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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1650 OF 1997

Steel Authority of India Ltd. ... Petitioner

Versus

1. The Bombay Metropolitan Region Iron &
Steel Market Committee

2. State of Maharashtra ... Respondents

WITH

WRIT PETITION NO.1632 OF 1997

Tata Iron & Steel Company ... Petitioner

Versus

1. The Bombay Metropolitan Region Iron
& Steel Market Committee

2. State of Maharashtra ... Respondents

Mr. S.C. Naidu a/w Mr. Rakesh Mandavkar and Ms. Amrita Dubey i/by
Mr. Bhavesh V. P Panjuani i/by M/s. Mulla & Mulla & Craigie Blunt &
Caroe for the Petitioner in WP/1650/1997.

Mr. S.C. Naidu a/w Mr. H.N. Vakil a/w Mr. Rushil Mathur i/by M/s.
Mulla & Mulla & Craigie Blunt & Caroe for the Petitioner in
WP/1632/1997.

Mr. N.N. Bhadrashete for the Respondent No.1.

Mr. A.B. Vagyan, G.P. a/w Mr. Manish M. Pabale, AGP and Mr. R.S.
Sawant, A.A.G.P. and Ms. G.R. Golatkar, A.A.G.P. for the Respondent
No.2.

CORAM : A.S. OKA & RIYAZ I. CHAGLA, JJ.

DATE ON WHICH SUBMISSIONS WERE HEARD : 29.09.2017

DATE ON WHICH JUDGMENT IS PRONOUNCED : 09.02.2018

JUDGMENT (PER A.S. OKA, J.):

1 The issues which arise in these two Petitions are more or less identical and hence, the same are taken up for hearing together. In both the Petitions under Article 226 of the Constitution of India, there is a challenge to the provisions of the Mumbai Metropolitan Region Specified Commodities Markets (Regulation of Location) (Enactment of Bye-Laws with retrospective effect to provide for levy and collection of the Registration Fee and Market Fee and Validation and Continuance) Act, 1997 (for short “the Validating Act”).

2 The petitioner in Writ Petition No.1650 of 1997 is the Steel Authority of India which is a Government of India Enterprise. The petitioner in Writ Petition No.1632 of 1997 is a Company registered under the Companies Act, 1956. The first respondent has been constituted under the provisions of Bombay Metropolitan Region Specified Commodities Market (Regulation of Location) Act, 1983 (for short “the said Act of 1983”). The first respondent - Market Committee is constituted under Sub-Section (1) of Section 8 of the said Act of 1983. Under Section 34 of the said Act of 1983, a power is vested in Market Committees constituted under Section 8(1) to levy and collect fees.

3 As far as the petitioner in Writ Petition No.1650 of 1997 is concerned, under an agreement to lease dated 29th December, 1983 a plot of land admeasuring about 1,67,900 square meters was allotted to the petitioner by the City and Industrial Development Corporation of Maharashtra Limited (for short "CIDCO"). The said plot of land is situated at revenue village Kalamboli, District Raigad. It is claimed in the petition that the said plot was developed by the petitioner by spending a huge amount. As far as Writ Petition No.1632 of 1997 is concerned, the petitioner acquired a plot of land admeasuring 72,000 square meters under an agreement of lease dated 31st March, 1982 executed by the City and Industrial Development Corporation of Maharashtra Limited (for short "CIDCO"). The said plot of land is also situated at revenue village Kalamboli in Raigad District. In this Writ Petition also, the petitioner has set out the details of the development work carried out on the said plot by the petitioner.

4 In both the Petitions, the case made out by the petitioners is that under relevant clauses of the lease deeds, the petitioners are required to pay service charges to CIDCO towards the cost of establishing and maintaining civic amenities such as roads, water drainage, conservancy of the said land, etc. The details of the service charges paid by the petitioners to CIDCO have been also set out in the

Petition. The case of the petitioners in both the Petitions is that the amenities to the said plots were not provided either by CIDCO or by the first respondent - Market Committee.

5 On 2nd March, 1990 a meeting of the first respondent was held in which it was decided to charge market fee at the rate of Rs.9/- per square meter on all warehousing plot holders/ stockyard holders with effect from 1st September, 1989. Accordingly, a demand was made to the petitioners. The petitioners in both the Petitions requested the first respondent to reconsider its decision as the petitioners were paying service charges to the CIDCO. Reference is made in both the Petitions to various demands made and action taken for non-payment of market fee to first respondent. Being aggrieved by the action of demanding market fee at the rate of Rs.9/- per square meter, the petitioner in Writ Petition No.1650 of 1997 filed Writ Petition No.370 of 1994 in this Court. The said Petition was disposed of by an order dated 2nd December, 1994. The Writ Petition was disposed of by recording a statement of the first respondent that the first respondent was withdrawing the demands made with regard to the market fee. As far as the petitioner in Writ Petition No.1650 of 1997 is concerned, there was again a demand made by the first respondent by a letter dated 20th December, 1996 in the sum of Rs.1,14,05,545/- comprising of market fee of Rs.1,06,17,149/- and delayed payment charges of Rs.16,88,396/-. The demand was made on

the basis of Maharashtra Ordinance No.XVII of 1996 dated 10th October, 1996 which enabled the first respondent to levy and collect market fees with effect from 1st September, 1989 with retrospective effect. Similar demand was issued to the petitioner in the other Petition. Ultimately, the said ordinance was replaced by the Validating Act which is the subject matter of challenge in this Petition which is deemed to have come into effect on 10th October, 1996. We may note here that earlier bye-laws made by the first respondent were approved by the State Government on 25th April, 1995. Prayer clause (a) of both the Petitions read thus :-

“(a) that this Hon'ble Court be pleased to declare that the Mumbai Metropolitan Region Specified Commodities Markets (Regulation of Location) (Enactment of bye-laws with retrospective effect to provide for levy and collection of the Registration fee and Market fee and Validation and Continuance) Act, 1997 and the bye-laws approved by the 2nd Respondent on 24th April 1995 are ultra Vires the Constitution of India and the provisions of the Bombay Metropolitan Region Specified Commodities Markets (Regulation of Location) Act 1983 and null and void.”

6 There is a reply filed by Shri B.B. Srivastava, Chief Executive Officer of the first respondent in both the Petitions. In Writ Petition No.1632 of 1997, there is a rejoinder filed by the petitioner.

7 The first submission of the learned counsel appearing for the petitioners is that the provisions of the Validating Act are declaratory in nature and there is no change or alteration brought about in the Parent Act by the Validating Act. In the alternative, he submitted that

Validating Act imposes a fresh levy which is impermissible. He relied upon the learned opinion expressed by Justice G.P. Singh in his well known commentary styled “Principles of Statutory Interpretation”. He relied upon a decision of the Apex Court in the case of *Shri Prithvi Cotton Mills Vs. Broach Municipality*¹ in support of his submission that the Validating Act cannot be a mere declaration but in substance, the same must amend the Parent Act to remove deficiency or cause of invalidity. He pointed out that the object of a Validating Act is to remove the cause, ineffectiveness or invalidity of actions or proceedings which are validated by legislative measures. He relied upon a decision of the Apex Court in the case of *Hari Singh and others Vs. The Military Estate Officer*². In this behalf, he also relied upon the decisions of the Apex Court in the case of *Utkal Contractors & Joinery (P) Ltd. and Ors. Vs. State of Orissa*³ and *Bakhtawar Trust Vs. M.D. Narayan*⁴. He invited our attention to the Maharashtra Ordinance No.XVII of 1996 as well as Maharashtra Ordinance No.III of 1997. Inviting our attention to the provisions of both the ordinances, he pointed out that Section 2 of the Ordinance provided that the bye-laws enacted and incorporated in Section 2 of the said Ordinance shall be deemed to be duly and validly made by the first respondent under Section 69 read with Sections 5 and 34 of the said Act of 1983. Section 3 of the first ordinance provided for

1 AIR 1970 SC 192

2 AIR 1972 SC 2205

3 AIR 1987 SC 2310

4 AIR 2003 SC 2236

a declaration that collection of fees by Market Committee during the earlier period specified therein stands validated. Second ordinance is virtually the same as the first Ordinance. As far as the Validating Act is concerned, it is on the lines of the first ordinance.

8 The submission of the learned counsel appearing for the petitioners is that the Validating Act does not amend Sections 2 and Section 69 of the said Act, 1983. There is no provision made that levy and collection of market fee will be competent without a valid bye-law in place. He pointed out that Section 2 of the Validating Act purports to frame a bye-law as contemplated by the said Act of 1983. A deeming fiction is provided that bye-laws mentioned in Section 2 shall be construed as having been made by the first respondent - Committee under Section 69 read with Section 34 of the said Act of 1983. He pointed out that however there is no amendment carried out to Sections 2(2) and 69 of the said Act of 1983. He pointed out that under Section 69 of the said Act of 1983, a power is conferred on the Market Committee to levy and collect different types of fees only as per the bye-laws. The learned counsel urged that Section 34 remains unamended and that the State legislature has purported to frame bye-laws which were required to be framed by the first respondent. He submitted that only bye-laws contemplated under the said Act of 1983 are the one

made under Section 69 of the said Act of 1983 and save and except Section 69, there is no other statutory power conferred which enables framing of bye-laws. He submitted that Market Committee can frame bye-laws only in accordance with Section 69 and therefore, no bye-laws could be framed by the Market Committee by giving retrospective effect.

9 The learned counsel placed reliance on decisions of the Madhya Pradesh High Court in the case of *Narottamdas Harjiwandas vs. P.B. Gowarikar*⁵ and *Dayalal Meghji vs. State of Madhya Pradesh*⁶. He also relied upon a decision of Allahabad High Court in the case of *Shashikant Rai vs. Regional Transport Authority*⁷. He submitted that in any case a fresh levy with retrospective effect cannot be imposed under the Validating Act. He relied upon a decision of this Court in the case of *CIT Vs. Hico Products Limited*⁸.

10 He submitted that in any event, the provisions of the Validating Act to the extent of retrospective operation are unreasonable and violative of Article 14 of the Constitution of India. He submitted that a Validating Act cannot provide for a declaration for regularising illegal executive action.

5 AIR 1961 MP 182

6 AIR 1962 MP 342

7 AIR 1978 ALL 68

8 (1990) 92 Bom.LR 659

11 He also invited our attention to the fact that the petitioners are paying service charges to the CIDCO as well as property taxes to the Village Panchayat.

12 He also invited our attention to the bye-law incorporated by the Validating Act. He invited our attention to the well settled proposition of law regarding distinction between a tax and a fee. He urged that as held by the Apex Court in the case of *Bhagwan Das Sood Vs. State of H.P.*⁹, the market fee is essentially a fee and not a tax. He pointed out that the affidavit filed by the first respondent does not indicate that common services, amenities and facilities were provided at the relevant time by the first respondent. He submitted that the levy of market fee in the facts and circumstances is nothing but a tax. He relied upon a decision of the Apex Court in the case of *Kewal Krishan vs. State of Punjab*¹⁰. The learned counsel would, therefore, submit that the provisions of the Validating Act will have to be struck down.

13 The learned counsel appearing for the petitioners invited our attention to the decision of the Federal Court in the case of *United Provinces Vs. Atiqah Begum*¹⁶. Inviting our attention to two decisions of the Apex Court in the case of *M/s. J. K. Jute Mills Co. Ltd vs. The State*

9 (1997) 1 SCC 227

10 AIR 1990 SC 1008

16 (1940)FCR 110

*Of Uttar Pradesh*¹⁷ and *Rai Ramkrishna Vs. State of Bihar*¹⁸, he submitted that where a law suffers from infirmity which has been noted in the judgment of the Court, it is permissible for the legislature to remedy the defect by curing the defect. He submitted that legislation of validating nature is constitutionally permissible because by such a legislation, what the legislator seeks to achieve is to enact a valid piece of legislation that removes the defects in the earlier legislation which is in force. He pointed out that, however, under the guise of enacting a validating legislation, the legislature cannot issue a mandate simplicitor to override the judgment of a Court. He pointed out that a validating legislation can always have a retrospective character. He submitted that a validating enactment in substance should amend the Parent Act to remove the deficiency or cause of invalidity as held by the Apex Court in the case of *Prithvi Cotton Mills Vs. Broach Municipality (supra)*. He pointed out that in the present case, the purported defect perceived by the State Government under the said Act of 1983 was that it did not enable the Market Committee to levy and collect the registration fee and market fee unless the bye-laws are framed by exercising power under Section 69. He submitted that it was open for the legislature to bring a valid enactment providing for a provision enabling the Market Committee to levy and collect registration fee and market fee in

1 7 AIR 1961 SC 1534

1 8 AIR 1963 SC 1667

absence of bye-law. Merely by providing that bye-laws framed by the Market Committee in exercise of powers conferred under Section 69 would have retrospective effect without inserting enabling provision to that effect in the said Act of 1983 would mean that there has been no effective legislative amendment to the Parent Act. He invited our attention to the objects and reasons of the Ordinances which acknowledge the fact that Market Committee without making requisite bye-laws under Section 69 proceeded to levy and collect market fee. He invited our attention to both the Ordinances. He pointed out that the impugned enactment does not amend Sections 2(2) and Section 69 of the said Act of 1983. The Validating Act does not bring about amendment providing that levy and collection of registration and market fee can be made without a valid bye-law being in place. By amendment, no power has been conferred on the Market Committee to levy and collect market fees in absence of bye-law and in fact Section 2 of the impugned enactment seeks to frame bye-law as contemplated by Section 69 of the said Act of 1983. He pointed out that the impugned enactment does not amend the main Act for conferring power on the State Legislature to frame bye-laws which power vests only in the Market Committee as provided in Section 69. He submitted that the legal position that a Market Committee cannot levy and collect fees without there being a proper bye-law framed under Section 69 remains

unaltered. He relied upon a decision of the Division Bench of the Madhya Pradesh High Court in the case of *Firm – Dayalal Meghji vs State of Madhya Pradesh*¹⁹ as well as a decision of the Allahabad High Court in the case of *Shashikant Rai Vs. Regional Transport Authority*²⁰.

14 The learned counsel submitted that in any event by Validating Act, a fresh levy with retrospective effect cannot be provided for. He submitted that a Validating enactment should be a curative legislation to remove the deficiency or cause of invalidity and not a fresh legislation imposing levy for the first time. Such levy violates fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India. He submitted that the said Act of 1983 does not permit even by implication retrospective application of bye-laws framed in exercise of powers under Section 69 of the said Act of 1983.

15 The learned counsel submitted that the impugned enactment is unreasonable and violative of Article 14 of the Constitution of India. He also submitted that the impugned enactment is repugnant to the said Act of 1983 as Sections 2(2) and 69 are not altered or amended by the impugned enactment.

16 He pointed out that the impugned enactment seeks to regularise the illegal collections made by the Market Committee for the

1 9 AIR 1962 MP 342
2 0 AIR 1978 ALL 68

period from 1st February, 1988 to 23rd February, 1999. He submitted that imposition of this levy, in any case, is oppressive and confiscatory in nature. He pointed out that the petitioners are under an obligation to pay service charges to CIDCO as per the provisions of the lease deeds executed by the CIDCO. He urged that the Market Committee is not declared as a Local Authority and that the CIDCO has not transferred amenities to the Market Committee. He submitted that in addition, the traders in the market yard are paying taxes to Kalamboli Grampanchayat which are levied in accordance with Section 126 of the Bombay Village Panchayat Act, 1958.

17 He also invited our attention to the bye-laws purportedly framed by the impugned enactment. He pointed out that the market fee is essentially a fee and not a tax. He submitted that there is no basis to levy the market fee on per square meter basis.

18 He submitted that bye-law No.4 sought to be incorporated by the impugned enactment and bye-law No.32 framed by the Market Committee are irrational, arbitrary and discriminatory and are required to be struck down. He submitted that the bye-laws sanctioned by communication dated 25th April, 1995 cannot stand the test of legality.

19 The learned Government Pleader submitted that there could be a taxing legislation which is retrospective. He relied upon a decision

of the Apex Court in the case of *Commercial Motors Limited vs. Commissioner of Trade Tax, Uttar Pradesh, Lucknow and Ors*¹¹. He relied upon another decision of the Apex Court in the case of *Dr. Indramani Pyarelal Gupta and Ors. Vs W.R. Natu and Ors*¹².

20 He also relied upon another decision of the Apex Court in the case of *Bachan Singh and Another Vs. Chhotu Ram and Ors*¹³. The learned Government Pleader relied upon another decision of the Apex Court in the case of *R. Dalmia Vs. The Commissioner of Income Tax*¹⁴ in support of the proposition that the words used are required to be incorporated conceptually. The learned Government Pleader relied upon the decision of the Apex Court in the case of *Joint Action Committee of Air Line Pilots' Association of India v. Director General of Civil Aviation*¹⁵. The main object was to decongest the old island City and to shift as many commercial activities as possible to places outside island City of Mumbai. He pointed out that many wholesale markets were shifted to Navi Mumbai. Even textiles, iron and steel markets were located outside the island City. He submitted that power to collect fees stems from the provisions of Section 34 of the said Act of 1983. He accepted that the manner of collection and rates of fees are to be specified by the bye-laws prepared under the said Act of 1983. He

1 1 (2015) 15 SCC 168
 1 2 (1963) 1 SCR 721
 1 3 (1986) 3 SCC 652
 1 4 (1977) 2 SCC 467
 1 5 (2011) 5 SCC 435

submitted that bye-laws by itself do not enable collection of fees as the same is enabled by Section 34. He submitted that by following procedure under Section 69, the bye-laws were framed under the said Act of 1983. He pointed out that by the impugned Amending Act only a date on which the bye-laws will come into force has been laid down by a deeming fiction.

21 The learned Government Pleader relied upon the meaning of the words “retrospective”, “retroactive” and “retro-activity” in various judicial dictionaries and Law Lexicons. He relied upon the concept of quasi retro-activity. He relied upon a decision of the Apex Court in the case of *Commercial Motors Limited Vs. CIT*. He submitted that when the words of statute are clear and unambiguous, full effect must be given to the same in order to give full effect to the intention of the legislature. By relying upon a decision of the Apex Court in the case of *R. Dalmia Vs. The Commissioner of Income Tax (supra)*, the learned Government Pleader urged that the impugned amending Act is not arbitrary or unreasonable. He urged that the State has power to amend the bye-laws for levy of fees with retrospective effect. He submitted that power to manage includes power to levy fees for management of the market areas. If the bye-laws were silent about the power to collect certain fees from the earlier date, the Validating Act has made good the lacuna in the said bye-laws.

22 The learned Government Pleader submitted that the bye-laws have been framed by the Market Committee and as the bye-laws do not make any provision for retrospective levy of fees, the State enacted the Validating Act to give retrospective effect to the bye-laws framed by the Market Committee. He submitted that under the bye-laws framed the Market Committee, it became empowered to collect market fees with effect from 25th April, 1995.

23 The learned Government Pleader submitted that the petitioners are themselves members of the Market Committee which has framed the bye-laws and therefore, the petitioners are estopped from challenging the retrospective operations of the bye-laws. He relied upon the decisions of the Apex Court in the case of *Indramani Pyarelal Gupta (Dr.) and Ors. Vs. W.R. Nattu and Ors.* (supra) and *Joint Action Committee of Air Line Pilots' Association of India v. Director General of Civil Aviation* (supra). He would, therefore, urge that no interference is called for in writ jurisdiction.

24 We have also heard the submissions of the learned counsel appearing for the first respondent who supported the submission of the learned Government Pleader. We have also heard the rejoinder of the learned counsel representing the petitioners.

25 We have given careful consideration to the submissions. We have carefully gone through each and every decision relied upon by both the parties. Many of the decisions lay down the same principles of law. Therefore, we have quoted only some of the decisions.

26 We must firstly refer to the provisions of the said Act of 1983. Sub-Section (2) of Section 2 defines “bye-laws” to mean “the bye-laws made by a Market Committee under this Act”. Section 3 deals with the declaration of market area and market yards. There is no dispute that the area in which subject plots of the petitioners are situated was notified as a market area with effect from 1st January, 1987. Section 34 incorporates the power of the Market Committee to levy fee. Section 34 reads thus :-

“34. **Power of committee to levy fees.** - It shall be competent to a committee to levy and collect fees in the manner and at the rates laid down in the by-laws made, -
(i) subject to the provisions of sub-section (2) of section 35, for stalls, offices, shop, godowns, etc., and open spaces in the market yard;
(ii) for the grant and renewal of licences;
(iii) for any common services, amenities and facilities provided or arranged by the committee;
(iv) for the entry of persons, vehicles and goods into the market yard; and
(v) for any other matter for which fee is to be or may be levied and collected by it.”

27 Another Section which is relevant is Section 69 which reads thus :-

“69. **Power of committee to make by-laws.** - (1) The power to make all by-laws under this Act shall be exercisable by the committee,

subject to the previous sanction of the State Government as hereinafter provided.

(2) Without prejudice to any power to make by-laws contained elsewhere in the Act, any committee may make by-laws consistent with this Act and the rules made thereunder for the administration of its affairs and for the guidance of standing committee, sub-committees, officers and servants.

(3)(a) The Committee, whenever it desires to make by-laws under this Act, shall, by a resolution at a special meeting, approve a draft of such by-laws.

(b) As soon as possible after such resolution is passed, the committee shall display the draft of the by-laws on its notice-board and publish a notice in at least two newspapers circulating in the market area and also in such manner, as may in its opinion, be best circulating to inform the public and all persons likely to be affected by the by-laws so displayed and inviting their objections and suggestion in respect of the proposed draft within a reasonable period to be specified in such notice.

(4) The committee shall consider the objections and suggestions received, if any, and may by a resolution approve the final draft of the by-laws.

(5) Within seven days of the passing of such resolution, the Chief Executive Officer shall submit the final draft of the by-laws approved under sub-section (4) to the Metropolitan Commissioner who shall send it with his recommendation to the State Government. The State Government may sanction the by-laws sent to it subject to such modifications, if any, as it may think necessary.”

apparent that the Market Committee can levy and collect fees in the manner and at the rates laid down by the bye-laws. Therefore, unless there were bye-laws lawfully made, the first respondent could not have exercised the power under Section 34 to levy market or registration fees. Sub-Section (2) of Section 2 defines bye-laws to mean the bye-laws made by a Market Committee under the said Act of 1983. Perusal of the provisions of the said Act of 1983 shows that under Section 68 a power to make rules is conferred on the State Government and under Section 69, a power to make bye-laws is vested only in the Market Committee subject to previous sanction of the State Government. Thus, condition precedent for a Market Committee to levy the market fee is making of bye-laws by exercising the power under Section 69 by the Market Committee. Thus, so long as the bye-laws are not made, the Market Committee is not competent to levy or charge market fees.

29 It is undisputed that the bye-laws contemplated by Section 69 of the said Act of 1983 came into force on and from 25th April, 1995 when the bye-laws (for short “the said bye-laws”) made by the first respondent were approved by the State Government. The said bye-laws do not confer any power to levy the market fees with retrospective effect for a period prior to 25th April 1995. It was also pointed out that the resolution of Market Committee dated 2nd March, 1990 of levying market fee was withdrawn after the same was challenged in Writ

Petition No.370 of 1994.

30 On perusal of the provisions of the said Act of 1983, we find that there is no power vested in the State Government to frame bye-laws contemplated by Sub-Section (2) of Section 2. Sub-Section (3) of Section 69 lays down a procedure to be followed for framing of bye-laws which can be summarised as under :-

A] The Committee is required by a resolution at a special meeting to approve a draft of the bye-laws;

B] The draft of the bye-laws is required to be displayed on its notice board and the Committee is required to publish a notice in at least two newspapers circulating in the market area for inviting objections and suggestions in respect of the proposed draft bye-laws;

C] The Committee is under an obligation to consider the objections and suggestions received and thereafter, by a resolution is required to approve the final draft of the bye-laws;

D] The Chief Executive Officer of the Market Committee is required to submit final draft of the bye-laws to the Metropolitan Commissioner who is under an obligation to send the same with his recommendations to the State Government;

E] Thereafter, the State Government has power to sanction the bye-laws subject to such modifications, if any, as it may think necessary.

31 We may note that the said power to make bye-laws was exercised by the first respondent and accordingly, along with a letter dated 10th January, 1995 final draft of the bye-laws was submitted to the State Government. By a letter dated 25th April, 1995, the Urban Development Department of the State Government informed the first respondent that the bye-laws have been approved by the State Government subject to modification made in bye-law Nos.32 and 33. Bye-law No.32 enjoins plot/shop/office premises/godown/open space holders in the market yard to pay market committee, market fee of Rs.9/- per square meter per annum on the basis of the area of their plots/ shops/ office premises/ godowns/ open spaces as well as delayed payment charges as the committee may decide. For larger holding above area of 5,000 square meters, it was provided that market fee payable will be Rs.7.50/- per square meter for the area between 5001 to 1,00,000 square meters. The market fee will be payable at the rate of Rs.6/- per square meter of area of 1,00,001 square meters and above.

32 On 2nd March, 1990 a resolution was passed by the first respondent to levy and recover market fee at the rate of Rs.9/- per square meter per annum with retrospective effect from 1st September, 1989. Against the petitioner in Writ Petition No.1650 of 1997 on 7th May, 1993, a demand was made by the CEO of the first respondent by which he requested the District Collector to recover a sum of Rs.62,38,518/- on account of market fee for the period from 1st September, 1989 to 31st March, 1993. On 2nd February, 1994 a Writ Petition was filed by the said petitioner being Writ Petition No.370 of 1994. In the said Writ Petition, a statement was made on behalf of the first respondent that the demand in respect of the market fee was being withdrawn and recovery of market fee will be made as and when lawful demand is made. On 10th January, 1996 the first ordinance was promulgated. On 17th January, 1997, the second ordinance was promulgated. Both the ordinances are in terms of the subsequent Revalidating Act. Therefore, we are referring to the provisions of the Revalidating Act. In the preamble, it is stated that the Act has been made to enact the bye-laws with retrospective effect to provide for levy and collection of the registration fee and market fee under the provisions of the said Act of 1983 and to make certain validating provisions. Sub-Section (2) of Section 1 of the Revalidating Act provides that the same shall be deemed to have come into force on 10th October,

1996. Section 2 of the Revalidating Act reads thus :-

- “2. Enactment of bye-laws with retrospective effect to levy and collect registration and market fees.** - The following bye-laws to provide for levy and collection of the registration fee and the market fee for common services, amenities and facilities provided or arranged within the area of the Bombay Metropolitan Region Iron and Steel Market Committee, Kalamboli, Navi Mumbai (hereinafter referred to as “the said Market Committee”) and the market yard, during the period commencing on the 1st February, 1988, and ending on the 23rd April, 1995, shall be deemed to be duly and validly made by the said Market Committee under section 69 read with sub-section (3) of section 5 and section 34 of the Mumbai Metropolitan Region Specified Commodities Markets (Regulation of Location) Act, 1983, on the 1st February, 1988, namely :-
- “1. Title, Commencement and Application. - (1) These bye-laws may be called the Bombay Metropolitan Region Iron and Steel Market Committee, Kalamboli, Navi Mumbai (Levy and Collection or Registration Fee and Market Fee) Bye-laws, 1988.
- (2) They shall come into force on the 1st February, 1988.
- (3) They shall apply for the levy and collection of the registration fee and market fee, for the period commencing from the 1st February, 1988 and expiring on the 23rd April, 1995.
2. Definition. - In these bye-laws, unless the context otherwise requires. -
- (a) “Act” means the Mumbai Metropolitan Region Specified Commodities Markets (Regulation of Location) Act, 1983;
- (b) “Market Committee” means the Bombay Metropolitan Region Iron and Steel Market Committee, Kalamboli, Navi Mumbai, constituted under section 4 of the Act.
3. Registration fee. - (1) An application for Registration with the Market Committee, shall be made by the traders lawfully engaged in the specified trade within the market area, to the Chief Executive Officer of the Market Committee.
- (2) A registration fee of rupees 100 till the 31st December, 1990; and thereafter of rupees 200, per application, shall be charged for such registration.
4. Levy and collection of market fee. - (1) There shall be levied and collected, from every person carrying on specified trade in Iron and Steel and holding any premises whether as a lessee or otherwise in the market yard, on the basis of the area of the plot, shop, office premises, godown or open space, a fee at the rate specified in the table below, per annum, for the common services, amenities and facilities provided by the Market Committee.

Serial Number	Area	Market Fee Per Square Meter
1	Upto 5,000 Square metres	Rupees 9.00
2	5,001 to 1,00,000 Square metres	Rupees 7.50
3	1,00,001 Square metres and above	Rupees 6.00

- (2) If the market fees levied and demanded are not paid within the period specified for making such payment, the Chief Executive Officer of the Market Committee may also charge such delayed payment charges, as may be decided by him.”

(underline supplied)

33 Thus, Section 2 purports to make bye-laws to provide for levy and collection of registration fee and market fee for the period between 1st February, 1988 and 23rd April, 1995. It provides that the bye-laws incorporated in the said Section shall be deemed to be duly and validly made by the said Market Committee under Section 69 read with Sub-Section (3) of Section 5 and Section 34 of the said Act of 1983 with effect from 1st February, 1988. Thus, by Section 2 of the Revalidation Act, the legislature has purported to frame bye-laws referred in Section 35 of the said Act of 1983 and the Section declares that the bye-laws shall be deemed to have been made by the first respondent – Market Committee. As stated earlier, the power to frame bye-laws under the said Act of 1983 is only under Section 69 which vests only with the Market Committee. Thus, by Section 2, the legislature has purported to exercise the power to make bye-laws vesting in the Market Committee and that also with retrospective effect from 1st February, 1988. Section 3 of the Revalidating Act is also relevant which reads thus :-

“3. Validation of fees levied and collected by Market Committee. - Notwithstanding anything contained in the Mumbai Metropolitan Specified Commodities Markets (Regulation of Location) Act, 1983 or in any judgment decree or order of any court, any registration fee or market fee levied and collected including any action (taken or things done) in pursuance of such levy and collection, by the said Market Committee acting or purporting to act under the provisions of the said Act, during the period commencing on the 1st February, 1988 and ending on the 23rd April, 1995, in so far as it is in accordance with the bye-laws 3 and 4 of the bye-laws made under section 2 of this Act, shall be deemed to be and shall be deemed always to have been validly levied and collected in accordance with law as if the said bye-laws 3 and 4 had been continuously in force at all material times and accordingly, -

- (a) all actions, proceedings or things done or taken by the said Market Committee, or any of its officers or servants in connection with the levy and collection of such fee shall, for all purposes, be deemed to be and have always been done or taken in accordance with the provisions of the said Act;
- (b) no suit or other proceedings shall be maintainable or continued in any court, against the said Market Committee or any of its officers or servants for the refund of the registration fee or market fee so levied and collected;

- (c) no court or any other authority shall enforce any decree or order directing the refund of any registration fee or market fee.”

34 It seeks to validate collection of registration fee or market fee by the Market Committee during the period commencing on 1st February, 1988 and ending on 23rd April, 1995 insofar as it is in accordance with the bye-laws No. 3 and 4 of the bye-laws made under Section 2. The statement of objects and reasons under both the Ordinances and the Validating Act are similar. It is mentioned therein that the first respondent – Market Committee without making requisite bye-laws under Section 69 of the said Act of 1983 for levy and collection of market fee and registration fee, during the period from 1st February, 1988 to 23rd April, 1995 has levied and collected registration fee and market fee only on the basis of the resolutions, it was necessary that the said irregular levy and collection of registration fee and market fee made by the said Market Committee be legalised with retrospective effect at the rates specified in the bye-laws validly made and that the Market Committee is not called upon to refund the same on the ground that the levy and collection thereof was not in terms of the said Act of 1983. It is further stated that it was necessary to undertake suitable legislation providing for enactment with retrospective effect of the

requisite bye-laws empowering the said Market Committee to levy and collect registration fee and the market fee and to make suitable validating provisions for validating such levy and collection of such fees by the first respondent.

35 Perusal of the Revalidating Act shows that :-

- A) The same does not purport to amend the said Act of 1983 by conferring power to frame bye-laws on the State Government. It does not confer any power on the market committee to frame bye-laws with retrospective effect;
- B) It purports to frame bye-laws as contemplated by Section 69 of the said Act of 1983 with retrospective effect from 1st February, 1988;
- C) It purports to validate levy and collection of registration fee and market fee made by the first respondent w.e.f. 1st February, 1988;

36 It will be necessary to make a reference to the law laid down by the Apex Court dealing with the Validating Acts. It will be necessary to make a reference to the decision of the Apex Court in the case of *Utkal Contractors & Joinery (P) Ltd. and Ors. Vs. State of Orissa (supra)*.

Paragraph 14 of the said decision reads thus :-

“14. The next question to be considered is whether the State while purporting to amend the Act has encroached upon the judicial power and set aside the binding judgment of this Court. We do not

think that Mr. Nariman was justified in contending so. The principles has been well established in a string of decisions of this Court, and we may briefly summarise as follows:-

The legislature may, at any time, in exercise of the plenary power conferred on it by Arts. 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law. There is no prohibition against retrospective legislation. The power of the legislature to pass a law postulates the power to pass it prospectively as well as retrospectively. That of course, is subject to the legislative competence and subject to other constitutional limitation. The rendering ineffective of judgments or orders of competent Courts by changing their basis by legislative enactment is a well known pattern of all validating acts. Such validating legislation which removes the causes of ineffectiveness or invalidity of action or proceedings cannot be considered as encroachment on judicial power. The legislature, however, cannot by a bare declaration, without more, directly overrule, reverse or set aside any judicial decision. Hari Singh v. Military Estate Officer (1973) SCR 515 : (AIR 1972 SC 2205), Govt. of Andhra Pradesh v. Hindustan Machine Tools Ltd. 1975 Supp SCR 394 : (AIR 1975 SC 2037), I.N. Saksena v. State of M.P. (1976) 3 SCR 237 : (AIR 1976 SC 2250) and Misri Lal Jain v. State of Orissa (1977) 3 SCR 714 : (AIR 1977 SC 1686).”

(emphasis added)

37 In the case of *Bhaktawar Trust* (supra), the Apex Court held thus:

“14. The validity of any statute may be assailed on the ground that it is *ultra vires* the legislative competence of the legislature which enacted it or it is violative of Part III or any other provision of the Constitution. It is well settled that Parliament and State Legislatures have plenary powers of legislation within the fields assigned to them and subject to some constitutional limitations, can legislate prospectively as well as retrospectively. This power to make retrospective legislation enables the legislature to validate prior executive and legislative Acts retrospectively after curing the defects that led to their invalidation and thus makes ineffective judgments of competent courts declaring the invalidity. It is also well settled that a validating Act may even make ineffective judgments and orders of competent courts provided it, by retrospective legislation, removes the cause of invalidity or the basis that had led to those decisions.

15. The test of judging the validity of the amending and validating Act is, whether the legislature enacting the validating Act has competence over the subject-matter; whether by validation, the

said legislature has removed the defect which the court had found in the previous laws; and whether the validating law is consistent with the provisions of Part III of the Constitution.”

(emphasis added)

In the case of *Shri Prithvi Mills Ltd (supra)*, the Apex Court

held thus:

“When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, **the cause for ineffectiveness or invalidity must be removed** before validation can be said to take place effectively. ... Granted legislative competence, *it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise*. A court's decision must always bind **unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances**. ... The legislature may follow any one method or all of them and while it does so *it may neutralise the effect of the earlier decisions of the court which becomes ineffective after the change of the law*. ... If the legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and **whether in making the validation it removes the defect which the courts had found in the existing law** and makes adequate provisions in the validating law for a valid imposition of the tax.”

(emphasis added)

In the case of *Indramani Pyarelal Gupta (supra)* relied upon by

the State, in paragraph 26, the Apex Court held thus:

“26. Mr. Pathak invited our attention to a passage in *Craies' Statute Law*, 5th Edn., p. 366 reading:

“Sometimes a statute, although not intended to be retrospective, will in fact have a retrospective operation. For instance, if two persons enter into a contract, and afterwards a statute is passed, which, as Cockburn, C.J. said in *Duke of Devonshire v. Barrow etc. Co.* [(1877) 2 QBD 286, 289] ‘engrafts an enactment upon existing contracts’ and thus operates so as to produce a result which is something quite different from the original intention of the

contracting parties, such a statute has, in effect a retrospective operation.”

The bye-law insofar as it affects executory contracts requiring such contracts to be closed out on a day not originally contracted for and at a price fixed by law is in the above sense undoubtedly retrospective. The submission of learned counsel was that though a legislature which had plenary power in this regard could enact a statute having a retrospective operation, subordinate legislation, be it a rule, a bye-law or a notification, could not be made so as to have retrospective operation and that to that extent the rule, bye-law or notification would be ultra vires and would have to be struck down, relying for this position on the decision of the Mysore High Court reported in AIR 1960 Mysore 326. We do not however consider it necessary to canvass the correctness of this decision or the broad propositions laid down in it. **It is clear law that a statute which could validly enact a law with retrospective effect could in express terms validly confer upon a rule-making authority a power to make a rule or frame a bye-law having retrospective operation and we would add that we did not understand Mr Pathak to dispute this position.** If this were so the same result would follow where the power to enact a rule or a bye-law with “retrospective effect” so as to affect pending transactions, is conferred not by express words but where the necessary intendment of the Act confers such a power. If in the present case the power to make a bye-law so as to operate on contracts subsisting on the day the same was framed, would follow as a necessary implication from the terms of Section 11, it would not be necessary to discuss the larger question as to whether and the circumstances in which subordinate legislation with retrospective effect could be validly made.

(emphasis added)

As far as the law regarding validating legislations is concerned, it is fairly well settled. We have also considered the decisions of the Apex Court in the case of *M/s. J. K. Jute Mills Co. Ltd* (supra) and *Rai Ramkrishna Vs. State of Bihar* (supra). The Apex Court has held that the legislature has power to enact laws having retrospective operation. The object of validating legislation is to enact a valid piece of legislation that removes the defect or vice in the earlier legislation. A mere declaration in the validating legislation that the

existing law or executive action which was held to be invalid will be valid would not be a valid legislation. In fact as held in the case of *Hari Singh and others (supra)*, the object of a Validating Act is to remove the causes for ineffectiveness or invalidity of actions by validating the same by a legislative action.

38 In the light of the well settled law that the impugned enactment will have to be examined. The object of the legislation is to validate action of the first respondent of collection of market fee with effect from 1st February, 1988 till 23rd April, 1995. We have already adverted to the provisions of Section 34 of the said Act of 1983. As held earlier, a Market Committee cannot levy and collect fees unless there are bye-laws made by it in accordance with the Section 69. The reason being Section 34 mandates that levy and collection of fees shall be in the manner and at the rates laid down in the bye-laws. Bye-laws have been defined to mean in Sub-Section (2) of Section 2 of the said Act of 1983 as the bye-laws made by the Market Committee under the said Act of 1983. As noted earlier, Section 69 is the only Section which incorporates a power to make bye-laws which vests in any Market Committee. As distinguished from the power to make bye-laws, under Section 68, rule making power is conferred on the State Government.

39 For validating the levy and collection of market fee for the period upto 23rd April, 1995, Section 34 could have been amended giving power to the first respondent - Market Committee to levy and collect fees by passing resolutions and by the legislation, the resolutions made prior to the commencement of the impugned Act could have been validated. But what the legislature has done under the Validating Act is to frame bye-laws which are incorporated in Section 2 thereof. By the impugned enactment, the legislature has not amended the said Act of 1983 by conferring power on the State Government to frame bye-laws. As stated earlier, under Sub-Section (2) of Section 2 of the said Act of 1983, bye-laws means bye-laws made by a Market Committee. Thus, the exercise undertaken of framing bye-laws which are incorporated in Section 2 of the impugned Validating Act is ultra vires the provisions of Section 69 read with Sub-Section (2) of Section 2 of the said Act of 1983. As the said Act of 1983 does not confer power to frame bye-laws on the State Government and as the Validating Act does not amend the said Act of 1983 for conferring power to frame bye-laws on the State Government, the act of legislature of framing bye-laws incorporated in Section 2 of the impugned enactment cannot be valid at all. Another important aspect is that assuming that the legislature could have exercised the power of the first respondent of framing the bye-laws, as Section 69 has not been amended, notifying the proposed bye-laws in

the manner provided therein, inviting objections /suggestions and consideration thereof was mandatory. All this has not been complied with. Thus, the bye-laws purportedly framed by the Validating Act are not in accordance with Section 69 of the principal Act.

40 Section 3 of the impugned Validating Act purports to validate the levy and collection by the Market Committees of the registration fees and market fees insofar as it is in accordance with the bye-laws No.3 and 4 forming part of Section 2 of the impugned enactment. Bye-laws enacted by Section 2 of the impugned enactment purport to provide for levy and collection of registration fee and market fee. Section 3 of the impugned enactment purports to validate only that levy and collection which is consistent or which is in accordance with bye-laws incorporated in Section 2. As the Section 2 does not stand the test of constitutionality, obviously, Section 3 cannot be valid. In any event, if bye-laws incorporated in Section 2 of the impugned enactment are held to be invalid, Section 3 cannot be enforced as it will not validate any levy and collection of registration fee and market fee upto 23rd April, 1995. Hence, both the Petitions must succeed to the extent to which validity of the impugned Validating Act is challenged. In both the Petitions, the impugned demand for market fee is for the period between 1st September, 1989 to 31st March, 1997. However, it is only with effect from 25th April, 1995 i.e. when the bye-laws were validly

made, the first respondent was entitled to recover market fees. Therefore, the demand for the period from 1st September, 1989 to 24th April, 1995 will have to be set aside.

41 As far as the demand from 25th April, 1995 is concerned, the main challenge is on the ground that the market fee is not a fee but in substance it becomes a tax. On this aspect, it will be necessary to make a reference to the affidavit of Shri B.B. Srivastava, the Chief Executive Officer of the first respondent. In clause (vi) of his affidavit he has stated thus :-

“(vi) I say that the Committee has been regularly spending amounts on the establishment and administration etc. of the Markets, including the maintenance and provision of basic amenities and common facilities at the Market Yard at Kalamboli. So far as the maintenance of the inside portion of the warehousing plot areas allotted to different plot-holders, it is the concern of the individual plot-holder. So far as the maintenance of the basic infrastructure and provision of common facilities as also the common amenities are concerned, the same are provided by the Market Committee and the CIDCO. On 27.09.1990, it was decided by the Market Committee that it would maintain the internal and Service roads and drainage etc., despite the fact that the basic infrastructure in the Market Yard at Kalamboli, such as roads etc. have still not been handed over to the Market Committee. **Even prior to this period, the Market Committee was engaged in providing common service such as Internal security, and gardening and horticulture etc. and even since then, the Market Committee has been maintaining the service roads and internal roads alongwith the drainage alongside these roads. That alongwith the internal and service roads, the internal security, horticulture and gardening is also maintained by the Market Committee. At present, all peripheral roads, street lights, drainage etc. alongside the peripheral roads and water supply arrangements etc. are provided by the CIDCO. The amount which is spent by the Market Committee upon the establishment and maintenance of the Market Yard, area and establishment/maintenance of basic infrastructure and common amenities etc. from the period from 1989-1990 to February 1997, is as follows :-**

Establishment		Rs. 53,94,456/-
Administration		Rs. 99,35,835/-
Basic Amenities (Repairs and Developments)		Rs.1,74,38,131/-
Total	:	Rs.4,27,58,412/-

As regards the amount collected between 1989-90 till February 1997, the Market fees of Rs.3,91,37,463/- and the D.P.C. is collected to the tune of Rs.24,40,490/-. Thus, the total amount collected by way of Market fee and the D.P.C. is to the tune of Rs.4,15,77,953/-. The other receipts are Rs.28,25,580/- (1989-90 to February 1997), and the borrowings at Rs.37.00 lakhs (since repaid)."

(emphasis added)

42 In paragraph 8, he has stated that the Market Committee has been rendering services to the plot-holders and traders. The question is whether the levy of market fee by the first respondent is in the nature of a tax or a fee. In paragraph 23 of the decision of the Apex Court in the case of *Kewal Krishan Puri vs. State of Punjab and Ors.*, the law on this aspect has been laid down which reads thus :-

"23. From a conspectus of the various authorities of this Court we deduce the following principles for satisfying the tests for a valid levy of market fees on the agricultural produce bought or sold by licensees in a notified market area:

- (1) That the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose.
- (2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.
- (3) That while rendering services in the market area for the purposes of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.
- (4) That while conferring some special benefits on the licensees it is permissible to render such service in the market which may be in the general interest of all concerned with the transactions taking place in the market.
- (5) That spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other

facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such services in the long run go to increase the volume of transactions in the market ultimately benefiting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them.

- (6) **That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.**
- (7) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above.

(emphasis added)

In the present case, from the affidavit of Shri Srivastava, it is apparent that the first respondent has been rendering services to the plot-holders and members. The first respondent may not have shown existence of *quid pro quo* with arithmetical exactitude, but broadly, it is established that first respondent is spending substantial amounts for rendering services to those who are burdened with payment of market fees. There was some argument based on the contention that rates of market fees differ on the basis of the area of the plots and therefore, it is arbitrary. We find that for very large plots, fee is payable at lesser rate. For smaller plots, the rate of fees is higher than what is prescribed for bigger plots. There is nothing arbitrary or irrational about it. In the circumstances, the demand from 24th April, 1995 cannot be questioned.

43 Accordingly, both the Petitions must succeed in part and we pass the following order :-

ORDER

- (i) Rule is made absolute in terms of prayer clause (a) only to the extent of the impugned validating Act. The bye-laws approved on 25th April 1995 are held to be valid;
- (ii) The impugned demand of market fees for the period from 1st September, 1989 till 24th April, 1995 is illegal and is quashed and set aside. However, the impugned demand with effect from 25th April, 1995 onwards is held to be valid;
- (iii) If the petitioners have paid any market fee for the period between 1st September, 1989 to 24th April, 1995, the first respondent shall refund the said amount to the petitioners with interest thereon at the rate of 6% per annum from the respective dates of payment within a period of three months from today. On an application being made by the petitioners in writing, it will be open for the first respondent to adjust the said amount with interest towards market fees or other dues;
- (iv) Rule is accordingly made partly absolute on above terms;
- (v) There will be no order as to costs.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)