose of generation, transmission or distribution of electricity.--(1) The Government may, as soon as may be after the commencement of this Act, cause one or more companies to be incorporated and set up under the provisions of the Companies Act, 1956 (1 of 1956)

for the purpose of generation, transmission or distribution of electricity, including companies engaged in more than one of the said activities in the National Capital Territory of Delhi and may transfer the existing generating stations or the transmission system or distribution system, or any part of the transmission system or distribution system, to such company or companies.....

15. Reorganisation of Delhi Vidyut Board and transfer of properties, functions and duties thereof.--(1) *With effect from the date on which a transfer scheme prepared by the Government to give effect to the objects and purposes of this Act, is published or such further date as may be specified by the Government (hereinafter referred to as "the effective date"), any property, interest in property, rights and liabilities which immediately before the effective date belonged to the Boards shall vest in the Government.*

(2) *The Government may transfer the property, interest in property, rights and liabilities to any company or companies established under section 14 for the purpose in accordance with the transfer scheme prepared therefore.....*

(6) *A transfer scheme may-*

xxxx xxxx xxxx xxxx

(b) *define the property, interest in property, rights and liabilities to be allocated-*

(i) *by specifying or describing the property, rights and liabilities in question,*

(ii) *by referring to all the property, interest in property, rights and liabilities comprised in a specified part of the transferor's under-taking, or*

(iii) *partly in the one way and partly in the other :*

Provided that the property, interest in property, rights and liabilities shall be subject to such further transfer as the Government may specify;

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20. Grant of licences by the Commission,--(1) *The Commission may, on an application made in such form and on payment of such fee, if any, as it may prescribe, grant a licence authorising any person to –*

(a) transmit electricity in a specified area of transmission; or

(b) supply electricity in a specified area of supply including bulk supply to licensees or any person.

45. On 20th November, 2001, the Government of NCT of Delhi issued a statutory Transfer Scheme by way of Notification. The relevant portion of the rules framed by the aforesaid Notification are reproduced hereinbelow:-

" NOTIFICATION

No.: F.11(99)/2001-Power/- In exercise of the powers conferred by section 60 read with sections 15 and 16 of the Delhi Electricity Reform Act, 2000 (Delhi Act No2 of 2001), the Government of the National Capital Territory of Delhi, hereby makes the following rules relating to the transfer and vesting of assets, liabilities, proceedings and personnel of the Delhi Vidyut Board in the successor entities and for determining the terms and conditions on which such transfer or vesting shall take effect, namely:-

1. Short title and Commencement

(1) These rules may be called the Delhi Electricity Reform (Transfer Scheme) Rules, 2001.

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2. Definitions:

In these rules, unless the context otherwise requires:-

xxxx xxxx xxxx xxxx

(b) *"assets" includes all rights, interests and claims of whatever nature as well as block or blocks of assets of the Delhi Vidyut Board;*

xxxx xxxx xxxx xxxx

(d) *"date of the transfer" means the date to be notified by the Government as the effective date of transfer to the successor entities in accordance with these rules of such of the undertakings, assets, liabilities, proceedings or personnel as may be specified in the notification published in the Official Gazette;*

xxxx xxxx xxxx xxxx

(g) *"DISCOM 3" means "North North-West Delhi Distribution Company Limited", a company incorporated under the Companies Act, 1956 (1 of 1956) with the principal object of engaging in the business of distribution and supply of electricity in the area as specified in Part III of Schedule 'H';*

xxxx xxxx xxxx xxxx

(j) *"holding company" means "Delhi Power Company Limited" a company incorporated under the Companies Act, 1956 (1 of 1956) with the principal object of holding shares in GENCO, TRANSCO and DISCOMS and liabilities of the Board;*

(k) *"liabilities" include all liabilities, debts, duties, obligations and other outgoing including contingent liabilities and government levies of whatever nature, which may arise in regard to dealings before the date of the transfer in respect of the specified undertakings:*

xxxx xxxx xxxx xxxx

(q) *"transferor" means the Government;*

(r) *"transferee" means the GENCO,TRANSCO,DISCOMS and PPCL, as the case may be, in whom the undertaking or undertakings or the assets, liabilities, proceedings and personnel of the Board, as the case may be, are vested in terms of these rules and shall include the holding company;*

xxxx xxxx xxxx xxxx

(t) *"undertaking" means a block or blocks of assets, liabilities and proceeding and wherever the context so admits the personnel;*

3. Transfer of assets etc. of the Board to the Government

(1) *On and from the date of the transfer to be notified for the purpose, all the assets, liabilities and proceedings of the Board shall stand transferred to and vest in, the Government absolutely and in consideration thereof the loans, subventions and obligations of the Board to the Government shall stand extinguished and cancelled, which shall be in full and final settlement of all claims whatsoever of the Board.*

xxxx xxxx xxxx xxxx

4. Classification of undertakings

(1) *The assets, liabilities and proceedings transferred to the Government under sub-rule (1) of rules 3 shall stand classified as under :-*

xxxx xxxx xxxx xxxx

(f) *Distribution Undertaking as set out in Schedule 'F'.*

(g) *Holding Company with assets and liabilities as set out in Schedule 'G'.*

5. Transfer of Undertaking by the Government

(1) Subject to the terms and conditions in these Rules,

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(f) the undertaking forming part of the Distribution Undertaking, as set out in Schedule 'F', shall stand transferred to, and vest in, the DISCOM 3, on and from the date of the transfer appointed for the purpose; and

(g) the assets and liabilities as set out in Schedule 'G', shall vest in the holding company, on and from the date of the transfer appointed for the purpose.

2. On such transfer and vesting of the undertakings in terms of sub-rules (1), the respective transferee shall be responsible for all contracts, rights, deeds, schemes, bonds, agreements and other instruments of whatever nature, relating to the respective undertaking and assets and liabilities transferred to it, to which the Board was a party, subsisting or having effect on the date of the transfer, in the same manner as the Board was liable immediately before the date of the transfer, and the same shall be in force and effect against or in favour of the respective transferee and may be enforced effectively as if the respective transferee had been a party thereto instead of the Board.

(3) The rights in the undertaking or the assets transferred to the transferee shall be subject to the restrictions and limitations, specified in these rules or in the applicable Schedule.

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11. Transfer by operation of law. *The Transfers under these rules shall operate and be effective on the date of transfer notified for the purpose as a statutory transfer and without any further act, deed or thing to be done by the Government, the Board, the transferees or any other person.*

12. Decision of Government final

(1) If any doubt, dispute, difference or issue shall arise in regard to the transfers under these rules, subject to the provisions of the Act, the decision of the Government thereon, shall be final and binding on all parties.

(2) The Government may, by order published in the official Gazette, make such provisions, not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulties arising in implementing the transfers under these rules.

SCHEDULE-'F'

[See RULE 4(1)(f) and Part III of Schedule "H"]

***DISTRIBUTION UNDERTAKING-DISCOM 3 (NORTH
NORTH- WEST DELHI DISTRIBUTION COMPANY LTD.)***

xxxx

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xxxx

I. DISTRIBUTION ASSETS:

All the 66 KV and 33 KV grid substations along-with the associated 66 KV and 33 KV transmission lines, 11 KV and LT. lines, on different types of supports with various sizes of conductors and step up/step down transformers, breakers, protective and metering devices and control rooms, testing laboratories, right of the way, building, roads, diesel generating sets or other conventional and non-conventional generating units, service connections and installations inside consumer premises, street lighting and signal system owned by or maintained by the board on behalf of the Municipal Corporation of Delhi and other Govt. agencies but excluding fittings, fixtures and installations owned by private persons or local authorities and excluding in particular the 66kv and 33kv lines emanating from the 400 KV and 220 KV substations as well as from the Generation Undertaking feeding the NDMC and MES areas of

supply.

II. GENERAL ASSETS/LIABILITIES:

Special tools and equipments, material handling equipment, earth movers, bulldozers, concrete mixtures, cranes, trailers, heavy and light vehicles, furniture, fixtures, office equipments, air conditioners, refrigerators, computers and signal systems, spares, consumables, raw materials, civil work installations including roads, buildings, schools, dispensaries, testing laboratories and equipment, training centers, workshops, work in progress, machineries, and equipment sent for repairs, scrap and obsolete materials.

III. OTHER ASSETS:

Other assets and movable properties including plant and machinery, motor car, jeeps , trucks, cranes, trailers, other vehicles, furniture, fixtures, air conditioners, computers, etc. to the extent they are utilized and operated by or associated with the assets referred to under Items I and II above, along with the residential colonies and properties like shops etc. situated in the colonies as per the order No.F.11/99/2001 - Power/PF- III/2828 dated 13th November, 2001 of the government shall also form the part of Distribution Undertaking.

Provided that notwithstanding I, II and III above and that the land was being used immediately before date of the transfer exclusively or primarily for the business of the transferee, no part of the land shall form part of the assets transferred under these rules. The transferee shall be entitled to use such land as a licensee of the government on payment of a consolidated amount of one rupee only per month during the period the transferee has the sanction or licence or authorization to undertake the distribution business. As and when such licence or sanction or authorization is revoked or cancelled or not renewed or the area of supply where the land is situated is withdrawn from the transferee, the licence to the transferee in respect of such land

shall cancelled.....

SCHEDULE-'G'

[See rule 4(1)(g)]

ASSETS AND LIABILITIES TRANSFERRED TO THE
HOLDING CO.

1. ASSETS:.....

Land and Land Rights....."

(emphasis supplied)

46. It is pertinent to mention that on 04th July, 2001, the Government incorporated amongst others holding and distribution companies. On 31st May, 2002, the Tata Power purchased shares of appellant under a Share Acquisition Agreement. In the said agreement, the effective date of transfer was stipulated as 1st July, 2002.

47. This Court upon a conjoint reading of the aforesaid facts as well as DERA, 2000 and the Transfer Scheme is of the opinion that at the first instance by virtue of Section 15(1) of the DERA, 2000 and Rule 3(1) of the Transfer Scheme, all assets/liabilities and proceedings of the erstwhile Board stood vested in the Government.

48. Subsequently, by virtue of Rule 4(1), all the assets/liabilities and proceedings that stood transferred to the Government were classified amongst others as assets/liabilities and proceedings of distribution undertaking as set out in Schedule 'F' (DISCOM 3/NDPL) and of Holding Company (DPCL) as set out in Schedule 'G'.

49. In fact, by virtue of Rule 5(1), the undertaking forming part of the distribution undertaking as set out in Schedule 'F' stood transferred to and vested in DISCOM 3/NDPL and the assets and liabilities as set out in Schedule 'G' stood vested in the Holding Company (DPCL) on or from the

date of transfer.

50. In the opinion of this Court, the transfer scheme provided firstly for transfer of land and land rights to Delhi Government, secondly for creation of a licence by Government in favour of the distribution company/NDPL and finally for transfer of land and land rights in favour of the Holding Company/DPCL along with the subsisting licence. It is pertinent to mention that on the date the transfer scheme was notified, the shareholding of the distribution companies as well as the Holding Company/DPCL was exclusively owned by the Government.

51. Rule 5(1)(g) read with Schedule 'G' proves beyond doubt that no part of the land and land rights belonging to the erstwhile DVB remained with the Government inasmuch as they stood further transferred and vested in the Holding Company/DPCL.

52. During the relevant assessment years, the Holding Company namely, DPCL, was clearly the owner of the land and land rights initially owned by DVB and not the Government.

53. Consequently, the entire land and land rights which belonged to the Government by virtue of Section 15(1) and Rule 3 stood further transferred to and vested in the Holding Company/DPCL.

54. We may mention that a learned Single Judge of this Court in ***Delhi Transco Ltd. & DPCL*** (supra) has concluded as under:-

"16. To a pointed question as to whether the balance sheet of petitioner i.e. Delhi Power Company Ltd. lists the land as an asset taken over from DVB, learned counsel for petitioners replies in the affirmative. However, counsel states that statutory auditors have objected to the same.

17. A perusal of Rule 3 and 4 would reveal that on and from

the date of transfer to be notified, all assets and liabilities of DVB vested in the Government of NCT of Delhi as per Rule 3 and immediately thereafter, as per Rule 4; stood transferred to the seven companies referred to in Rule 4, asset distribution being as per Schedule 'A' to 'G'.

18. Residual clause under the caption Land and Land Rights in Schedule 'G', vests all miscellaneous assets of the Board in petitioner No.2.

19. The transfer scheme leaves nothing in the hands of the Government of NCT of Delhi. Obviously, for this reason, in the Balance Sheet of petitioner No.2 all lands belonging to DVB are shown as its asset. If this be the position, licence by the Government of NCT of Delhi is a mere myth. Since the Government of NCT of Delhi does not own the land, it cannot be the licensor. Reference in the transfer scheme that the DISCOMS, GENCO and TRANSCO shall be licencees of the land under the Government is therefore an incorrect statement of law and facts."

(emphasis supplied)

55. It is pertinent to mention that neither the Government nor DPCL had filed an appeal against the said judgment. Only respondent No.1-MCD preferred an appeal against certain observations made by learned Single Judge. In the appeal, the Chief Secretary of Delhi, at the instance of the Division Bench brought about a settlement between the parties by virtue of which it was agreed that property tax on Holding Company/DPCL and Delhi Transco Ltd. would be levied and paid on a factor of two.

56. At our instance, Ms. Zubeda Begum, learned counsel for Government and DPCL placed on record the Balance-Sheets of the Holding Company/DPCL for the relevant assessment years. These Balance-Sheets show that land and land rights had been valued as assets of the Holding

Company/DPCL. In our opinion, this could only have been done if the land and land rights had been transferred to the Holding Company/DPCL.

57. We also find it strange that the Holding Company/DPCL, subsequently on the basis of a legal opinion furnished by the Government reversed the entries with regard to the land and land rights in its balance-sheet. In our view, as long as the statutory Transfer Scheme and the Rules remain un-amended, the Holding Company/DPCL would continue to be the owner of the land and land rights initially owned by DVB.

58. Ms. Zubeda Begum's reliance upon SBI Report as well as the Cabinet decision dated 6th January, 2001 to contend that land is owned by the Government, is misconceived on facts and untenable in law inasmuch as the aforesaid documents had been issued prior to the statutory Transfer Scheme and the Rules being notified on 20th November, 2001.

59. In any event, this Court is of the opinion that appellant's and respondent's reliance on Government's letters, information brochures and circulars is inconsequential and not determinative of the issue at hand as the question whether the property tax is leviable or not has to be decided in accordance with DERA, 2000 read with statutory scheme and the DMC Act. In fact, the Supreme Court in ***Municipal Commissioner of Dum Dum Municipality & Ors.*** (supra) has held as under:-

"11. Chapter III is entitled "Property and Contracts". Section 12 in this chapter provides for "transfer of assets and liability of Central Government to the Authority". Sub-section (1) of Section 12 reads:

"12. (1) Save as otherwise provided in sub-section (2), as from such date as the Central Government may appoint by notification in the Official Gazette in relation to any airport,—

(a) all properties and other assets vested in the Central Government for the purposes of the airport and administered by the Director General of Civil Aviation immediately before such day shall vest in the Authority;

(b) all debts, obligations and liabilities, all contracts entered into and all matters and things engaged to be done by, with, or for the Central Government immediately before such day for or in connection with the purposes of the airport shall be deemed to have been incurred, entered into and engaged to be done by, with, or for the Authority;

(c) all non-recurring expenditure incurred by the Central Government for or in connection with the purposes of the airport up to such day and declared to be capital expenditure by the Central Government shall, subject to such terms and conditions as may be determined by the Central Government, be treated as the capital provided by the Central Government to the Authority;

(d) all sums of money due to the Central Government in relation to the airport immediately before such day shall be deemed to be due to the Authority;

(e) all suits and other legal proceedings instituted or which could have been instituted by or against the Central Government immediately before such day for any matter in relation to the airport may be continued to be instituted by or against the Authority;

(f) every employee holding any office under the Central Government immediately before such day solely or mainly for or in connection with such affairs of the airport as are relevant to the functions of the Authority under this Act shall be treated as on deputation with the Authority but shall hold his office in the Authority by the same tenure and upon the same terms and conditions of service as respects

remuneration, leave, provident fund, retirement or other terminal benefits as he would have held such office, if the Authority had not been constituted and shall continue to do so until the Central Government, either on its own motion or at the request of the Authority, recalls such employee to its service or until the Authority, with the concurrence of the Central Government, duly absorbs such employee in its regular service, whichever is earlier:

Provided that during the period of deputation of any such employee with the Authority, the Authority shall pay to the Central Government, in respect of every such employee, such contribution towards his leave salary, pension and gratuity as the Central Government may, by order, determine:

Provided further that any such employee, who has, in respect of the proposal of the Authority to absorb him in its regular service, intimated within such time as may be specified in this behalf by the Authority his intention of not becoming a regular employee of the Authority, shall not be absorbed by the Authority in its regular service.”

12. Sub-section (3) says that

“if any dispute or doubt arises as to which of the properties, rights or liabilities of the Central Government have been transferred to the Authority or as to which of the employees serving under the Central Government are to be treated as on deputation with the Authority, under this section such dispute or doubt shall be decided by the Central Government in consultation with the Authority and the decision of the Central Government thereon shall be final.”

Section 13 declares that any land required by the authority for discharging its functions shall be deemed to be needed for a public purpose and can be acquired as such under the Land Acquisition Act, 1894. Section 14 says that subject to the provisions of Section 15, the Authority shall be competent to enter into and perform any contract necessary for the discharge of its functions under the Act. Section 15 prescribes

the mode in which contracts on behalf of the Authority shall be executed.....

28. We may now deal with the submission based upon certain letters of Government of India asserting that all the properties of the Authority are the properties of the Union. The appellants seek to read these letters as constituting a decision within the meaning of Section 12(3). Section 12(3) has been set out in full hereinabove. We may now set out one of the letters relied upon, viz., letter dated 2-1-1981 from the Deputy Secretary to the Government of India to the Chief Secretary, Government of Maharashtra, Bombay which reads:

“No. W-24011/14/80-AA

Date: 2-1-1981.

To,

*The Chief Secretary,
Government of Maharashtra,
Mantralaya, Bombay.*

*Sub: (i) Non-agriculture assessment
on the lands at Bombay
Airport under the control
of the IAAI.*

*(ii) Payment of municipal taxes
to the Bombay Municipal
Corporation by the IAAI.*

Sir,

I am directed to say that the International Airports Authority of India, a public sector undertaking under this Ministry, has informed the Ministry that Additional Collector, Bombay Suburban District and the Bombay Municipal Corporation respectively are making non-agricultural assessment and levying municipal taxes on the lands under the control of IAAI

at Bombay Airport. Sometime ago, this Ministry received a letter from the Additional Collector, Bombay Suburban District stating that the IAAI is subject to non-agricultural assessment for the lands under its control at Bombay Airport (No. C/Desk/2/8A/826 dt. 3-5-1980).

2. This matter was referred to the Union Ministry of Law, Justice & Company Affairs for legal opinion. A copy of the legal opinion received is enclosed. It may be seen from the legal opinion received that the property vested with the IAAI continues to be the property of the Government of India and is exempt from State taxation.

3. In view of this, it is requested that suitable instructions be issued to the Additional District Collector, Bombay Suburban District and the Commissioner, Bombay Municipal Corporation not to levy any State tax on the lands under the control of IAAI at Bombay.

Yours faithfully,

sd/-

(Gopal Chaturvedi)

Dy. Secretary to the Govt. of India”

29. The appellants also rely upon a certificate issued by the Government of India addressed to the Managing Director, Hotel Corporation of India, which may also be set out:

“GOVERNMENT OF INDIA

MINISTRY OF CIVIL AVIATION AND TOURISM

(Department of Civil Aviation)

SARDAR PATEL BHAWAN,

PARLIAMENT STREET,

NEW DELHI.

Dated 21-8-1989

AV.18050/67/89-AA

To,
The Managing Director,
Hotel Corporation of India,
5th Floor,
Centaur Hotel, Bombay Airport,
Bombay.
Sub: Assessment of property tax.

Sir,

I am directed to refer to letter No. PRM/202 dated 3rd August, 1989 on the above-noted subject and to certify that Air India is a statutory corporation established under the Air Corporation Act, 1953 by the Government of India and the Hotel Corporation of India is a wholly-owned subsidiary of Air India. Since both Air India and the Hotel Corporation of India are public sector undertakings, the properties of these Corporations are basically vested with the Government of India.

*Yours faithfully,
sd/-*

(R.N. Bhargava)

Under Secretary to the Govt. of India”

30. In our opinion, these letters and/or the certificate do not represent a decision within the meaning of Section 12(3) since that sub-section seems to contemplate a dispute between the Union of India and the Authority. No such dispute ever existed. Secondly it cannot bind any of the Municipal Corporations concerned herein for the reason that they were not heard before rendering the said decision. Yet another feature of these letters and certificate is that they do not draw a distinction between properties transferred by the Union of India to the Authority and the properties acquired and/are controlled by the Authority after its constitution. According to the Central Government, all the properties of the Authority are really the properties of the Union — a stand which is not taken by the appellants even.

60. Also there is no estoppel against the statute. If a property is amenable to property tax by virtue of operation of law, the Government cannot exempt it by way of a Letter/Circular/Office Memorandum/Minutes of Meeting or an affidavit. The Supreme Court in ***State of Uttar Pradesh and Another vs. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti and Others***, (2008) 12 SCC 675 has held as under:-

"44. It is settled law that there can be no estoppel against a statute. If the field was occupied by statutory rules, the employees could get right only under those rules. The High Court was equally bound to consider those rules and to come to the conclusion whether under the statutory rules, the retrenched employees were entitled to absorption either in government department or in any other public sector undertaking. Statement, assurance or even undertaking of any officer or a counsel of the respondent Corporation or of the Government Pleader of the State is irrelevant. The High Court, in our view, ought to have considered the prayer of the Corporation and decided the question if it wanted to dispose of the matter on merits in spite of availability of alternative remedy to the employees.

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46. It is well settled that a court of law can direct the Government or an instrumentality of State by mandamus to act in consonance with law and not in violation of statutory provisions. Unless a court records a finding that act of absorption of all employees of the Corporation either in government department or in any other public sector undertaking is in accordance with law, no writ can be issued. Therefore, even on that ground, the directions of the High Court deserve to be set aside."

61. Though the appellant relied upon Rule 12(1) of the Transfer Scheme to submit that the Government's letter dated 29th January, 2010 and the Government's stand in an affidavit dated 14th February, 2012 was conclusive on the issue that no property tax was payable, yet it is surprising to note that the appellant did not abide by the consensual decision/direction dated 16th November, 2010 of the Government to pay service charges. The relevant portion of the Minutes of Meeting dated 16th November, 2010 is reproduced hereinbelow:-

"

The following issues were discussed and decided:-

1. It was mutually agreed that in light of GNCTD letter dated 29.01.2010 to MCD & Office Memorandum dated 15/17.12.2009 of Ministry of Urban Development Govt. of India, property tax is not payable by Power utilities.

(Action: M.C.D. and All Power Utilities)

2. The Govt. land/properties in accordance with Ministry of UD, Govt. of India, O.M. dated 15/17.12.2009, Power Utilities will pay service charges on the covered area @ 75% of the property tax (as applicable on utilities i.e. factor of 2) with effect from 29.01.2010 only. All Power Utilities will self assess the service charges and make the payment to M.C.D. accordingly.

(Action: M.C.D. and All Power Utilities).....

(emphasis supplied)

62. Further, Mr. Mehta's contention that appellant had resiled from the understanding dated 16th November, 2010 on the ground that respondent-MCD had subsequently asked for payment of service charge since 2002, is contrary to facts. In fact, from the Status Note annexed with the Government's affidavit dated 28th November, 2011 filed in W.P.(C) 2867-

68/2006, it is apparent that appellant had unilaterally and without reason resiled from the consensual decision taken in the meeting dated 16th November, 2010. The relevant portion of the Status Note dated 24th November, 2011 is reproduced hereinbelow:-

"3.

(b) The successor entities, more particularly, the Discoms took stand that in terms of the decision taken during the meeting chaired by Hon'ble Chief Secretary on 16.11.2010 and as stated in para 2 of the Minutes thereof, the power utilities were directed to pay service charge on covered area @75% of property tax w.e.f. 29.01.2010 only. They interpreted this para to the fact that no property tax/service charge was payable by them before the date of 29.01.2010 as the word 'only' has been used for excluding the liability of payment of property tax prior to that period.

(c) Hon'ble Chairman of the Committee did not agree with their stand and advised them to re-examine the same in view of the fact that logic has to be applied uniformly and the contention that liability of property tax/service charge can be fastened from a particular date without any cogent reason or basis was untenable.

4.(a) Subsequently vide its letter dated 13.10.2011, NDPL has addressed a letter to the Chairperson of the Joint Committee and has desired to record its strong objection and observations with regard to the arbitrary and intransigent stand taken by MCD in total disregard of the spirit of understanding admitted to be arrived at between NDPL and MCD as recorded in the Minutes of Meeting dated 16.11.2010. For the various reasons stated in the letter, factual as well as legal, NDPL sought to withdraw from the participation in the Joint Committee and also withdrew its concession to pay service charge @75% as recorded in the Minutes of Meeting

dated 16.11.2010. NDPL further expressed its intention to seek adjudication of the issue before the Hon'ble High Court of Delhi in the pending Writ Petition Nos.3460 of 2011 and 2630 of 2005.

(b) Unilateral withdrawal of NDPL from participating in the meetings of the Committee was examined by the Chairman of the Committee and consequently NDPL has been advised to put-forth his views before the Committee since it is a conciliatory process only and nothing can be enforced upon anybody against his will....."

(emphasis supplied)

63. We are surprised to note that in the present case the Government and the Holding Company/DPCL did not take any step to get the consensual decision dated 16th November, 2010 implemented. From the Status Note annexed with the Government's affidavit dated 28th November, 2011, it is apparent that appellant was taking an inequitable stand and was trying to clutch at a typographical error in the Minutes dated 16th November, 2010 in a bid to wriggle out of a binding obligation. But, we refrain from saying anything further as we were informed that the aforesaid Minutes of Meetings are pending adjudication in another writ petition.

64. Undoubtedly, the Government has the right to formulate a policy and privatise the energy sector. But in our opinion, the process must be "thought through" and executed in a transparent manner. Though the statutory Transfer Scheme transfers land worth crores of rupees, yet it does not specifically deal with the issue of property tax. If no property tax was payable, the Transfer Scheme could have specifically stated so and if it was payable, the entity which had to pay the same, should have been specified.

65. Further, what is not understandable is that even though privatisation of distribution companies and transfer of land to them was known from the day one, no care was taken to describe either the extent, location or measurement of the land. When the distribution licence expires or is terminated, it is not understood, as to how the Holding Company and/or the Government would know that the entire land has been returned back by the distribution company/appellant. Since land is very valuable in the city of Delhi, we direct the Government and DPCL to forthwith take immediate remedial steps by clearly identifying and demarcating the land in possession of the appellant.

66. Also, when this Court looks at the big picture, as suggested by Mr. Mehta, it is of the view that the intent of DERA 2000 was to make the energy sector in Delhi more efficient and economical as well as competitive by privatising it. It was hoped by the legislature that the private sector would turn around the sick and inefficient energy sector by injecting the much needed fresh capital and professionalism. Certainly the intent was not to make Delhi's ailing energy sector profitable by ensuring it did not pay taxes that erstwhile DVB was paying!

67. As far as the issue whether the statutory Transfer Scheme creates a lease or licence in favour of appellant is concerned, we are of the opinion that it is not open to the parties to go behind the rules framed under DERA, 2000.

68. In fact, the judgment cited by both the parties are clearly inapplicable to the facts of the present case as the said judgments deal with contractual documents or deeds executed in pursuance to a statute. But in the present instance, the subordinate legislation namely, the statutory Transfer Scheme

by way of rules enacted under DERA, 2000 declares the transfer of land in appellant's favour as a licence and as there is no challenge to the legal validity of the statutory Transfer Scheme, this Court is of the view that only a licence has been conferred upon the appellant and not a lease.

69. This Court is further of the opinion that Section 20 licence for distribution business issued by DERC is distinct and separate from the licence for land granted in appellant's favour. This Court is in agreement with the submission of the learned counsel for appellant that the terms of licence for distribution business cannot either govern or be used as a tool to interpret the licence for land.

70. Since Holding Company/DPCL is not a party before us and we have reached the conclusion that 8080 sq. mtr. of vacant plot of land occupied by appellant-NDPL on a licence basis is amenable to property tax, we remand the matter back to the Deputy Assessor and Collector of respondent-MCD for determination as to whether the appellant or the Holding Company/DPCL is liable to pay property tax. Before passing the final order, the Deputy Assessor and Collector of respondent-MCD is directed to give a hearing to both the appellant as well as the Holding Company/DPCL. With the aforesaid observations, present appeal stands disposed of.

MANMOHAN, J

CHIEF JUSTICE

DECEMBER 09, 2013

rn/js