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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 06/08/2019****Judgment Delivered on : 27/08/2019****Writ Appeal No. 355 of 2019***{Arising out of Order dated 14.05.2019 passed in Writ Petition No. 1273 of 2003 by the learned Single Judge}*

M/s. Bharti Airtel Ltd. Registered office at Bharti Crescent, 1 Nelson Mandela Road, Vasant Kunj, Phase II, New Delhi – 110070, Through its authorised signatory Shri Sanjeev Jain S/o Shri Mahendra Kumar Jain, Age 41 years, 3rd Floor, Metro Tower, Vijay Nagar, Indore, Madhya Pradesh.

---- Appellant**Versus**

1. State of Chhattisgarh, Through Its Secretary, Department of Urban Administration & Development, Mantralaya, DKS Bhawan, Raipur, Present Address Mahanadi Bhawan, Atal Nagar, Raipur, Chhattisgarh.
2. Raipur Municipal Corporation, Raipur, Through its Commissioner, Head Office, Near Mahila Police Thana, Gandhi Udyan, Raipur, Chhattisgarh, 492001
3. Property Tax Officer, Raipur Municipal Corporation, Raipur, Chhattisgarh – 492001

---- Respondents**AND****Writ Appeal No. 356 of 2019***{Arising out of Order dated 14.05.2019 passed in Writ Petition No. 1055 of 2003 by the learned Single Judge}*

M/s. Bharti Airtel Ltd. Registered Office at : Bharti Crescent, 1 Nelson Mandela Road, Vasantkunj, Phase II, New Delhi - 110070, Through its authorised signatory Shri Sanjeev Jain S/o Shri Mahendra Kumar Jain, Age 41 years, 3rd Floor, Metro Tower, Vijay Nagar, Indore, Madhya Pradesh.

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1. State of Chhattisgarh, Through Its Secretary, Department of Urban Administration & Development, Mantralaya, DKS Bhawan, Raipur, Present Address Mahanadi Bhawan, Atal Nagar, District Raipur, Chhattisgarh.
2. Bhilai Municipal Corporation, Bhilai, Through its Commissioner, GE Road, Supela, Bhilai, District Durg, Chhattisgarh.
3. Property Tax Officer, Bhilai Municipal Corporation, Bhilai, District Durg, Chhattisgarh.

---- Respondents

For Appellants	: Shri Sumit Nema, Senior Advocate with Shri Sachin Singh Rajput, Advocate
For State/Respondent No. 1	: Shri Siddharth Dubey, Deputy Government Advocate
For Municipal Corporation/ Respondents No. 2 and 3	: Shri H.B.Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Judgment

Per P.R. Ramachandra Menon, Chief Justice

1. IA No. 1 of 2019 has been filed for condoning the delay of 19 days in preferring these appeals. For the reasons stated in the application, delay is condoned.

2. Whether a cellular service provider who has obtained licence from the Central Government in terms of Section 4 of the Indian Telegraph Act, 1885 (*for short 'the Act, 1885'*) to establish, maintain or work a telegraph within the area of operation and jurisdiction of the local authority concerned, is liable to pay property tax to the local authority, is the main question involved in these appeals.

3. Such a question is mooted with reference to the fact that the property tax as envisaged under Section 135 of the Madhya Pradesh Municipal Corporation Act, 1956 (*for short 'the Act, 1956'*), as applicable to the State of Chhattisgarh as well, can be imposed only on the 'owners' of the 'buildings' or 'lands' situated within the city, with reference to the gross 'annual letting value' of the buildings or the lands, as mentioned under Section 132(1)(a) of the Act, 1956. It is also pointed out that the Appellant is not an 'occupier' of the land or any building and hence, does not come within the purview of Section 132(6)(j) of the Act, 1956. The verdict passed by the learned Single Judge repelling the contentions raised by the Appellant against the course and proceedings pursued by the local authority by dismissing the writ petitions is under challenge in these appeals.

4. We heard Shri Sumit Nema, learned Senior Counsel who addressed the Court on behalf of the Appellant, Shri Siddharth Dubey, learned Deputy Government Advocate representing the State and Shri H.B.Agrawal, learned Senior Counsel representing the Respondent-Corporation.

5. The parties and proceedings are referred to as given in Writ Appeal No. 355 of 2019, arising out of Writ Petition No. 1273 of 2003.

6. The Appellant (same in both the appeals) obtained a licence from the Central Government in terms of Section 4 of the Act, 1885 to establish, maintain and operate telephone services in the “Madhya Pradesh Circle” and a lease agreement was executed in this regard as borne by Annexure P/5 dated 28.02.1997. After granting the said licence, by virtue of the formation of the State of Chhattisgarh, a corrigendum was issued to the effect that the said licence would apply to the State of Chhattisgarh and was later granted unified access service licence as well, by the Department of Telecommunications, Government of India, *w.e.f.* 16.03.2005.

7. It is the case of the Appellant that on the basis of the licence granted, communication lines/cables including under ground cables were drawn/laid by the Appellant in various parts of the State of Chhattisgarh, including in Raipur city and also in Bhilai. This was done after obtaining all the requisite permissions from the local authorities in the areas of their jurisdiction. As the Appellant had to dig up the public streets/roads/lands belonging to the local authority, sanction was required to be obtained in terms of Section 10(c) of the Act, 1885.

8. It is pointed out that such permission was to be granted by the local authority in terms of Section 10(c) of the Act, 1885. The conditions that could be incorporated for granting such licence/permission in terms of Section 10(c) is stipulated under Section 12 of the Act, 1885. According to the Appellant, it could be

'reasonable conditions' that the local authority may thought fit to impose, but shall only be with regard to payment of any 'expenses' which the local authority will necessarily incur, in consequence of the exercise of powers conferred by that Section or as to the time or mode of execution of any work or as to any other thing connected to or relative to any work undertaken by the 'Telegraph authority' (here, the 'Appellant') under those powers. It is also stated that, by virtue of the powers under Section 19B of the Act, 1885, the Central Government has issued Annexure P/6 notification dated 09.09.1997 conferring such powers upon the Appellant Company (which are available to the Telegraph authority under the Act, 1885). By virtue of this, the Appellant-licencee was provided with power to seek way-leave from the local authority in respect of the service area, with regard to the property which is vested or under the control or management of the local authority, in connection with providing telephone services by the licencee to its subscribers in the licensed area during the currency of the licence;

(a) to place and maintain telephone lines under, over, along, or across and post in or upon property vested in or under the control or management of the concerned local authority;

(b) to enter on that property under, over, along, across, in or upon which the line or post has been placed, in order to examine, repair, alter or remove telephone lines or posts established or being maintained by the said licencee;

Provided that the said licencee shall always comply with the provisions of the said Act or any law time being in force and shall not exercise the powers conferred under the notification in respect of the said property vested in or under the control or management of the local authority without the express permission of that authority.

9. It is thus contended that the Appellant-Company, which is a licensee under the Act, 1885 is having the same powers and privileges as conferred upon the Telegraph Authority under the Act in placing and maintaining telegraph lines and posts under, over, along or across in or upon any immovable property and that by virtue of the mandate of Section 12 of the Act, 1885, the local authority can demand only such expenses as are necessarily incurred because of laying down cables/lines by the Appellant and that the Act does not envisage any levy or recovery of any compensation by the local authority from the licensee. In support of the said contention, reliance is sought to be placed on the 'statement of objects and reasons' of the Act, 1885. It is pointed out that the situation as above is taken care of in the Act, 1956, as well as evident from Section 317-A (main provision dealing with laying railways, tramways or electrical, telephone poles) clearly stipulating that nothing in this section shall be deemed to affect any provision of the Act, 1885. It is further pointed out that a circular dated 17.08.1999 (Annexure P/7) was issued by the Ministry of Surface Transports, Government of India, to the Secretaries of the Public Welfare Department of all the States instructing that only the restoration cost was to be charged and that no ground rent was to be realised for laying down cables from the existing private telecom licensees, as is being done in the case by the Department of Telecommunications. It is with reference to the above provisions and proceedings, that a contention has been raised that the Municipal Authorities have no jurisdiction to levy any 'property tax' or such other tax on the Appellant-Company for usage of such land for laying down the cables.

10. It is the case of the Appellant that the Respondent-Municipal Corporation, without any regard to the legal provisions as above, issued a notice dated 25.05.2001 (Annexure P/8) requiring the Appellant to satisfy the property tax on self-assessment basis, on the underground cables laid by it for rendering the services. On receipt of the notice, the Appellant brought it to the notice of the Respondent-Corporation that no property tax was liable to be paid for usage of the

land or the property for the period in question and that there was no question to levy any such tax under the statute. The objection raised by the Appellant was not considered and a further notice was issued demanding satisfaction of the tax stated as due for the years in question. It is stated that an appeal was preferred by the Appellant before the Appeal Committee under the provisions of the Act, 1956, whereupon the Appellant was served with a notice dated 05.09.2001 demanding satisfaction of all dues of property tax before the appeal could be taken as maintainable, for being adjudicated. A warrant of attachment was also issued simultaneously, which made the Appellant to satisfy the amount demanded on 10.09.2001, stated as effected under protest. It is in the said background that the Appellant has moved this Court by filing Writ Petition No. 1273/2003 seeking to interdict the proceedings taken by the Raipur Municipal Corporation, raising the grounds of challenge, as above. Since almost similar course was pursued by the Bhilai Municipal Corporation, a similar writ was filed challenging the said proceedings as Writ Petition No. 1055 of 2003, on similar grounds.

11. The claim of the Appellant-Company was vehemently opposed from the part of the Respondent-Municipal Corporation and also by the State, referring to the relevant provisions of law. Specific reference was made to Section 5(31) of the Act, 1956, which defines the term 'land' (which includes benefits arising out of land, houses and things attached to the earth or permanently fastened to anything attached to the earth) to the effect that the owner of the cable is the owner of the benefits arising out of the land and therefore the Appellant-Company is liable to pay tax, also in view of the enabling provisions of Section 132 and 135 of the Act, 1956. It was also pointed out that both the Municipal Corporations had passed necessary resolutions for adopting the self assessment procedure and had completed the procedural formalities in this regard. It was stated further that the Supreme Court, in ***The Anant Mills Co. Ltd. v. State of Gujarat & Others***; {AIR 1975 SC 1234 : (1975) 2 SCC 175} had held that a person who had laid the underground cable was

the actual occupier of the land and was liable to be treated as the 'occupier' of the land, to be mulcted with the liability.

12. After hearing both the sides, the learned Single Judge, placing reliance on the verdict passed by Apex Court in **Ahmedabad Municipal Corporation v. GTL Infrastructure Limited & Others**; (2017) 3 SCC 545, rejected the contention of the Appellant/Writ Petitioner-Company (that there was no liability to satisfy the tax not being an owner of the land under Section 132(1) of the Act, 1956). A comparative analysis was made to the definition of the term 'land' under Section 2(30) of the Gujarat Provincial Municipal Corporations Act, 1949 and as it appears under Section 5(31) of the Act, 1956 holding that the provisions were in *pari materia*; by virtue of which the law laid down by the Apex Court with reference to the definition of the term 'land' under Section 2(30) of the Gujarat Act, was equally applicable to the case in hand, though the verdict passed by the Apex Court was with reference to the liability to satisfy property tax by the licencees who had established 'mobile towers' for providing the communication services. The contention of the licencee-Writ Petitioner that the 'procedure' provided under Section 133 of the Act, 1956 to impose the subject tax was not followed, was held as not applicable, as it was in respect of imposition of a new tax, more so, since Section 133(4) clearly provided that nothing contained in the said section would apply to a tax mentioned in clause (a) of sub-section (1) of Section 132, which shall be charged and levied in accordance with Section 135, virtually concluding that 'property tax' being charged under section 132(1)(a), read with Section 132(6)(j), the argument with regard to non-compliance of Section 133 was having no force. It was accordingly, that interference was declined and both the writ petitions were dismissed.

13. As mentioned already, the first and foremost contention raised by the learned Senior Counsel appearing for the Appellant-Company is that there is no power under the Act, 1885 to realise any 'property tax' upon the Appellant, who has

virtually stepped into the shoes of Telegraph Authority by virtue of the licence granted under Section 4 of the Act, 1885; except the actual expense which may have to be incurred by the local authority as envisaged under Section 12 of the Act, 1885. It is in support of the said contention that reliance has been sought to be placed on the 'statement of objects and reasons' of the Act, which clearly says that when the property belongs to a local authority, the powers conferred under the Act, 1885 cannot be exercised over it without the consent of that authority, and that consent may be given subject to conditions. The relevant portion as sought to be relied on, is reproduced below:

“When the property belongs to a municipal board or other local authority, the powers conferred by the Act cannot be exercised over it without the consent of that authority and that consent may be given subject to conditions. Among other conditions which can be imposed is one requiring that any expenses to which the local authority may be put by the exercise of the power shall be made good; but it will be observed that no provision is made for the payment of compensation on any other account to a local authority whose property is made use of for this purpose, it being considered that, as the construction of telegraphs is a matter in which the public are interested, no charge should be made for accommodation of this sort when it can be granted without inconvenience to the public or expense to the local authority concerned.”

14. It is true that there is no provision for grant of any compensation or any other amount to a local authority whose property is made use of, since the construction of telegraphs is in 'public interest'. It is with reference to this aspect, that specific grounds have been raised in the memorandum of appeal. There cannot be any dispute over this aspect, but then, the question is whether prescription of the tax liability could be held as 'compensation' or such other amount payable to the local authority, where the property is made use of for the property belonging to the local authority. 'Compensation', normally is a 'one time' affair, because of the deed or misdeed committed by a party who is to make up for the same in respect of the affected party, and the loss resulted is satisfied to the

requisite extent. There is no question of any recurring loss or continued payment of compensation. In view of the law laid down by the Apex Court in ***The Anant Mills Co. Ltd.*** (supra), the licensee who has laid underground cables is an 'occupier' of the land and is liable to satisfy the property tax. The aforesaid verdict was passed by the Apex Court with specific reference to the legislative competence of the State to charge and realise all the taxes in respect of the user of such land, also with reference to the legislative power under Entry No. 49 of the List II of the VII Schedule to the Constitution of India. The Apex Court held that the word 'land' includes not only the face of the earth, but has also in its legal signification an indefinite extent upward and downward. The observation in paragraph 44 and the declaration therein are very important and hence, extracted below:

"44. Mr Tarkunde on behalf of the petitioner Company has urged that under Entry 49 of the State List in the Seventh Schedule to the Constitution, the State Legislature is empowered to enact a law relating to taxes on lands and buildings. It is submitted that the State Legislature has no competence under the above entry to enact a law for levying tax in respect of the area occupied by the underground supply lines. The word "land", according to the learned counsel, denotes the surface of the land and not the underground strata. We are unable to accede to the above submission. Entry 49 of List II contemplates a levy of tax on lands and buildings or both as units. Such tax is directly imposed on lands and buildings and bears a definite relation to it. Section 129 makes provision for the levy of property tax on buildings and lands. Section 139 merely specifies the persons who would be primarily responsible for the payment of that tax. The word "land" includes not only the face of the earth, but everything under or over it, and has in its legal signification an indefinite extent upward and downward, giving rise to the maxim, *Cujus est solum ejus est usque ad coelum* (see p. 163, 73 *Corpus Juris Secundum*). According to *Broom's Legal Maxims*, 10th Edn., p. 259, not only has land in its legal signification an indefinite extent upwards, but in law it extends also downwards, so that whatever is in a direct line between the surface and the centre of the earth by the common law belongs to the owner of the surface (not merely the surface, but all the land down to the centre of the earth and up to the heavens) and hence the word "land" which is *nomen generalissimum*, includes, not only the face of the earth, but everything under it or over it."

15. After observing that the term 'land' in Entry 49 of the List II would include the underground strata after considering the definition of the term 'land' in Section 2(30) of the Gujarat Provincial Municipal Corporations Act, 1949, the Bench turned down the submission raised on behalf of the licensee that the right to lay down supply lines under Section 12 of the Indian Electricity Act was in the nature of a statutory licence and hence not a right in land and hence not taxable by the State legislature with reference to Entry 49 of List II. The observations as given in paragraph 49 are in the following terms:

"49. It has been argued by Mr Tarkunde that the right to lay down supply lines under Section 12 of the Indian Electricity Act is in the nature of a statutory licence and is not a right in land. Hence the right does not constitute land within Entry 49 and is not taxable by the State Legislature. This submission is wholly misconceived because what is taxed under the Corporations Act is land. Section 139, as already mentioned earlier, merely fastens the liability and states that the person primarily liable to pay that tax would be the actual occupier. It is not the case of the Corporation that the right of the petitioner Company of laying and placing electric supply lines constitutes land and as such the petitioner Company is liable to pay property tax. On the contrary, the liability is sought to be fastened on the petitioner Company because of the company being in occupation of the land wherein electric supply lines, have been laid and placed. Section 52 of the Indian Easement Act, 1882 to which reference has been made on behalf of the petitioner Company, merely defines "license" and has no bearing on the question with which we are concerned."

16. Accordingly, the Apex Court declared in unequivocal terms that the Petitioner-Company was in occupation of the land wherein underground supply line was laid (repelling the contention that holding of the property of the Corporation under a statute would draw a distinction), as observed in paragraph 52, which is reproduced below:

"52. It has been argued by Mr Tarkunde that even if the petitioner electricity-company may be held to be actual occupier of the underground space on which its supply line has been laid the petitioner Company does not hold the said space from the Corporation.

It is urged that the petitioner Company is in occupation of that space under a statute and not from the Corporation. In order to hold that space from the Corporation, it was essential, according to the learned counsel, that there should have been some agreement between the petitioner Company and the Corporation or that the Corporation should have given its consent for that purpose. We are unable to accede to the above submission. Clause (a) of Section 139(1) of the Corporations Act fastens the liability for payment of property tax on the actual occupier of the premises held immediately from the Government or from the Corporation. In order to attract the liability under the above clause, it is not essential that there should have been an agreement between the actual occupier and the Government or the Corporation for the holding of the premises or that the holding must be with the consent of the Government or the Corporation. The liability would accrue even if the premises vesting in the Government or the Corporation are occupied in pursuance of a statutory provision. The words "held immediately from the Government or from the Corporation" signify only the party in whom the premises vest which are held by the actual occupier thereof."

Applying the above law to the given set of facts and circumstances, it cannot but be said that the Appellant is occupying the land.

17. Whether 'property tax' could be demanded from a cellular service provider in respect of the mobile towers established in the land belonging to a local authority was the subject matter of consideration before the Supreme Court in **Ahmedabad Municipal Corporation** (supra). It was contended by the licensee, as in the instant case, that no tax could be charged without the authority of law, by virtue of the mandate of Article 265 of the Constitution of India, the legislative incompetence with reference to Entry No. 49 of List II of the VII Schedule, and also with reference to the definition of the terms 'land' and 'building' as defined under the relevant provisions of the Gujarat Provincial Municipal Corporations Act, 1949. Section 2(30) of the Gujarat Act is in '*pari materia*' with the definition of the term 'land' under Section 5(31) of the Act, 1956, involved herein. They are reproduced below:

Definition under the Gujarat Provincial Municipal Corporations Act, 1949	Definition under the Chhattisgarh Municipal Corporation Act, 1956
2(30) "land" includes land which is being built upon or is built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street;	5(31) "land" includes benefits arising out of land, houses and things attached to the earth, or permanently fastened to anything attached to the earth and also land which is being built upon or is built upon or covered with water."ration Act, 1956

18. The Apex Court held that the dictionary meaning of the term 'land' and 'building' conveys a meaning as understood in common parlance as it appears with reference to an enclosed space for human dwelling; but the legislative entries in Schedule VII should not be construed in restricted manner and that the Constitution being an organic document, must be allowed a natural growth by a process of interpretation keeping pace with the times. The Bench also said that the legislative entries in the Constitution must be given a broad, liberal and expansive interpretation so as to meet the constitutional goals and philosophy, adding that the definition of an expression used in a statute cannot be adopted for interpreting same expression in the Constitution. Summing up the principles of interpretation of legislative entries and the words and phrases in the Constitution, the necessity to adopt a dynamic, rather than a pedantic view, was asserted as to be preferred. Paragraph 29 of **Ahmedabad Municipal Corporation** (supra) is relevant in this context and hence, it is reproduced below:

"29. Coming specifically to the expression "building" appearing in Schedule VII List II Entry 49 in view of the settled principles that would be applicable to find out the true and correct meaning of the said expression it will be difficult to confine the meaning of the expression "building" to a residential building as commonly understood or a structure raised for the purpose of habitation. In *State of A.P. v. Hindustan Machine Tools Ltd* {(1975) 2 SCC 274} a tax on a building housing a factory has been understood to be a tax on building and not on the factory or its plant and machinery. A general word like "building" must be construed to reasonably extend to all ancillary and subsidiary matters and the common parlance test adopted by the High Court to hold the meaning of levy of tax on building

and machinery does not appear to be right keeping in mind the established and accepted principles of interpretation of a constitutional provision or a legislative entry. A dynamic, rather than a pedantic view has to be preferred if the constitutional document is to meet the challenges of a fast developing world throwing new frontiers of challenge and an ever changing social order."

19. As mentioned already, one of the main contentions raised by the Appellant is that the taxing power under Section 132(1)(a) of the Act, 1956 is not applicable to the Appellant-licencee for not being an 'owner' of the 'building' or 'land' as it belongs to the Municipal Corporation. It is in this context, that a supplementary contention is raised that the residual provision under Section 132(6) (o) of the Act, 1956 conferring power on the State Government to impose any other tax which the State Government has power to impose under the Constitution of India, to be imposed by the local authority with the prior approval of the State Government. To make it more clear, the contention is that, insofar as the State Government do not have the power or jurisdiction to enact any legislation wherein they could impose any tax on laying underground cables/lines used for telecommunication services, nor such power can be inferred as vested with the Respondent-Municipal Corporation as well, hence there cannot be any levy. But in this context, it is relevant to note that a separate and more specific provision is there, by way of Section 132(6)(j) of the Act, 1956 which confers a clear power upon the local authority to impose the tax on the buildings or lands situated within its limits. Sections 132(1)(a), 132(6)(j) and 132(6)(o) are extracted below, for easy reference:

"132. Taxes to be imposed under this Act.- (1) For the purpose of this Act, the Corporation shall, subject to any general or special order which the State Government may make in this behalf, impose in the whole or in any part of the Municipal Area, the following taxes, namely; -

(a) a tax payable by the owners of buildings or lands situated within the city with reference to the gross annual letting value of the buildings or lands, called the property tax, subject to the provisions of Sections 135, 136 and 138;

(6) In addition to the taxes specified in sub-section (1), the Corporation may, for the purpose of this Act, subject to any general or special order which the State Government may make in this behalf, impose any of the following taxes, namely: -

xxx

xxx

xxx

(j) a tax on persons occupying houses, buildings or lands within the limits of the Corporation according to their circumstances and property;

xxx

xxx

xxx

(o) any other tax which the State Government has power to impose under the Constitution of India, with the prior approval of the State Government."

20. From the above, it is crystal clear that the local authority need not back upon Section 132(6)(o) of the Act, 1956 and is having every authority to impose the tax by virtue of the enabling provision under Section 132(6)(j), more so, in view of the declaration made by the Apex Court with reference to the meaning of the term 'land' as discussed herein before so as to include the persons/licencees who are laying the underground cables and hence deemed as occupying such lands. For the very same reason, the contentions of the Appellant-licencee that they are not the owners of the buildings or lands or that the tax had to be fixed with reference to the gross 'annual letting value' in terms of Section 132(1)(a) of the Act, 1956 and further that there is no 'annual letting value' in the case of underground cables laid down by the Appellant-licencee etc. does not hold any water at all. By virtue of the enabling power to impose tax as envisaged under Section 132(6)(j) of the Act, 1956 which is in supplemental to the taxing power under Section 132(1)(a), the Appellant is not correct or justified in contending that there is no provision in the statute to charge 'property tax' or that the Appellant not being the 'owner' or 'occupier' of the land, is not bound to meet the demands in satisfying the tax.

21. There is a contention for the Appellant/Company that some violation of the procedural aspects is involved in imposing the tax, fixing the rates and also to the manner of realisation. Reference is made to Section 133 and 134 of the Act, 1956. Though, such contentions have been raised in the memorandum of appeal, it

was not much pressed, but for asserting the legality in fixing the property tax upon the licensee with reference to the provisions of the Act, 1885, coupled with the taxing power of the local authority under Section 132(1)(a) of the Act, 1956, and the definition of the term 'owner' and such other provisions, as discussed already. The learned Single Judge has observed in paragraph 7 of the verdict that the Municipal Corporation concerned had passed a resolution for adopting the self assessment procedure on the date mentioned for adopting the self assessment procedure and thereafter, objections were invited and a public meeting was also convened for finalising the rate of property tax. Later, in paragraph 14 also, it is stated that both the Municipal Corporations *i.e.* Raipur and Bhilai had contended in their returns on oath that the respective Municipal Corporations had passed resolution to impose property tax for use of land for laying underground cable on the basis of per running meter and based on the said resolution, assessments on the basis of records were carried and such data for laying underground cable had been used for imposition of the property tax against all the telephone/cellular companies like BSNL, Reliance, Airtel *etc*; in turn holding that the Municipal Corporations had followed the procedure prescribed under the Act, 1956 for carrying of the assessment before issuing demand notice and that there was absolutely no violation of the provisions of the Act, 1956. We do not find any reason to take a different view in this regard, as no violation is substantiated.

22. Lastly, the learned counsel for the Appellant submits that there is wide difference and disparity with regard to the rate of tax fixed by the Raipur Municipal Corporation and the Bhilai Municipal Corporation, as involved in the two different cases. The learned counsel submits that in the case of Raipur Municipal Corporation, as per the resolution passed in this regard, it was assessed as follows:

"विषय : एअर टेल, भारतीय संचार निगम लिमिटेड आदि द्वारा नगर में बिछाये जा रहे भूमिगत केबलों पर सम्पत्तिकर लेने बाबत ।

संकल्प : एअर टेल भारतीय संचार निगम लिमिटेड आदि संस्थानों द्वारा विभिन्न प्रयोजनार्थ नगर में बिछाये जा रहे भूमिगत केबलों पर रु 26/— प्रतिरनिंग मीटर वार्षिक की दर से सम्पत्ति कर लिया जाय। उपरोक्त दर पर लगाये गये सम्पत्तिकर की वसूली वार्षिक आधार पर की जायेगी तदनुसार कार्यवाही की जाय।"

Coming to Bhilai Municipal Corporation, it was effected in the following terms:

जोन	भूमि का क्षेत्रफल (वर्गफुट में)		भूमि का वा भा मूल्य दर (प्रति वर्गफुट में)		वा. भा. मूल्य	देय सम्पत्तिकर (10% की दर से)
1.	2,63,612.70	x	रु 7.00	=	रु. 18,31,289.00	रु. 1,83,129.00

वर्ष 99—2000 से देय करों की गणना:—

वर्ष	सम्पत्तिकर	शिक्षा उपकर	अधिभार (18%)	योग
99—2000	रु. 1,83,129.00	—	रु. 32,963.00	रु. 2,16,092.00
2000—2001	रु. 1,83,129.00	रु. 3,662.00	रु. 32,963.00	रु. 2,19,754.00
2001—2002	रु. 1,83,129.00	रु. 3,662.00	—	रु. 1,86,791.00
अंडरग्राउंड काबिज भूमि का कुल देय कर रु 6,22,637.00				

23. It is pointed out by the learned counsel that by virtue of the mandate under Section 135 of the Act, 1956, the rate of tax under Section 132(1)(a) shall not be less than 6% and not more than 10% of the annual letting value. Section 135 of the Act, 1956 reads as follows:

"135. Imposition of property tax.-
(1) Notwithstanding anything contained in this Act, the tax under clause (a) of sub section (1) of Section 132 shall be charged, levied and paid, at the rate not less than six percent and not more than ten percent of the annual letting value, as may be determined by the Corporation for each financial year:
Provided that if the Corporation fails to determine the rate of the property tax by 31st March, the rate as prevailing during the previous financial year shall be deemed to be the rate for current financial year."

First of all, it is to be noted that the *non-obstante* clause therein is with reference to the tax payable under Section 132(1)(a) of the Act, 1956; which however is silent with regard to the supplemental taxing power under Section 132(6)(j) (extracted already). That apart, there is an amendment to the statute

whereby the words, 'not more than ten percent' appearing in Section 135 of the Act (Act No. 23 of 1956) stands substituted by the words 'not more than twenty percent' in so far as the State of Chhattisgarh is concerned (as per CG Act No. 1 of 2002). That apart, fixation of the rate of tax depends upon various factors including the nature, lie, location, topography, proximity to the town, buildings, hazards, blocks, hurdles *etc.* Fixation of the same is within the exclusive domain of the local authority and it is a forbidden field for a Court of law to enter into, insofar as it is not contrary to any provisions of law. The Appellant having failed to demonstrate any clear violation in this regard, the said contention is also devoid of any merit.

24. In the aforesaid facts and circumstances, we are of the view that the verdict passed by the learned Single Judge does not warrant any interference.

25. The appeals fail and are dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE