



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 09.03.2020

ORDER PRONOUNCED : 06.05.2020

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(The Court was lockdown due to COVID-19 pandemic from 24.03.2020 to 30.04.2020)

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) No.18477 of 2018

and

W.M.P. (MD) Nos.16376 to 16378 of 2018

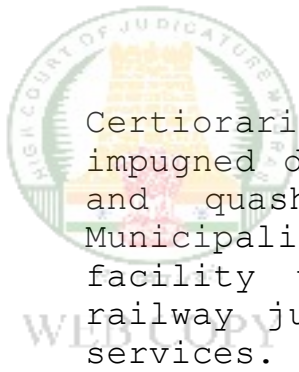
Madurai Multi Functional Complex Private Limited,
Having its registered office at
#30 J.L.Nehru Road, 15 A Block "C" 2nd Floor,
Kolkata 700 016,
West Bengal, and local address at
Madurai Railway Station Premises,
West Veli Street (opp to SBI),
Madurai 625 001,
represented by its Authorized Signatory ... Petitioner

Vs.

- 1.The Madurai Corporation,
represented by its Commissioner,
Madurai.
- 2.Rail Land Development Authority,
represented by its General Manager/Railway Infrastructure,
Near Safdarjung Railway Station,
Moti Bagh,
New Delhi 110 021.
- 3.IRCON Infrastructure and Services Limited,
represented by the Chief Executive Officer,
Plot C-4, Saket District Center,
New Delhi-17. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of

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Certiorarified Mandamus, calling for records relating to the impugned demand notice of the 1st respondent signed on 03.03.2018 and quash the same and consequently direct the Madurai Municipality Corporation to provide water connection and drainage facility to the multifunction complex located in the Madurai railway junction upon payment of fees and charges towards such services.

For Petitioner : Mr.N.Dilipkumar
For R1 : Mr.K.Govindarajan for
Mr.R.Murali Standing Counsel
For R2 & R3 : Mr.J.Alaguram Jothi

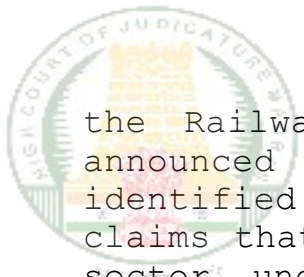
ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus to call for records relating to the impugned demand notice of the 1st respondent / The Madurai Corporation, represented by its Commissioner, Madurai, dated 03.03.2018 and set aside the same and to direct the 1st respondent to provide water connection and drainage facility to the Multi Functional Complex located in the Madurai railway junction upon payment of fees and charges.

2.The writ petitioner is Madurai Multi Functional Complex Private Limited with registered office at Kolkota and an address at Madurai and represented by C.Maruthurajan, Manager (Operations) / Authorized Signatory. It is a Special Purpose Vehicle - SPV Company incorporated under the Companies Act, 1956, by M/s.Veeraprabhu Marketing Limited-Rajdhani Hotels Private Limited Consortium.

3.In the affidavit filed by C.Maruthurajan, Manager (Operations) / Authorised Signatory, in support of the writ petition, it had been stated that the property in relation to which the 1st respondent / Madurai Corporation had demanded payment of property tax is located at Madurai Railway Station premises. It is land and building and the petitioner claims that it is a Multi Functional Complex owned by the Railways and therefore, it is a property of Union of India. It had been stated that the property is vested with the 2nd respondent / Rail Land Development Authority (RLDA), which is a statutory authority under the Ministry of Railways with registered office at New Delhi.

4.It had been further stated that the Government of India / Ministry of Railways (Railway Board) through its Deputy Director, by letter dated 26.07.2012 had recorded that the Multi Functional Complexes are covered under the provisions of Section 11 of the Railways Act, 1989 and paragraph No.201 of Indian Railway Works

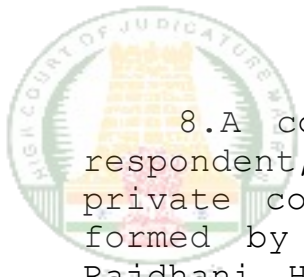


the Railway Budget for the financial period of 2009-2010 had announced development of Multi Functional Complexes (MFCs) at identified sites to generate non-tariff revenue. The petitioner claims that MFC buildings developed by the Railways through public sector undertakings or its undertakings like the 2nd and 3rd respondents / RLDA and IRCON Infrastructure and Services Limited (IRCON ISL), which companies under the Ministry of Railways and registered under the Companies Act, 2013, with registered office at New Delhi, are to be considered as operational buildings of the Railways.

5.It had been stated that the 2nd respondent / RLDA had entered into a lease agreement with the 3rd respondent / IRCON ISL on 04.07.2013 and the building in question at Madurai Railway Junction was constructed by IRCON ISL. It had been stated that under the agreement, the ownership is vested with RLDA. It had been stated that the petitioner had entered into a sub lease agreement with the 3rd respondent / IRCON ISL on 03.02.2016 and had taken the property on sub lease for a period of 30 years. It had been further stated that the petitioner had sent a letter to the Madurai Corporation on 13.12.2017, requesting water connection and drainage facility. It had been stated that the 1st respondent / Madurai Corporation circulated a property tax working sheet with proposal to levy property tax.

6.In the affidavit, it had been stated that a letter had been sent on 09.02.2018 to the 1st respondent stating that the property belongs to the Railways and consequently, being the property of the Union of India, the petitioner is not liable to pay property tax. However, a demand notice had been issued on 03.03.2018, which is impugned in this writ petition.

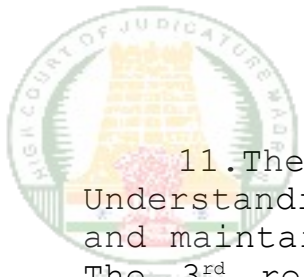
7.The petitioner claimed that they met the 1st respondent in person and explained that the property belongs to the Union of India and therefore, they were exempt from levy of property tax. A letter was also issued on 27.02.2018. It had been stated that the Deputy Chief Law Officer of the Southern Railways by letter dated 19.04.2018, had stated that the property belongs to the Union of India and therefore, it is exempted for payment of property tax. It had also been stated that the 3rd respondent had issued a letter on 04.03.2018 stating that property tax should not be levied. A further letter had also been issued on 03.05.2018 by the Divisional Railway Manager, again confirming the stand that property tax cannot be levied. The petitioner gave further representations on 19.05.2019 and again on 27.06.2018. However, since the 1st respondent insisted on payment of property tax, the writ petition had been filed.



8.A counter affidavit had been filed on behalf of the 1st respondent, in which it had been stated that the petitioner is a private company particularly, a Special Purpose Vehicle Company formed by the consortium of M/s.Veeraprabhu Marketing Limited-Rajdhani Hotels Private Limited. It had been stated that the petitioner had obtained lease of the building measuring to an extent of 6179.49 square meters., for running a commercial entity namely, 3 star hotel. It had been stated that the petitioner is paying a monthly rent of Rs.10 lakhs to the 3rd respondent in accordance with the agreement entered between them on 03.02.2016. It had been stated that the petitioner had also got possession of the building. It was stated that in the agreement entered between the petitioner and the 3rd respondent, the petitioner had agreed to pay all taxes to the local body. It was therefore stated that the petitioner was well aware that they were under obligation to pay property tax. It had been stated that the petitioner cannot take advantage of Article 285 of the Constitution of India, since the petitioner is a private company and had obtained the property for a long lease of 30 years.

9.It had been further stated that the 1st respondent / Madurai Corporation is governed by the provisions of Madurai City Municipal Corporation Act, 1971 and under Section 115 of the Act, the Corporation is entitled to levy property tax. It had been stated that Section 120 of the Act provides that all buildings and lands within the city shall be levied with property tax. Section 122 of the Act provides for general exemptions. It had been claimed that the petitioner does not fall within any of the exemptions. It had been stated that the petitioner submitted an application on 21.04.2015 stating that they are in possession of basement floor, ground floor and first and second floors. The ground floor has been leased out to the State Bank of India. The building also has 160 rooms for rental accommodation under 3 star category. They have a builtup area of 60,000 sq.ft., and the cost of construction was Rs.7.50 crores. It had been stated that on 01.08.2018, the petitioner gave an application seeking assessment of property tax and by another letter dated 13.12.2017, had accepted to pay the property tax.

10.It had been stated that the 1st respondent had sent a communication dated 04.08.2018 expressing its intention to levy property tax. It had been stated that the 2nd respondent / RLDA is a separate authority under the Ministry of Railways, for development of vacant railway lands for commercial use to generate revenue. The 2nd respondent had been formed for the purpose of commercial development. It had been stated that the 3rd respondent is a public sector company registered under the Companies Act, 1956. It had been stated that a public sector company cannot be equated with the Union of India.



11.The 2nd respondent had entered into a Memorandum of Understanding with the 3rd respondent on 21.08.2009 for developing and maintaining Multifunctional Complexes (MFCs), at market value. The 3rd respondent had developed the Multifunctional Complex at Madurai. It was thereafter run by the petitioner for a monthly rent of Rs.10 lakhs. It was therefore stated that neither the 2nd and 3rd respondents nor the petitioner are entitled to claim shelter under Article 285 of Constitution of India. It was also stated that if the petitioner is granted exemption, it would cause unjust loss to the Corporation. It was stated that if the petitioner seeks to raise any dispute, they can approach the Corporation or the Tax Appellate Tribunal. The mere fact that the land belongs to the 2nd respondent would not be a ground for the petitioner not to pay the property tax for the building. It had therefore been stated that the writ petition should be dismissed.

12.A reply affidavit was filed on behalf of the petitioner. It had been stated that in the agreement dated 04.07.2013 entered between the 2nd and 3rd respondents, it had been stated that 'assets' shall mean 'all fixed assets constructed by the lessee and not to the site itself'. It is further provided in Clause 2.4 (b) that the ownership of the project assets shall always vest with RLDA. It had been stated that the property continues to be owned by the Railways. It had been stated that the 3rd respondent / IRCON ISL is the owner of the property. The Multi Functional Complex is an operational building and therefore, it can not attract tax. It had been stated that the 1st respondent cannot insist on property tax to be levied on the subject matter property. It had been stated that the petitioner is a part of the Railways and established under Section 4 (A) of the Railways Act, 1989 for developing the railway lands. It had been stated that the relief sought in the writ petition should be granted.

13.Heard arguments advanced by Mr N.Dilipkumar, learned counsel for the petitioner, Mr.K.Govindarajan learned counsel for Mr.R.Murali, learned Standing Counsel for the 1st respondent and Mr.J.Alaguram Jothi, learned counsel for the 2nd and 3rd respondents.

14.The writ petitioner / Madurai Multi Functional Complex Private Limited having its registered office at Kolkota in West Bengal and a local address at Madurai Railway Station Premises and represented in the writ petition by its Authorised Signatory, Mr.C.Maruthurajan, Managaer (Operations), has filed the present writ petition in the nature of a certiorarified mandamus calling for the records relating to the impugned demand notice of the 1st respondent / The Madurai Corporation, represented by its Commissioner, Madurai, dated 03.03.2018 and to set aside the same



and for a consequential mandamus to direct the 1st respondent to provide water connection and drainage facility to the Multi Functional Complex at Madurai Railway Junction on payment of fees and charges towards such services.

15.The property in dispute, as given in Schedule 'A' of the sub lease agreement dated 03.02.2016, which had been executed between the 3rd respondent / IRCON Infrastructure and Services Limited (IRCON ISL) and the petitioner is as follows:

"SCHEDULE - A

LEASED PREMISES DESCRIPTION

Site No : Raliway station premises
Location : Madurai (Tamil Nadu)
Zonal Railway : Southern Railway
Division : Madurai

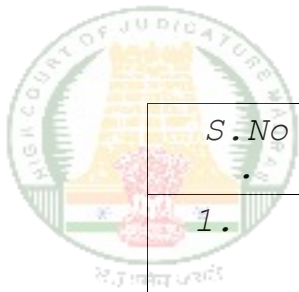
1. Total Plot Area of Railway land (the site) :
2,728.85 Sqm
2. Total Built-up Area on the Plot :
6,179.49 Sqm
3. The Site is bounded on/by on four sides as below :
 - Front : Road (West veli street)
 - Back : MFC Compound Wall and Amman temple
 - Right : Entry/Exit to Railway Station
 - Left : Open Railway Land
4. Site plan placed as Annexure 'Ç'
5. Site inventory : Complete MFC Building as per Drawings enclosed
6. Constructions, Immovable Assets, Structures, Installations : Complete MFC Building as per Drawings enclosed
7. Assets : Complete MFC Building as per Drawings enclosed

The Lessee will provide the following components as part of the MFC on the Site Complete MFC Building as per Drawing enclosed.

The above list is indicative and not exhaustive."

16.The facilities provided by the Multi Functional Complex (MFC) had also been given in Annexure 'B' of the said agreement and they are as follows:

"Facilities to be provided at MFC



S.No	Name of the MFC/ Station	Facilities
1.	Madurai (Tamil Nadu)	Basement, Budget hotel, Anchor store, Retail shops, Banquet hall, Food plaza, Shops, Pharmacy, Cafe, Book shop & ATM

The sub leases can operate Food plaza / court himself. If in case the same is sub-sub-leased to other agency, the operation shall be done by having a tie-up with Established/Reputed Brands in the field acceptable to Lessee. Prior Approval of Lessee shall have to be taken before sub-sub-leasing of the same."

17. Annexure 'C' referred in Schedule 'A' is dated 02.04.2015 and is handing/taking over of the Multifunction Complex at Madurai Railway Station. It had been certified that "satisfactory, vacant, peaceful and complete encumbrance, free possession of the above Multi Functional Complex has been taken over by M/S. Multi Functional Complex Private Limited". The document / Annexure 'C' has been signed by the Additional General Manager, (IRCON ISL), while handing over the building and the Manager, Multi Functional Complex Private Limited, Madurai, had also signed the document acknowledging, taking over of the MFC building.

18. Even before examining the averments made in the writ petition, it would be appropriate to set out a few background details regarding construction of Multi Functional Complexes by the Railways.

19. The Railways Act, 1989, had been enacted to consolidate and mandate the law relating to Railways. Nearly a century earlier, the Indian Railways Act, 1890, had been enacted at a time when the Railways in India were mostly managed by private companies. The Government of India primarily played the role of a co-ordinating and regulating authority in various matters, such as, inter railway movement of traffic, fixation of rates, sharing of revenue earnings, appointment of claims liability amongst the railways, providing reasonable facilities etc., This role was accordingly reflected in the Act. (Ref: Professional Book Publishers' Bare Act of the Railways Act, 1989.)

20. Chapter II-A relating to establishment of "Rail Land Development Authority" (RLDA) in the Railways Act, 1989, was inserted by Act 47 of 2005 with effect from 30.08.2006. Consequent to said insertion, the following definitions were also included.



"Section 1-A:- "Authority" means the Rail Land Development Authority constituted under Section 4-A;

Section 32-A:- "Railway Land" means any land in which a Government railway has any right, title or interest;"

21. Under Chapter II-A, Sections 4-A to 4-I were inserted. Section 4-A is as follows:

"4A:- Establishment of Railway Land Development Authority:- The Central Government may, by notification, establish an authority to be called the Rail Land Development Authority to exercise the powers and discharge the functions conferred on it by or under this Act."

22. Section 4-D is as follows:

"4D. Functions of Authority.- The Authority shall discharge such functions and exercise such powers of the Central Government in relation to the development of railway land and as are specifically assigned to it by the Central Government.

2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may assign to the Authority all or any of the following functions, namely:-

(i) to prepare scheme or schemes for use of railway land in conformity with the provisions of this Act;

(ii) to develop railway land for commercial use as may be entrusted by the Central Government for the purpose of generating revenue by non-tariff measures;

(iii) to develop and provide consultancy, construction or management services and undertake operation in India in relation to the development of land and property;

(iv) to carry out any other work or function as may be entrusted to it by the Central Government, by order in writing."

23. Section 4-E is as follows:

"4-E:- Powers of Authority to enter into agreements and execute contracts:- Subject to such directions as may be given to it by the Central Government, the Authority shall be empowered to enter into agreements on behalf of the Central Government and execute contracts."

24. Section 4-F is as follows:

"4-F:- Procedure of transaction of business of Authority:- The Authority shall have power to regulate, by means of regulations made by it, its own procedure (including quorum at its meetings) and the conduct of all business to be transacted by it, the constitution of Committees and Sub-Committees of members and the delegation to them any of the powers



(excluding the power to make regulations under this Chapter) and to perform duties of the Authority."

25. Section 4-I is as follows:

"4-I:- Power of Authority to make regulations:-

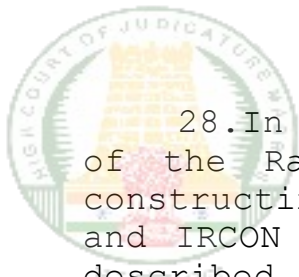
1) The Authority may, with the previous approval of the Central Government, make regulations, consistent with this Act and the rules made thereunder, for carrying out the provisions of this chapter.

2) Every regulation made by the authority under this chapter shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

26. Simultaneously, under Chapter IV, which related to Construction and Maintenance of Works, under Section 11, which related to Power of Railway Administrations to Execute all Necessary Works, Sub Section (da) was inserted. Section 11 (da) is as follows:

"Section 11 (da):- developing any railway land for commercial use."

27. A reading of the above provisions shows that consequent to the Railway (Amendment Act, 2005) Act, 47 of 2005, a paradigm shift was made in the administration of land belonging to the Railways. The Central Government had established an Authority, namely, the Rail Land Development Authority (RLDA), to discharge the functions of preparing schemes for the use of railway land, development of the railway land for commercial use, development and provision of consultancy, construction or management services with respect to development of land and property and also, carry out any other work as entrusted by the Central Government. It is also seen that under Section 4-I, the Authority can make regulations for carrying out the functions as provided. Another shift in the administration of the land belonging to the Railways was the insertion of Section 11 (da) of the Act, whereby very specifically, the Railway administration was given the power to develop the railway land for commercial use.

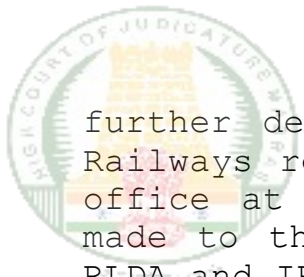


28. In pursuance of the establishment of RLDA under Section 4-A of the Railways Act, 1989, a Memorandum of Understanding for constructing Multi Functional Complexes was executed between RLDA and IRCON International Limited (IRCON) on 21.08.2009. RLDA was described as a Statutory Authority under the Ministry of Railways with registered office at New Delhi. IRCON was described as a Government Company under the Ministry of Railways registered under the Companies Act, 1956 with registered office at New Delhi. In the agreement, it had been stated that the Ministry of Railways in the Railway Budget for the financial year 2009-2010 had announced development of Multi Functional Complexes at identified sites as projects to be undertaken by IRCON and RLDA jointly. It had been further stated that IRCON has vast national experience in infrastructure projects as well as development of commercial, institutional, industrial and residential properties. It had been further provided that RLDA has the statutory mandate for commercial development of identified surplus railway land and airspace assigned to it by the Ministry of Railways for generation of revenue to the Ministry of Railways.

29. It had been further stated that IRCON should develop, operate and maintain the infrastructure of Multi Functional Complexes (MFCs) in identified station premises of the Railways and also provide multiple facilities like, shopping, food stalls / restaurants, book stalls, PCO booths, ATMs, medicine and variety stores, budget hotels, parking facilities etc to railway users. It had been stated that the Ministry of Railways has identified 50 Railway Stations for development of MFCs. It was further provided that MFCs shall be developed, maintained and operated by wholly owned (100%) subsidiary of IRCON. Thereafter, RLDA shall enter into an agreement with such wholly owned subsidiary and will arrange free possession of the sites to such wholly owned subsidiary for implementation of the projects. They will also enter into a lease agreement to lease out the project site.

30. The wholly owned subsidiary was also authorised to encumber the lease right over the land for the purpose of financing construction of MFCs. It had been stated that if any such lease agreement is executed, then the memorandum of understanding between RLDA and IRCON would stop to operate and the lease agreement between RLDA and the wholly owned subsidiary shall take effect.

31. The wholly owned subsidiary of IRCON is the 3rd respondent in this writ petition namely, IRCON Infrastructure and Services Limited (IRCON ISL). Thereafter, a lease agreement was entered into on 04.07.2013 between RLDA and IRCON ISL. The lessor was RLDA and the lessee was IRCON ISL. IRCON ISL was described as a wholly owned subsidiary of IRCON International Limited (IRCON) and



further described as a Government Company under the Ministry of Railways registered under the Companies Act, 1956 with registered office at New Delhi. In the lease agreement reference is also made to the Memorandum of Understanding dated 21.08.2009 between RLDA and IRCON referred supra.

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32.It was further stated that IRCON in accordance with the MOU, promoted and incorporated a wholly owned (100%) subsidiary, IRCON ISL intended to undertake development of MFCs over the lands at Railway Stations. It had been provided further in the preamble to the lease agreement as follows:

"G. IrconISL is desirous of acquiring development rights over the sites for the development of MFCs involving planning, designing, development, financing, construction, commissioning, marketing and collecting revenues from individual sub-lessees/tenants through direct selling of services, raising equity and debt funds for construction of the same and operation and maintenance of MFCs upon the sites; and

H. RLDA has agreed to grant, to IrconISL, lease rights to the sites, and other rights as specified herein subject to the fulfilment of obligations as contained herein."

33.In the said agreement, assets had been defined as follows:

"Assets" shall mean all fixed assets constructed by the Lessee but not the Site itself;

"Consideration" shall mean the payments to be made by the Lessee to RLDA for each Site as consideration to the rights given to the Lessee by RLDA;"

34.In the said agreement, MFCs had been described as follows:

"MFC" shall mean multi functional complex comprising building developed and constructed on the Site(s) to be used for the purpose of running multiple facilities like shopping, food stalls/restaurants, book stalls, PCO Booths, ATMs, medicine and variety stores, budget hotels, parking facilities etc.;"

35.The second lease agreement and the sub lease agreement have been defined as follows:

*"**Second Lease Agreement**" shall mean the agreement executed by the lessee with any entity for sub-leasing/sub-licensing/renting the built-up area developed on the site in full with power to such entity for further sub-leasing/sub-licensing/renting. The terms Second Lease and Second Lessee shall be construed accordingly;*

*"**Sub-Lease Agreement**" shall mean the agreement executed by the lessee or the Second Lessee with any entity for sub-leasing/sub-licensing/renting the built-up space developed on*



the site without any power to such entity of further

sub-leasing/sub-licensing/renting. The terms Sub-Lease and Sub-Lessee shall be construed accordingly;"

36. The scope of the project had also been given in the agreement. It is as follows:

"Scope of the Project

The scope of development of project(s) by IrconISL shall be:

a. Conceptualizing, planning, designing, financing, construction, of the Project Assets and Project Utilities upon the Site(s) as per good industry practice for the purposes of the development of MFCs.

b. Marketing of the commercial spaces in the MFCs through leasing/sub-leasing to provide the following amenities to the railway passengers and other railway users based on the size of the station and facilities already existing therein.

(i) shopping; (ii) food stalls/restaurants; (iii) book stalls; (iv) PCO Booths; (v) ATMs; (vi) medicine and variety stores; (vii) Budget hotels; (viii) parking facilities; and (ix) any other similar amenities.

c. Generating and collecting revenue through marketing activities specified under sub para (b) hereinabove or directly by providing such services to the railway passengers and users;

d. Operating and maintaining the MFCs."

37. The financing arrangements had been given in Clause 5.0. It is as follows:

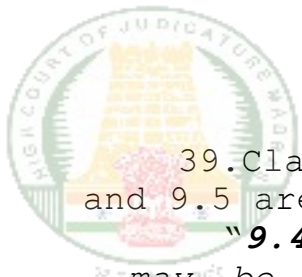
"Financing Arrangements

IrconISL expressly agrees and undertakes that IrconISL shall on its own arrange for all financing and /or meeting all financing requirements through suitable debt, quasi debt, equity and quasi equity contributions in order to comply with its obligations under the Lease Agreement including but not limited to its obligations to arrange financing for the construction of the assets and utilities. In the event of escalation of total project cost due to delay by IrconISL in construction of Project Assets or Project Utilities at the Site(s), IrconISL shall itself arrange for financing and /or meeting all finance requirements of such escalation in the total Project cost."

38. In Clause 6.0, IRCON ISL was also given the right to create encumbrances. It is as follows:

"Creation of Encumbrance during the Term

IrconISL shall have the right to create encumbrance on the Project Revenues, after making allowance towards all future payments to RLDA, in favour of the lenders for the purposes of obtaining debt for financing the project(s)."



39.Clause 9 relates to obligations of IRCON ISL. Clauses 9.4 and 9.5 are as follows:

"9.4.Electricity, water and sewerage connection for MFCs may be provided by the Railways on availability and on apyment basis as per extant

rules of MOR. However, in case the electricity, water and sewerage connection for MFCs are not provided by the Railways, IrconISL shall at its own cost take all measures, including applying for any and all connections from suitable government authorities to provide the same to all the MFCs at the Site(s) and shall undertake all measures required to be undertaken for separate metering of electricity and water utilized by the users of the MFCs. No way leave charges will be imposed on IrconISL to bring/connect such utilities from outside to the Site(s).

9.5.IrconISL shall from the Effective Date pay all outgoings, cess, taxes (including municipal taxes), levies, fees and other charges whatsoever and all increases thereto in respect of the Site(s), utilities on the Site(s) and MFCs and RLDA shall not be liable for the same."

40.Clause 11 relates to marketing and subleasing of buildup spaces in MFCs. Clause 11.11 is as follows:

"IrconISL shall be entitled to market the assets / commercial spaces / units in the MFCs through advertisement for booking of such assets / commercial spaces / units in the project assets after getting the project completion certificate."

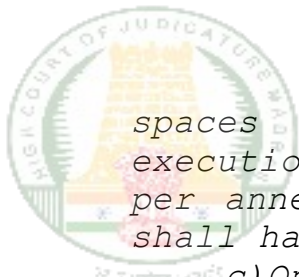
41.Clause 11.2 gives right to the IRCON ISL to sub-lease to third parties. It is also as follows:

"11.2.Sub leasing to third parties:

11.21.RLDA agrees that upon project completion, irconISL shall have the right to execute second lease agreements or sub lease agreements of the buildup spaces in the MFCs with third parties in the following manner:

a) IrconISL shall have right to sub lease the built up spaces in an MFC in full to a single party (the second lessee). The second lessee in turn shall further have right to sub lessee the part built up spaces in the MFC to multiple sub lessees but such sub lessees shall not have any further right to sub lease. IrconISL shall sub lease to second lessee by way of execution of a second lease agreement that shall include items as per annexure-A1 and the draft of such second lease agreement shall have to be preapproved by RLDA.

<https://hcservices.ecourts.gov.in/hcservices/> IrconISL or the second lessee may sub lease built up



spaces in the MFCs to multiple sub lessees by way of execution of sub lease agreements that shall include itmes as per annexure A-2 and the draft of such sub lease agreement shall have to be pre approved by RLDA.

c) On each occasion IrconISL enters into a second lease agreement or sub lease agreement or the second lessee enters into a sub lease agreement, IrconISL shall collect a one time payment of Rs.100/- (Rupees one hundred only) per sq.m. of leased area from the second lessee or the sub lessee, as the case may be, through an account payee cheque in favour of RLDA and deposit the same with RLDA along with a copy of such second lease agreement or the sub lease agreement within 30 (thirty) days of execution of such agreement. In the absence of realization of such payment by RLDA, the second lease agreement or the sub lease agreement shall become null and void.

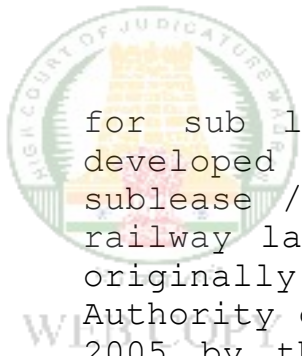
d) The term of the second lease agreement and the sub lease agreement shall not exceed the term of the lease agreement for that MFC.

e) The right to sub lease mentioned hereinabove shall be vested solely with IrconISL or the second lessee and shall not be transferable in any form except to their successors and permitted assigns or as permitted under this lease agreement.

f) Any second lease agreement or the sub lease agreement shall at all times be subject to this lease agreement.

42. An analysis of the agreement entered into between RLDA and IRCON ISL, namely, between the 2nd and 3rd respondents indicates that RLDA had granted lease rights to the sites and assets can be constructed on the sites by IRCON ISL and for such lease of site, IRCON ISL shall pay consideration to RLDA. Further, the assets that could be constructed would include the Multi Functional Complexes (MFCs), which could range from shopping, food stalls / restaurants, book stalls, PCO booths, ATMs, medicine and variety stores, budget hotels, parking facilities etc. Thus, a wide range of facilities of construction can be put up by the lessee. For putting up such construction, naturally, finance is required. That is covered under the Memorandum of Understanding dated 21.08.2009, which had been referred supra entered into between RLDA and IRCON, who is not a party in the writ petition, wherein, it had been very specifically stated that the wholly owned subsidiary of IRCON namely, the 3rd respondent / IRCON ISL "shall be allowed by RLDA to create encumbrance on the lease right over the land for the purpose of bankability / project financing of MFC".

43. Further, IRCON ISL / 3rd respondent was also given permission to enter into a second lease agreement with any entity



for sub leasing / sub licensing and renting the builtup area developed on the site with power to such entity to further sublease / sub license / rent. This effectively means that the railway land in this specific case, in Madurai Railway Junction, originally owned by the Railways, was later to be developed by an Authority created under Act 47 of 2005 - Railways (Amendment) Act, 2005 by the creation of Rail Land Development Authority, RLDA, which is an independent authority having independent functions and with a composition of Chairman, Vice Chairman and other members and also Officers and Employees, who are paid salaries and allowances from the Consolidated Fund. Thus, the Authority, RLDA, had been created by an Act of Parliament for the purpose of developing the Railway land for commercial use. RLDA had then entered into a Memorandum of Understanding with IRCON, which was a Government Company under the Ministry of Railways and registered under the Companies Act, 1956.

44. Thereafter, IRCON had created a 100% subsidiary. IRCON ISL / 3rd respondent. Thereafter, RLDA / 2nd respondent had entered into a lease agreement with the 3rd respondent / IRCON ISL to actually develop the land, put up construction and collect the amount from individual sub lessees / tenants and also pay consideration for the right to the site granted by RLDA. IRCON ISL also had the right to enter into a second lease agreement with any entity for sub leasing or renting the builtup area. Further, both the IRCON ISL and the second lessee had further right to enter into a sub lease with respect to any area, so constructed.

45. The petitioner herein / Madurai Multi Function Complex Private Limited is a private company with registered office at Kolkota in West Bengal. It is a non Government company. In the affidavit filed in support of this petition, it had been stated that the buildings, which are the subject matter in the writ petition at Railway Junction in Madurai, had been constructed by IRCON ISL. It was also stated that the present buildings were tendered twice by the Railways, but an appropriate investor did not come forward to take the building on lease. It was actually stated in the affidavit as follows:

".....The subject property / present building was tendered twice by the Railways through IRCON / RLDA. However, it was not able to find an appropriate investor to take it on lease on 2 past occasions. Commercial feasibility of the project was an issue-in terms of the lease rent sought by Railways as well as the additional investment required for making the property inhabitable.

8. I submit that the petitioner entered into a sub lease agreement with the third respondent on 03.02.2016 and had accordingly taken the property on sub lease for a period of 30 days from the third respondent."



46.The said statements extracted above from the affidavit of the Authorised Signatory of the petitioner company, C. Maruthurajan, who is also the Manager (Operations) reveal that the property was tendered twice by the Railways, but no appropriate investor came forward to take it on lease. It is also seen that the commercial feasibility was also a issue with relation to the lease rent sought by the Railways as well as any additional investment required for making the property marketable.

47.Even though the details of the petitioner company have not been set out in the affidavit filed in support of this petition, a quick search on the internet regarding the composition of the petitioner company revealed that it is a private company, incorporated on 02.09.2014. It is classified as a non Government company and registered with the Registrar of Company, Kolkota with an authorized share capital of Rs.30,000,000/- and paid up capital of Rs.30,000,000/-. The Directors of the petitioner company are / were Rishabh Patni, Rakesh Jalan and and Sushil Kumar Jain. The activities involved are in Hotels, camping sites and other provisions of short-stay accommodation and restaurant facilities operated in connection with the provision of lodging. Also included are the operation of sleeping cars when carried on by separate units. It is an unlisted company and the date of its last Annual Meeting was on 29.09.2018 and its Balance Sheet was last filed on 31.03.2018. The above information has been assessed from <https://www.zaubacorp.com>. It is not known whether the information has been updated.

48.Taking advantage of the right to enter into a second lease agreement, the 3rd respondent / IRCON ISL entered into a lease agreement with the petitioner / Madurai Multi Functional Complex Private Limited, on 03.02.2016. In the said agreement, the petitioner company has been described as a Special Purpose Vehicle - SPV company, incorporated by M/s.Veeraprabhu Marketing Limited-Rajdhani Hotels Private Limited, Consortium under the Companies Act, 2003. In the agreement, it was termed as the sub lessee and the 3rd respondent / IRCON ISL was termed as the lessee. It must be pointed out that the petitioner company is not a Government company. It is not a company under the control of either the Ministry of Railways or the Union of India or the State Government. It is not a company under the control of, more specifically, the Railways. It is a private company. In the agreement, in the preamble portion, it had been covenanted as follows:

"A.WHEREAS Lessee has developed a multi-functional complex comprising the building constructed on a plot land owned by the lessor ie., Rail Land Development Authority (RLDA) measuring 2728.85 square meters ("land") situated at



Railway Station at Indore (MP) to be used for the purpose as mentioned in clause no.6 of this agreement (hereafter referred to as "MFC") in furtherance to and in accordance with the terms of a memorandum of understanding dated 21.08.2009 ("MOU") and a lease agreement dated 04.07.2013 ("RLDA lease agreement") executed between the lessor and the lessee. (the terms of sub lease agreement shall prevail over the corresponding terms of lease agreement entered between RLDA & IrconISL).

B.ANAD WHEREAS the lessee is entitled to sub lease / sub license the units comprised in the MFC to a singly sub lessee / sub licensee in terms of the provisions of the RLDA lease agreement subject to the policies and guidelines issued by the Ministry of Railways, Government of India from time to time in this regard.

C.AND WHEREAS the sub lessee after perusing all the documents including the documents pertaining to the leased premises and the policies and guidelines issued by the Ministry of Railways, Government of India from time to time with regard leasing of units in the MFC, and after making itself aware fo all the lessee's rights and obligations under the RLDA lease agreement and being satisfied with quality and condition of the construction of MFC and all the units contained therein along with various installations has approached the lessee for taking on lease all the units comprised in the MFC having total builtup area ("leased premises") on "as is where is basis" for a term of lease period of 30 (thirty) years.

D.AND WHEREAS the lessee on the assurance of the sub lessee that it shall strictly abide by the stipulations contained in this agreement has agree to give on lease to the sub lessee the leased premises on the terms and conditions contained herein."

49.The following terms were defined as follows:

"Land" shall have the meaning assigned to it in Recital A of this agreement.

"Leased Premises" shall have the meaning assigned to it in Recital C of the agreement.

"MOU" shall have the meaning assigned to it in Recital A of this agreement."

50.It had been stated that the lease shall be for a period of 30 years commencing with effect from 04.09.2014.

51.The rent and other payments are given as follows:

"Rent and other payments.

The lease rent payable for the leased premises under this agreement shall be as under:



(i) One time down payment:

Non-Refundable one time down payment as per following:-

S.No	Name of the Work	Amount (Rs.)
1	Madurai (Tamilnadu)	4,91,00,000/- (Rupees Four Crores Ninety One Lakhs only)

All taxes as applicable are payable extra by the sub lessee.

One time down payment are payable by sub lessee as per following schedule:

S.No	Installment	% of one time down payment	Amount of Installment (Rs.)	Due date of payment
1	I st	56%	2,74,96,000/-	24.09.2014
2	II nd	22%	1,08,02,000/-	04.09.2015
3	III rd	22%	1,08,02,000/-	04.09.2016

All taxes as applicable are payable extra by the sub lessee.

In case of delay in payment(s) interest @ 15% per annum shall be charged for a period of delay if delay is more than 15 days, contract/confirmation shall be annulled and all securities including EMD shall be forfeited.

The sub lessee has deposited one time down payment (including service tax) as per following details:

Date	Mode of payment	Reference No	Amount
10.12.2014	RTGS	Via BARB01NDJOD	25,00,000/-
02.02.2015	RTGS	Via CNRB0000145	57,00,000/-
03.02.2015	RTGS	Via CNRB0000145	1,65,00,000/-
04.02.2015	RTGS	Via CNRB0000145	34,44,906/-
	TDS		27,49,600/-
		Total	3,08,94,506/-

Includes service tax of Rs.33,98,506/-

and

(ii) Monthly lease rent

A monthly lease rent of Rs.10,00,000/- (Rs.Ten Lakhs only)



for the complete building and shall be payable quarterly in advance on or before 7th (seventh) day at the beginning of each quarter.

There shall be Free-Rent period of six months w.e.f.04.09.2014 during which no rent is payable by the sub lessee under this agreement. Since only warm shell structures of MFCs with budget hotels are being sub leased, this period shall be utilized by the sub lessee to furnish, put fitments, take water/electricity connections, install lift and take necessary licenses required under this sub lease agreement and all other necessary works required for operation/commissioning of MFC. However, this free-rent period shall not exceed the six months irrespective of inability of the sub lessee to make MFC operational within said time.

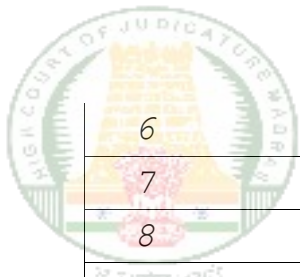
(iii) Transfer charges

The sub lessee is required to pay a one-time fee of a sum of Rs.6,17,950/- (Rupees six lakhs seventeen thousand nine hundred fifty only) calculated at the rate of Rs.100 per square meter for the total built up area of the leased premises towards transfer charges drawn in favour of "Rail Land Development Authority" payable at New Delhi in addition to One Time Down Payment and Monthly Rental payable to lessee. Taxes as applicable shall be payable extra. The due date of payment is 24.09.2014.

(iv) in addition to One Time Down Payment, Monthly Lease rent (payable quarterly) and transfer charges, the sub lessee is required to pay 15 days of monthly lease rent ie., Rs.5,00,000/- (Rs.Five Lakhs only) within 21 days of signing of sub lease agreement in form of DD / Pay Order in favour of "M/s.Knight Frank (India) Private Limited" payable at New Delhi. Taxes as applicable extra."

52.It had also been stated that there will be a 15% increase in the monthly lease rent. A tabular column had also been given regarding the monthly rentals payable for the 30 years, excluding tax. It is as follows:

S.No	Period	Monthly Rental Payable (excluding taxes) as applicable during period mentioned (Rs)
1	04.03.15 - 03.09.17	10,00,000/-
2	04.09.17-03.09.20	11,50,000/-
3	04.09.20-03.09.23	13,22,500/-
4	04.09.23-03.09.26	15,20,875/-
5	04.09.26-03.09.26	17,49,007/-



6	04.09.29-03.09.32	20,11,358/-
7	04.09.32-03.09.35	23,13,062/-
8	04.09.35-03.09.38	26,60,022/-
9	04.09.38-03.09.41	30,59,026/-
10	04.09.41-03.09.44	35,17,880/-

53.The purpose for such sub lease had also been given in the agreement. It is as follows:

"Purpose:

The sub lessee for the leased premises under this agreement is only for commercial use and the sub lessee is mandatorily required to provide facilities as mentioned in annexure B of the tender documents and other passenger support facilities. Any activities deemed unlawful for operation and for the purposes other than as stated herein shall not be allowed from the leased premises.

The lessee will provide the approved building plan from Railways. However, to operate any sub leased activity, if certificate/license is required from the local authority or any other relevant agency, the same shall be taken by the sub lessee."

54.It is seen from the above that the sub lease was only for commercial purpose and the lessee / 3rd respondent would provide the approved building plan. However, to operate the sub lease activities, if a certificate / license is required from the local authority or any relevant agency, the same shall be taken by the sub lessee, which indicates that to put up the building in operation, namely, to get water connection and drainage facility in the instant case, the petitioner, who is the sub lessee must obtain them from the local authority. The approved building plan alone shall be given by the lessee / 3rd respondent / IRCON ISL, but thereafter, for operating the building or to make the facilities operational in the building, the onus shifts to the petitioner to obtain them from local authority.

55.In clause 7.8 with respect to payment of electricity, water, sanitation, sewer, light, heat, fuel, janitorial and all other charges, fees, taxes and duties, levies, etc as levied by any Government Authority or Local Body or Municipality or Municipal Corporation or even by RLDA or by the Indian Railways on the leased premises and the MFCs, it had been provided that they shall be paid by the sub lessee namely, the petitioner herein. This clause is as follows:

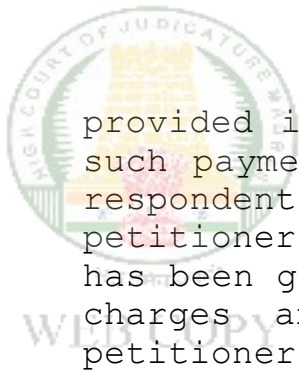
"The sub lessee covenants and undertakes to pay the electricity, water sanitation, sewer, light, heat, fuel, janitorial and all other charges, fees, taxes and duties,



levies etc, levied by any Government authority or local body or municipality or municipal corporation or RLDA or Indian Railways on the leased premises and MFC. The sub lessee shall provide original copies of invoices/bills/demands raised by the concerned authority/authorities and proof of payment of the said demand/invoice to the lessee as and when paid. If there is any default in making the afore-stated payments by the sub lessee, the sub lessee shall compensate and indemnify the lessee for all the consequences, including any loss and / or damages suffered by the lessee and / or penalties imposed by such authorities on the lessee. In case of non payment by the sub lessee of electricity, water, sanitation, sewer, light, heat, fuel, janitorial and all other charges fees, taxes and duties, levies etc, levied by any Government authority or local body or municipality or municipal corporation or RLDA or Indian Railways on the leased premises, the lessee shall have a right (but not an obligation) to pay the same and deduct twice (which includes penalty) the such amounts from the security deposit which is kept with the lessee. In such circumstances, the sub lessee shall be obliged to replenish the security deposit within 10 days of demand made by the lessee."

56.In the instant case, to make the building operational, the petitioner requires water and sewer connection. During the course of arguments and even in the documents, which will be referred later, the petitioner had undertaken to pay necessary water and sewer charges to the 1st respondent / Madurai Corporation. However, the stand of the 1st respondent / Madurai Corporation is that they will provide water and sewer facilities to the building only if such building is assessed to tax and the property tax is paid thereon. This is because, water and sewer connections / facilities can be provided only to approved buildings, whose construction have been duly approved by the authorities and permission had been granted for the approved plan, under which, the building had been constructed. Water and sewer connections can never be granted to unauthorized constructions. If the construction is to be categorized as an authorised construction, then it must be assessed to tax and conform to other stipulations including stability and fire safety and also ensure that there are no deviations in the building from the plan submitted and approved.

57.In the above covenant, the sub-lessee namely, the petitioner herein had agreed and undertaken to pay necessary water, sanitation and sewer charges and also all taxes levied by the local bodies or Municipal Corporation. It was subject to this undertaking that the petitioner was granted permission to enter into the premises and a sub lease was entered into. It is further



provided in the agreement that if there is any default in making such payments, the sub lessee / petitioner shall indemnify the 3rd respondent / IRCON ISL for the consequences. Further, if the petitioner / sub lessee does not make the payments, then authority has been given to the 3rd respondent / IRCON ISL to pay the taxes / charges and recover the same to twice the amount from the petitioner, from the security deposit. A further obligation was cast on the petitioner / sub lessee in such a circumstance to replenish the security deposit within 10 days.

58. In this connection, the rent and other payments as agreed between the parties and as extracted above show that the petitioner should make a non refundable one time down payment of Rs.4,91,00,000/- and a monthly lease rent of Rs.10,00,000/- and transfer charge of Rs.6,17,950/- and further, on gradual increase at the rate of 15% of the rent, it had been worked out that the rent will gradually increase every month from Rs.10,00,000/- to finally Rs.35,17,880/- per month.

59. It had been further covenanted in clause 7.9 that if the sub lessee / petitioner seeks to make temporary partitions, temporary / minor alterations, false ceilings, air conditioners and other minor renovations, then it must be ensured

that such changes are approved under the local bye-laws and permission and licenses should be obtained at its own expense. This clause is as follows:

"The sub lessee covenants and undertakes not to make any payment structural additions, alterations, or variations to the leased premises and MFC including changes in the elevation or open spaces. The sub lessee may make provision for temporary partitions, temporary / minor alterations, false ceilings, air conditioners and other minor renovations inside the leased premises, with the written permission of the lessee, provided that all such changes are within the limits of the local bye laws. All permissions or licenses or approvals to be obtained in this regard shall be obtained by the sub lessee at its own expense. Further, any such alterations made by the sub lessee as afore-stated shall neither impair the structural soundness nor diminish the value of the leased premises and / or the MFC."

60. These clauses indicate that insofar as minor / temporary alterations or even fixing of air conditioners are concerned, the local authority was vested with the right to ensure that such minor alterations are done under approval of the bye-laws. This ensures that the operation of the entire building is subject to the laws laid down by the Municipal Corporation. It is also provided with respect to termination of the sub lease as follows:



"In case of termination, except for the situation where it has to vacate the leased premises due to change in the policies and guidelines issued by the Ministry of Railways, Government of India, the one time down payment mentioned at clause 4 (a) shall be forfeited by the lessee.

In the event of termination, due to change in the policy and guidelines issued by the Ministry of Railways, Government of India from time to time or otherwise prior to scheduled expiry of the term, all rights and interests in the assets/commercial spaces/units comprised in the leased premises in the MFC and utilities therein, as the case may be, shall automatically vest in Rail Land Development Authority or the lessee as the case may be in such case, proportionate amount of one time down payment only (without any interest thereon) will be refunded to the sub lessee based on effective lease period and only moveable assets (furnishings) belonging to sub lessee and sub sub lessee shall remain their property."

61.A reading of the above shows that if the lease is terminated, due to change in policy / guidelines issued by the Ministry of Railways, Government of India, then the Assets / Commercial / Units comprised in the leased premises shall automatically be vested with the Rail Land Development Authority, RLDA or the lessee / IRCON ISL. It is further seen that among the undertakings by the sub lessee, clause 7.15 is as follows:

"7.15. The sub lessee acknowledges and undertakes that it shall have only leasehold interest in the leased premises as provided in this agreement and shall have no title to the leased premises. The sub lessee further acknowledges and undertakes that it shall have no right, title or interest including but not limited to any leasehold rights in the land or any other area of the MFC other than the leased premises"

62.This clause provides that the petitioner / sub lessee will have only leasehold interest premises and shall have no title to the leased premises. It indicates that the petitioner does not have any right, title or interest including but not limited to leasehold rights in the land.

63.An analysis of the above two clauses reveal that the petitioner has no title to the property. They are only occupants and if any amenities are required to operate the building like, water connection and drainage connection, they must pay the charges to the Corporation. They cannot claim title. If the lease is terminated, the building shall to vest back with the Railways or to RLDA, which is an Authority established by the Railways. It has been further provided in clause 17.11 as follows:

"The leased premises under this agreement is a "public



premises" as defined in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (herein after referred to as the Act of 1971), and the same shall be subject to the provisions of the Act of 1971."

64.This indicates that the building which the petitioner had taken sub lease is a public premises as defined under the Tamilnadu Public Premises (Eviction of Unauthorised Occupants), Act, 1975. A public premises under the said Act is defined as follows:

"2.**Definition:-** In this Act, unless the context otherwise requires:-

- a)
- b)
- c)
- d)

e) "public premises" means any premises belonging to or taken on lease or requisitioned by, or on behalf of, the Government and includes-

1) any premises belonging to, or taken on lease by, or on behalf of-

(i) any company as defined in Section 3 of the Companies Act, 1956 (Central Act 1 of 1956) in which not less than fifty one percent of the paid up share capital is held by the Government and

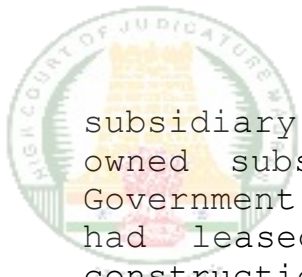
(ii) any corporation (not being a company as defined in Section 3 of the Companies Act, 1956 (Central Act 1 of 1956) or a local authority) established by or under any law and owned or controlled by the Government,

2) any premises belonging to or vested in a local authority or any board constituted under any law,

3) any premises belonging to a wakf, registered with the Tamilnadu Walk Board."

65.A careful analysis of the said definition indicates that a premises should belong to the Government or be taken on lease on behalf of the Government. In the instant case, the MFCs came into existence by the establishment of the 2nd respondent / RLDA by the Railways (Amendment) Act, 2005 (Act 47 of 2005). The Authority - RLDA was established primarily for the purpose of putting up commercial complexes for non tariff revenue from the lands belonging to the Railways. Thereafter, RLDA entered into a Memorandum of Understanding on 21.08.2009 with IRCON International Limited (IRCON) which is a Government company under the direct control of Ministry of Railways incorporated for the actual development of the land.

66.In the said Memorandum of Undertaking, it was provided that RLDA would enter into a lease agreement with a wholly owned



subsidiary of IRCON. The 3rd respondent / IRCON ISL is the wholly owned subsidiary (100%) of IRCON. Therefore, it is also a Government company and comes under the Ministry of Railways. RLDA had leased out the railway lands to IRCON ISL to put up construction and buildings for commercial exploitation. The averments in the affidavit filed in support of the writ petition show that IRCON ISL had tried to tender the property on two earlier occasions, but there were no bidders. Thereafter, the petitioner herein came forward to take the property on sub lease.

67.**Article 285 of the Constitution of India** has to be now examined:

"Exemption of property of the Union from State taxation:-

1) The property of the Union shall save insofar as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

2) Nothing in clause (1) shall until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

68.It is seen that any property of the Union is exempted from State tax unless the Parliament makes a law permitting State taxation. "Railways" comes under the VII Schedule, in the List I, Union List Item No.22. "Railways" then come entirely under the purview of the Union of India. Article 246 of the Constitution of India is as follows:

"246.Subject matter of laws made by parliament and by the legislatures of States:-

1) Notwithstanding anything in clause (2) and (3) parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the seventh schedule (in this Constitution referred to as the "Union List").

2) Notwithstanding anything in clause (3) Parliament and subject to clause (1) the legislature of any State also have power to make laws with respect to any of the matters enumerated in list III in the seventh schedule (in this Constitution referred to as the "Concurrent List").

3) Subject to clause (1) and (2), the legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the seventh schedule (in this Constitution referred to as the "State List").

4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included

Notwithstanding that such matter is a matter enumerated in the



State list."

69.This Article is in Part XI of the Constitution which stipulates the relation between the Union and the States and in Chapter I relating to Legislative Relations and Distribution of Legislative Powers. Under Article 246, the Parliament has exclusive power to make any law with respect to any of the matters enumerated in List I of the VII Schedule, also called by Union list.

70.As stated above, "Railways" comes under the VII Schedule in Serial No.

22 of list I - Union List. Thus, everything and anything to do with Railways comes under the exclusive prerogative of the Union of India. This would also include the properties of the Railways, which would naturally belong only to the Union of India. The site / land of the Railways developed by an Authority, created by a statute namely, the Railway (Amendment) Act, 2005, also vests with the Union of India. The property is leased out to a Government company, IRCON ISL and further sub leased to the petitioner. The petitioner has, under the lease deed every right to exploit the property commercially.

71.When the concept of development by RLDA / Public Sector Undertakings of MFCs became a reality, the Railway Board by proceedings dated 28.12.2010 in 20096/LML/2/13 had addressed the Principal Chief Engineers of All Indian Railways, stating as follows:

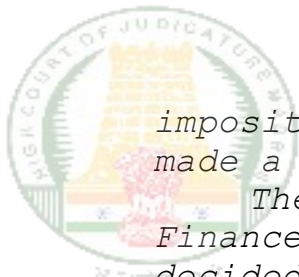
*"Government of India
Ministry of Railways
Railway Board "*

No.2009/LML/2/13
The Principal Chief Engineers,
All Indian Railways.

New Delhi dt. 28.12.2010

Sub: Supply of Electricity / water / sewerage services to Multi Functional Complexes (MFCs) to be developed by RLDA / PSUs and way leave charges - reg.

It was requested by RLDA that the Zonal Railways may provide electricity, water supply and sewerage services for the proposed Multi Functional Complexes (MFCs) on payment basis as per extant rules to the developer who would be developing the MFC. Where the railway is not in a position to supply the same, developer may be allowed to bring / connect utilities from outside the railways without



imposition of way leave charges. Accordingly, they have made a provision in the RFP document for MFC.

The matter has been examined in consultation with the Finance Directorate of the Railway Board and it has been decided that Zonal Railways would provide electricity, water supply and sewerage services to the proposed MFCs to be developed by the developer engaged by RLDA / PSUs on usual payment basis as per extant rules of the railway. Where Zonal Railway is not able to provide these services, no way leave charges would be levied for getting these utilities / facilities from outside the Railways area to the MFCs.

This issue with the concurrence of Finance Directorate of Railway Board.

Sd/-

(R.D.Pathak)

Dy.Director/LM(L)-II

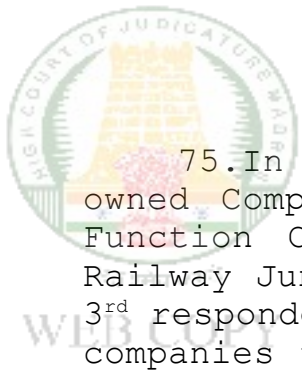
Railway Board

Copy to : Vice Chairman, RLDA - This disposes off their letter No.RLDA/2010/Projects/MFC/IRCON dated 12.10.2010."

72.It is seen that the Railway Board was conscious that any Multi Functional Complex developed would require provision of electricity / water / sewerage services. In the proceedings, extracted above, it has been stated that as per the extant rules of the Railways, the Zonal Railway may provide electricity, water and sewerage services on payment basis. However, if the Railways is not in a position to supply the same, the developer may be allowed to bring / connect utilities from outside the Railways and there would be no imposition of way leave charges. The two key words in the proceedings above are "extant" and "way leave charges".

73.In the Oxford English Dictionary, II Edition, Volume V Dvandva-Folis, Clarendon Press.Oxford, the word "extant" has defined as "to stand forth, to be prominent, be visible exist". As an adjective, it had been defined as "standing out or above any surface, projecting, protruding, protuberant". It had been further defined as "in existence, existing". As an illustration, the following small sentence is also given. " in this extant movement". Another meaning was "continuing to exist".

74.Examining the above meanings of the word "extant", it therefore implies that the Railway Board has very specifically taken a decision to provide electricity, water supply and sewerage services to the MFCs as per the "existing" - "extant" Rules to the developer, who would be developing the Multi Functional Complexes.



75. In this case, the developer was IRCON, which is a wholly owned Company under the Ministry of Railways. After the Multi Function Complex had been developed and constructed in Madurai Railway Junction, RLDA had entered into a lease agreement with the 3rd respondent / IRCON ISL. Both IRCON and IRCON ISL are Government companies under the control of Ministry of Railways. The Railway Board had very categorically stated that those companies must pay charges to the Railways for the services of providing electricity / water / sewerage, if they are provided by the Railways. If they are not provided by the Railways, then the developer would have to get these utilities / facilities from outside the Railway area.

76. In the instant case, the utilities / facilities will have to be provided by the 1st respondent / Madurai Corporation. Therefore, if the developer has to pay charges for such services to the Railways, if the Railways had supplied them, then, naturally, they will have to pay the said charges to the 1st respondent / Madurai Corporation. As a matter of fact, in the letter extracted above, the Railway Board had stated that they would grant a concession, namely, if the services are obtained from outside, then, the Railways would not charge "way leave charges". Way Leave Charges are levied by the Railways when the land of the Railways is used for laying of pipe lines under the land or drawing electricity lines over the land. This charge had been waived by the Railways.

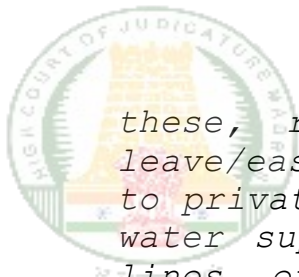
77. In proceedings No.97/LML/24/3 issued by the Railway Board dated 24.04.2014 and addressed to the General Manager, All Indian Railways, Pus, Core, Metro, Kolkata, Director General, RDSO, Lucknow, Director General, NAIR, Vadodara, Chief Commissioner of Railway Safety, Lucknow, with respect to correction slip No.47 in Indian Railway Engineering Code - para 1033, it had been stated as follows:

"1033.Way Leave Facilities / Easement Rights:-

1.Way leave facilities/easement rights on railway land involve occasional or limited use of land by a party for a specified purpose like passage etc., without conferring upon the party any right of possession or occupation of the land and without in any way affecting the railway's title, possession control and use of the land.

2.Sections 16 of the Railways Act, 1989 enjoins upon the Railways to make and maintain specified works for the accommodation of the owners and occupiers of the lands adjoining the railway, for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made. Such works include

overcrossings, undercrossings, passages, drains, water courses etc. Apart from



these, requests are often received for provision of way leave/easement on railway land in the form of passage/access to private houses and establishments underground pipelines for water supply and sewerage, electrical and telecommunications lines, etc. In many cases, these are unavoidable in view of the very nature and extent of the railway alignment.

3. Such requests for granting way leave/easement facilities have to be considered with due regard to the circumstances of each case. Some such circumstances may be:-

i) Non-availability of any other means of access to properties/houses;

ii) Non-feasibility of provision of water supply, electricity, sewerage, etc, from any other direction.

4. In genuine and unavoidable cases, way leave facility/easement right may be allowed after execution of proper agreements. However, the land is not licensed, but only permission is to be granted for a limited use which is to be specified in detail in agreement. To avoid any misunderstanding on this score, the agreement should not use terms like 'license' and 'license fee' but only 'permission' and 'way leave charges'. The agreement should also clearly stipulate that the Railway Administration retains full rights to enter upon, pass through or use the land, at any time, without any notice to the party. In the event of the way leave facility being discontinued with, the Railway will not be liable to pay any compensation or reimburse any amount to the party, nor to provide any alternative arrangement for access, etc. In such a case, any installations like underground pipe lines, etc. put up by the party are liable to be removed/shifted by the party at its own cost.

5. The way leave facility/easement right on railway land provided for these specific purposes should not be used to transverse and use railway land along the track. Railways are advised to deal these cases in strict compliance to instructions contained above mentioned letter. In case of oblique crossing, unavoidable and bare minimum railway land parallel to the track should be used."

78. In the very same proceedings, the rates as would be revised from time to time for levy of way leave / easement rights on Railway land had also been given. The rates range from one time recovery of Rs.6,400/- to Rs.12,800/- to 6% of the market value of land per annum subject to minimum of Rs.5,000/- per annum to 10% of the market value of land per annum subject to minimum of Rs.20,000/- per annum. These rates are levied in accordance with, whether the services are provided to pedestrians / cyclists for pathway across the railway land, water pipe lines for farmers, electricity line for housing shops, passage / road for vehicles for housing societies, underground water / sewerage pipe lines for



State Government and autonomous bodies and such other entities.

79.A reading of the above shows that way leave charges are levied without conferring upon the party any right of possession or occupation of the land and without affecting the Railway's title, possession, control and use of the land which is significant as the Railways have asserted their title over the land. Way leave charges are collected from third party contractors, who use the land for provision of electricity, water and sewerage. Therefore, the Railway Board considered even a public sector undertaking, which developed MFCs are third party entities who cannot claim title over the land of the Railways. The issue here is with respect to buildings.

80.A further clarification came in proceedings No.2008LML 243 dated 26.07.2012. It is as follows:

*"Government of India
Ministry of Railways
(Railway Board)*

No.2008LML243

New Delhi dated 26.07.2012

*The Vice Chairman,
Rail Land Development Authority,
Near Safdarjung Railway Station,
Moti Bagh-1,
New Delhi 110 021.*

*Sub : Development of Multi Functional Complexes (MFCs)
Ref : RLDA's letter No.RLDA/2010/Project/MFC/Rajpur
dated 16.11.2011.*

The MFC buildings are covered as per the provisions of Section 11 of Railways Act, 1989 and paragraph No.201 of Indian Railways Works Manual, 2000. As such, MFC buildings being developed either by Zonal Railways themselves or through Railways PSUs namely, RITES Limited, IRCON International Limited, Rail Vikas Nigam Limited and Rail Land Development Authority through private builders are to be considered as operational buildings of Railways.

2.The duties and responsibility to be discharged by the Zonal Railways, RLDA and PSUs in connection with development of Multi Functional Complexes (MFCs) by RLDA/PSUs are annexed herewith for necessary compliance.



Encl: as above

Sd/-
(R.D.Pathak)
Deputy Director/LM(L)-II
Railway Board

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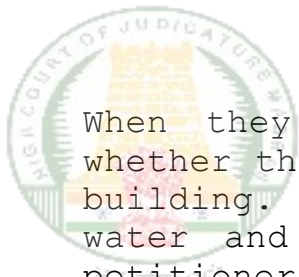
- 1) The Managing Director, RITES Limited Gurgaon,
- 2) The Managing Director, IRCON International Limited, New Delhi.
- 3) The Managing Director, Rail Vikas Nigam Limited, New Delhi.
- 4) Principal Chief Engineers, All Zonal Railways"

81.It had been stated that MFC buildings are covered under the provisions of Section 11 of the Railways Act, 1989 and in paragraph 201 of the Indian Railways Works Manual, 2000. They are to be considered as Operational Buildings of the Railways. In the Annexure the duties and responsibilities of Railway, RLDA, PSUs and Private Developers in connection with development of Multi Functional Complexes / MFCs by RLDA / PSUs had been given.

82.In column No.4 relating to supply of utility services (electricity / water / sewerage), it had been stated that such provision was a responsibility of the Railways, if the buildings had been developed by the Railways or by RLDA. If the buildings had been developed by PSUs / private developer, then, such supplies have to be arranged from local authorities and no way leave charges would be levied for getting these utilities. Charges as levied by the local authorities have to be paid by both PSUs or private developers, as the case may be.

83.In column 8, it had been stated that obtaining all other approvals / licensees / permissions will lie with PSUs / private developer. It had been mentioned that the Railways / RLDA will issue supporting letter / NOC as may be necessary. This implies that wherever any permission / approval is required from the local bodies, then, the Railways / RLDA would only give NOC - No Objection Certificate. If a planning permission is to be obtained from the local authority, then necessary charges for the same will have to be paid.

84.The Multi Functional Complexes which have been taken on sub lease by the petitioner in Madurai Railway Junction had been built in accordance with the rules laid down by the 1st respondent / Madurai Corporation. They are the planning sanctioning authority. The Railways will only give a No Objection Certificate stating that they have no objection for construction of a MFC building over the land of the Railways, but the MFC as such will have to conform to the rules and regulations of the Madurai Corporation.



When they obtain such plan, the issue, which now arises, is whether they will also be called upon to pay property tax for such building. It is seen that they will have to pay the electricity, water and sewerage charges and the only concession, which the petitioner can get, is that the petitioner need not pay way leave charges for the underground pipe lines or overhead electricity lines to RLDA.

85.The earliest letter available on record addressed by the petitioner dated 13.12.2017 to the Commissioner, Madurai Corporation, Madurai, is as follows:

Madurai Multi Functional Complex Private Limited

13.12.2017

The Commissioner,
Madurai Corporation,
Madurai.

Dear Sir,

Ref: Out lease agreement No:IRCON ISL/Agreement/15-16/Madurai-and our letter dated 21.04.2015 addressed to you - reg.

Sub: Request to provide us Corporation Water connection and connection to Corporation Drainage system and Services - reg.

In regard of the above references and in continuation of our subsequent representations to you, we hereby request you to provide us immediately, Corporation water connections and connection to Corporation drainage system and services as we have applied for to your good selves.

We hereby undertake to comply with all your terms, conditions and also agree to pay all due and relevant taxes as may be levied upon for providing us the said services.

Looking forward for your kind support and cooperation

Kindly do the needful and oblige.

Thanking you.

For Madurai Multi Functional Complex Private Limited.

Sd/-

C.K.N.Kuppuraajha,

<https://hcservices.mca.gov.in/hcservices/>



86. In the letter, they have referred to their lease agreement with the 3rd respondent / IRCON ISL and they have requested provisions of Corporation water connections and connection to the Corporation drainage system. In the said letter, they have undertaken to comply with all terms and conditions and they also agreed to pay all dues and relevant taxes as may be levied for providing the said services.

87. A careful analysis of the above letter very clearly reveals that the petitioner had undertaken to pay *"all due and relevant tax as may be levied upon for providing us the said services"*. This means that the petitioner had undertaken to pay not only the charges for the said services but also all the relevant taxes. The taxes which are relevant for provision of water, electricity and sewerage are the tax on the building itself. This is the property tax, which is demanded by the 1st respondent. In the said letter, they have undertaken to comply with all terms and conditions and had also agreed to pay all *"due and relevant tax"*.

88. The Madurai Corporation by referring to assessment No.115/016/01269 and terming the petitioner as an assessee, as a sub lessee of RLDA, had stated that the total area of the building was 38569 sq.ft. The date of completion / occupation of the building was 01.10.2017. A calculation sheet had been given. They had given the annual value for each one of the sub divided area which had been given on rent. The annual rental had also been given. The land value had also been given. The building value had also been given. The discount for the building had also been given. Finally, they have stated that the total annual value was Rs.69,01,525.00/-. The basic property tax at 11% was given as 7,59,168.00/-. The education tax was at 2.5%, Library cess at 10% was also levied. The property tax (half year tax) was arrived at 10,07,623.00/-. This was with effect from 01.10.2017. It is also seen that the entire building of 68569 sq.ft., was used only for commercial usage.

89. The building of the Railways can be broadly categorized into two categories. The first category would be the buildings used for the Railways themselves like, stations on the platform, quarters for the staff, officers, etc., A Multi Functional Complex comes under the second category, which is not exclusively used by the Railways. It may have been constructed on Railway site / land, but there is no exclusivity that only Railway passengers can have access to the facilities provided. Every individual crossing the road across the Railway Station can enter into the hotel in a MFC and can have dinner. They need not buy a platform ticket for the same. It is not a restricted zone. The quarters for the staff of the Railways are restricted zones. The issue then arises



whether these building come within the purview of Article 285 of the Constitution of India.

90.To recapitulate, it would be prudent to once again extract Article 285 of the Constitution of India.

"Exemption of property of the Union from State taxation:-

1) The property of the Union shall save insofar as Parliament may be lay otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

2) Noting in clause (1) shall until parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the

Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

91.It must be kept in mind the conclusion, which can be safely reached even before examining whether the land and building can be assessed property tax that the petitioner herein is liable to pay charges as levied for provision of electricity connection and sewerage / drainage connection.

92.In (1992) 1 Supreme Court Cases 100 (Union of India Vs. Purna Municipal Council and others), the Hon'ble Supreme Court had categorically held that Section 135 of the Indian Railways Act, 1890 and the provisions of Section 184 of the Railways Act, 1989, which had been extracted above, get saved under Article 285 (1) of the Constitution itself. Paragraphs 4 and 5 of the said judgment are as follows:

"4.The view expressed by the High Court is obviously erroneous. Section 135 of the Indian Railways Act, 1890 gets saved under Article 285(1) of the Constitution itself. The said Article provides that property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by the State or by any authority within a State. Section 135 of the Railways Act provides as under:

"Taxation of railways by local authorities:-

Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways from railways administrations in aid of the funds of local authorities, namely:.-

(1) A railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Central Government has,

by notification in the official gazette, declared



the railway administration to be liable to pay the tax.

(2) While a notification of the Central Government under clause (1) of this Section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or in lieu thereof such sum, if any as an officer appointed in this behalf by the Central Government may having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

(3) The Central Government may at any time revoke or vary a notification under clause (1) of this Section:

(4) Nothing in this Section is to be construed as debarring any railway administration from entering into contract with any local authority for the supply of water or light or for the scavenging of railway premises or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.

(5) 'Local Authority' in this section means a local authority as defined in the General Clauses Act, 1887 and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchmen or for conservancy of a river".

5. The aforesaid provision, existing as it is, in terms permits taxation of Railways by the local authority in the manner given therein; the Central Government being the controlling and the regulating authority permitting liability at a given point of time, its extent and manner. The Indian Railways Act being a central enactment has no role to play in sub-Article (2) of Article 285, for that is a sphere in which the State legislation operates. The reasoning of the High Court to oust the applicability of Section 135 of the Indian Railways Act on the test of sub-Article (2) of Article 285 was totally misplaced, as also in not venturing to create room for it in sub-Article (1) of Article 285. The interplay of the constitutional and legal provisions being well cut and well defined requires no marked elaboration to stress the point. Accordingly, we allow this appeal, set aside the judgment and order of the High Court and issue the writ direction asked for in favour of the Union of India restraining the respondent council from raising demands on the railway in regard to service charges. We make it clear that the rights of the local authority as flowing under Section 135 of the Indian Railways Act, 1890 stand preserved



in the event of the Central Government moving into the matter, if not already moved. In the circumstances of the case, however, there will be no order as to costs."

93. It had been seen that the Hon'ble Supreme Court had very categorically stated that the interplay of the constitutional and legal provisions being well cut and well defined requires no marked elaboration to stress the point.

94. In **(1996) 7 Supreme Court Cases 542 (Union of India and another Vs. Ranchi Municipal Corporation, Ranchi and others)**, the Hon'ble Supreme Court once again relied on Purna Municipal Council (referred supra), where the demand had been made by the Municipality and which was challenged by the appellants therein and had held as follows:

"3. The respondent Municipality had made a consolidated outstanding demand for a sum of Rs.1,01,501 for years 1993-94, 1994-95 on 16.12.1993 towards the service charges. The appellants challenged the validity of the demand. On reference, the Division Bench in the impugned order dated 15.05.1995 in CWJC No.3223 of 1994 upheld the demand of the Municipality. Thus, this appeal by special leave.

4. The controversy is no longer res integra. This Court in Union of India v. Purna Municipal Council had held that Section 135 of the Railways Act is subject to the provisions of Article 285 of the Constitution. Therefore, the respondent Municipality was restrained from demanding any payment by way of service charges from the Railways. Shri M.P.Jha, learned counsel appearing for the Municipality, sought to rely on clause (4) of Section 135 of the Railways Act which contemplates a contract between the Central Government and the Municipality and payment thereof on the basis of the said contract. In this case, the contract now sought to be relied upon is only to relieve distress warrant pending disposal of the dispute in the High Court. Therefore, it cannot be construed that there is any contract between the Union of India and the Municipality. In view of the fact that the Municipality has no right to demand service charges from the Union of India, the demand made by the Municipality is clearly ultra vires its power. It is true that earlier W.P.No.2844 of 1992 was filed and was dismissed by the High Court and the special leave was refused by this Court on the ground of gross delay.

5. It is now settled law that the summary dismissal does not constitute res judicata for deciding the controversy. Moreover, this being a recurring liability which is ultra vires the power, earlier summary dismissal of the case does not operate as a res judicata.

6. The appeal is accordingly allowed. Writ is issued as



prayed for. Whatever amount has been paid by now cannot be recovered from the Municipality. No costs."

95. It is seen that once again the Hon'ble Supreme Court had held that the Municipality has no right to demand service charge from the Union of India and that the demand made by the Municipality is clearly *ultra vires* of its powers.

96. In **(2004) 3 Supreme Court Cases 92 (Municipal Corporation, Amritsar Vs. Senior Superintendent of Post Offices, Amritsar Division and another)**, the Hon'ble Supreme Court once again reiterated that where the Department has already been paying for rendering services like, water supply, street - light and drainage, demand of tax was impermissible. Once again reliance was placed on both Purna Municipal Corporation (referred supra) and Ranchi Municipal Corporation (referred supra). The Hon'ble Supreme Court had framed various questions for determination and the same were as follows:

4. The questions which resolve around for determination in this appeal are:

a) whether the demand for service charges so made by the Corporation against the respondents is by way of "service charge" or by way of "tax"?

b) if it is held that the demand so made was by way of "tax", whether the same is violative of Article 285 (1) of the Constitution of India?"

97. Thereafter, the Hon'ble Supreme Court answered the said questions as follows:

"6. Article 285(1) provides that the property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

7. As observed from the impugned notice, the whole basis of the demand notice was in pursuance of the letters/circulars issued by Government of India, Ministry of Finance being Nos. 14[1]-P/52/1 dated 10.5.54 and 14(7)- P/65 dated 29.3.67. It is argued by Mr. Mahabir Singh, learned counsel that the Corporation is justified and entitled for payment of service charges in view of the circulars issued by the Government of India, as referred to above. We are unable to countenance with this contention of the learned counsel. The circulars, aforesaid, issued by the Union of India were administrative in nature. It is now settled principle of law that administrative circulars cannot override the constitutional provisions. The Government of India circular, as referred to above, was issued by one Deputy Secretary to the Government of India. By no stretch of imagination such

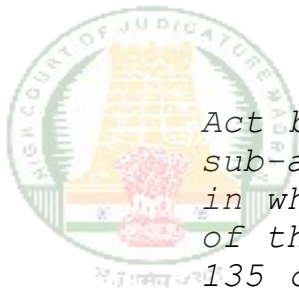


of India, can be said to have any overriding effect over the mandate of Article 285(1) of the Constitution. We are, therefore, of the view that the circulars so issued, as noticed above, do not alter the position with regard to the bar imposed by Article 285(1) of the Constitution. The interplay of the constitutional and legal provisions being well cut and well defined requires no marked elaboration to stress the point.

8. The question, whether the demand so made was by way of 'service charge' or 'tax', need not detain us any longer. The demand so made was with regard to the services rendered to the respondents' department, like water supply, street lighting, drainage and approach roads to the land and buildings. In the counter, the respondents averred that they are paying for the services rendered by the appellant-Corporation by way of water & sewerage charges and power charges separately. It is also categorically averred that no other specific services are being provided to the respondents for which the tax in the shape of service charges can be levied and realized from the respondents. There is no provision in the Municipal Corporation Act for levying service charges. The only provision is by way of tax. Undisputedly, the appellant-Corporation is collecting the tax from general public for water supply, street lighting and approach roads etc. Thus, the "tax" was sought to be imposed in the garb of "service charges". The interplay of the constitutional and legal provisions being well cut and well defined, it was clearly not within the competence of the Corporation to impose tax on the property of the Union of India, the same being violative of Article 285(1) of the Constitution.

9. Furthermore, the issues raised herein are no more res-integra. This Court, in (1992) 1 SCC 100 Union of India v. Purna Municipal Corporation & Ors. considered an identical question and held that Section 135 of the Railways Act, being an Act of the Central Government and saved by clause (1) of Article 285 of the Constitution, clause (2) of Article 285 was not attracted, and the Municipal Corporation was restrained from demanding tax by way of service charges from railways. This is what this Court has said in para 5 of that judgment:

"The aforesaid provisions, existing as it is, in terms permits taxation of railways by the local authority in the manner given therein; the Central Government being the controlling and the regulating authority permitting liability at a given point of time, in its extent and manner. The Indian Railways



Act being a central enactment has no role to play in sub-article (2) of Article 285, for that is a sphere in which the State legislation operates. The reasoning of the High Court to oust the applicability of Section 135 of the Indian Railways Act on the test of sub-article (2) of Article 285 was totally misplaced, as also in not venturing to create room for it in sub-article (1) of Article 285. The interplay of the constitutional and legal provisions being well cut and well defined requires no marked elaboration to stress the point. Accordingly, we allow this appeal, set aside the judgment and order of the High Court and issue the writ and direction asked for in favour of the Union of India restraining the respondent council from raising demands on the railway in regard to service charges."

10.The same view was reiterated in (1996) 7 SCC 542 Union of India & Anr. v. Ranchi Municipal Corporation & Ors.

11.For the aforesaid reasons, the appeal is devoid of merits and it is accordingly dismissed with no order as to costs."

98.The Hon'ble Supreme Court had, thus, upheld the sanctity of Article 285 (1) of the Constitution of India. It must be seen that the payment of water and sewerage charges, which had been levied and realized, have not been interfered with, but when there has been an imposition and demand of tax in the shape of service charges, then the Hon'ble Supreme Court has negated demands raised by the Municipal Corporation.

99.The learned counsel for the first respondent however insisted that property tax is leviable. In this case, the learned counsel stated that the petitioner is not an arm of the Union Government or the Ministry of Railways. It is not a Government Company. It is a Private Limited Company. They have taken the property on sub-lease with obligation to pay rent to the second respondent and they are also exploiting the building for commercial purposes. It had been stated that even in the agreement with the third respondent they had very specifically undertaken to pay all necessary taxes. It was also pointed out that even while submitting the application seeking electricity / water / drainage connection, the petitioner had undertaken to pay necessary taxes. The learned counsel therefore insisted that levy and demand of property tax on the petitioner is justifiable.

100.It is also significant to point out that the petitioner had not impleaded the Union of India as a party / respondent in



the writ petition.

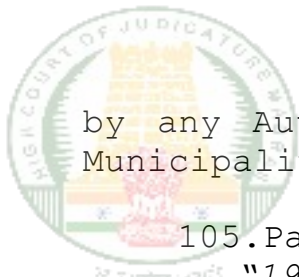
101. In (1995) 5 Supreme Court Cases 251, (**Municipal Commissioner of Dum Dum Municipality and others Vs. Indian Tourism Development Corporation and others**), the Hon'ble Supreme Court was called to examine imposition of property tax on the International Airports Authority, which was a Corporation created under the Companies Act with share capital, own properties, own fund, accounts, employees and capable of lending and entering into contracts and had held that the Article 298, under which, the State was entitled to engage itself in all activities necessary for promotion of the social and economic welfare of the community, the nature of the properties must be determined on the totality of circumstances. In that case, the property held by International Airports Authority had been categorized into two, ie., (1) those that were transferred to it under Section 12 of the Act at the time of its inception and (2) those that have been acquired by it subsequent to its constitution.

102. It had been held that the properties under the second category are the properties of the Authority and therefore, the same is liable to tax. With respect to the properties under the first category, it had been held that the nature and vesting, should be determined, as stated above, on a totality of circumstances.

103. Paragraph 2 of the said judgment is as follows:

"2. The question arising in this batch of appeals is whether the properties vested in the International Airport Authority of India under the provisions of International Airports Authority Act, 1971 can yet be called the properties of the Union within the meaning of Article 285 of the Constitution of India and, therefore, exempt from all taxes imposed by a State or by any authority within a State - to be more precise by the municipality. The Delhi High Court has answered the said question in the negative, i.e., in favour of the Delhi Municipal Corporation whereas the Calcutta High Court has taken a contrary view. A learned Single Judge of the Bombay High Court has also taken the same view as the Calcutta High Court but the said judgment is now the subject matter of a letters patent appeal before the Division Bench of the same court."

104. It is seen that the properties had been vested with the International Airports Authority of India under the provisions of International Airports Authority Act, 1971 and the issue was whether those properties can be called properties of the Union within the meaning of Article 285 of the Constitution of India and exempt from all taxes imposed by a State Government or



by any Authority within the State - to be more precise by the Municipality.

105.Paragraphs 19 and 20 of the said judgment are as follows:

"19.The power to carry on a business is an incident of proprietary power. Even before the present Article 298 was substituted by the Constitution Seventh Amendment Act, 1956, this Court had taken the view that the State is entitled to engage itself in all activities necessary for the promotion of the social and economic welfare of the community and that for doing so no specific legislation is necessary except where the State proposes to encroach upon private rights in order to enable it to carry on its business. [Rai Sahib Ram Jawaya Kapur & Ors. v. State of Punjab (1955 (2) S.C.R.225)]. With a view to put the matter beyond any doubt, Article 298 was substituted altogether by the Seventh Amendment Act. It reads:

"298. Power to carry on trade, etc.--The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:

Provided that--

(a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and

(b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament."

20.According to the statement of objects and reasons appended to the Bill, the said amendment was brought in "to make it clear that the Union government, as well as State governments, are competent to carry on any commercial or industrial under taking, whether or not it is related to a matter within the legislative competence of the Union or as the case may be of the State. Similarly, the holding, acquisition and disposal of property and the making of contracts by the Union or a State could be for any purpose without constitutional impropriety."

106.The Hon'ble Supreme Court in the said judgment finally held as follows:

<https://hcservices.ecourts.gov.in/hcservices/> "32.The decision of the Constitution Bench of this



Court in Andhra Pradesh State Road Transport Corporation v. The Income Tax Officer (1964 (7) S.C.R.17) - a case arising under Article 289 of the Constitution - may be referred to at this stage. The Andhra Pradesh State Road Transport Corporation was constituted under the Road Transport Corporations Act, 1950 with effect from January 11, 1958. Prior to that date, road transport was a department of the Government of Andhra Pradesh and was being run by it. During the period prior to January 11, 1958, the income from the road transport was exempt from tax as the income of the State Government but once the corporation was formed, the Income Tax Department took the view that the income earned by the corporation is liable to tax. Notices were accordingly served upon the corporation, which questioned the same by way of a writ petition in the Andhra Pradesh High Court. It contended that having regard to the provisions of the Road Transport Corporations Act and in particular Section 30 which provides that the net income of the Corporation should go to the State of Andhra Pradesh, it must be held that the income of the corporation was really the income of the State Government. This argument was rejected on an examination of the provisions of the Road Transport Corporations Act which are broadly in accord with the provisions of the International Airports Authority Act, 1971. In coming to the said conclusion, the Constitution Bench laid emphasis upon the fact that the corporation has a separate fund of its own, that it can borrow funds from any source including from the State Government and Central Government and that it can enter into contracts and own property. It held that the mere fact that the corporation is owned by the State Government or that in all material Particulars, its activities are controlled by the State, are of no consequence. Of course, the share capital of the corporation in that case was held by the State Government and Central Government together and that it also contemplated raising of capital by issue of shares to other parties whereas in the case of the Authority there is no such provision. But the said feature, in our opinion, does in no way whittle down the relevance of the said decision to the facts of the case before us, for the reason that the said fact is not at the core of the decision.

33. There is yet another circumstance which goes to support our conclusion. The Parliament has since enacted the Airports Authority of India Act, 1994 (Act 55 of 1994) in supersession of the 1971 Act. We are told that the 1994 Act has come into force on and from April 1, 1995. Section 3 of the Act constitutes an authority called "Airports



Authority of India". Sub-section (1) of Section 13 says that on and from the appointed day, the under takings of the International Airports Authority (i.e., the authority constituted under Section 3 of the 1971 Act) shall be transferred to and vest in the Authority constituted under Section 3 of the 1994 Act. Sub-section (2) of Section 13 makes it clear that the undertaking of the International Airports Authority.... which is transferred to and which vests in the Authority under sub-section (1) shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, real or personal, corporeal or incorporeal, present or contingent, of whatever nature and wheresoever situate, including lands, buildings, machinery, equipment, works, workshops, cash balances, capital reserves, reserve funds, investments, tenancies, leases and book debts and all other rights and interests arising out of such property as were immediately before the appointment day in the ownership, possession or power of the International Airports Authority.....in relation to its undertaking whether within or outside India.....". No distinction of the nature urged by the learned counsel for the appellants is recognised by sub- section (2) of Section 13 of the 1994 Act.

34. Reference may be made in this connection to the decision of this Court in *Western Coalfields Limited v. Special Area Development Authority* (1982 (1) S.C.C.125). Certain government companies incorporated under the Companies Act, the entire share capital whereof was held/owned by the Government of India claimed exemption from State taxation under Article 285(1) of the Constitution. The said plea was rejected by this court holding that merely because the entire share capital is owned by the Government of India it cannot be held that companies themselves are owned by the Government of India. It was observed that the companies which are incorporated under the Companies Act have a corporate personality on their own distinct from that of the Government of India and that the lands and buildings are vested in and owned by the companies whereas the Government of India only owns the share capital. Reliance was placed upon certain decisions of this Court including the decision in *Andhra Pradesh State Road Transport Corporation*. We are of the opinion that the said principle applies equally in the case of a statutory corporation. The statutory corporation is constituted by or under a statute as against the companies (including government companies) which are registered under and governed by Indian Companies Act, 1956.



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

107. The entire reasoning by the Hon'ble Supreme Court was that the International Airports Authority of India is a statutory Corporation distinct from the Central Government and that the properties vested with the Authority are no longer the properties of the Union of India for the purpose of and within the meaning of Article 285. It was therefore held that the Authority cannot invoke the immunity created by Article 285 (1) of the Constitution.

108. In **(1999) 4 Supreme Court Cases 458 (Electronics Corporation of India Limited and others Vs. Secretary, Revenue Department, Government of Andhra Pradesh and others)**, a Hon'ble Constitution Bench of the Hon'ble Supreme Court of India, had explained the issues arising when there was an amendment of the Andhra Pradesh Non - Agricultural Lands Assessment Act, 1963 by Act 28 of 1974 and when the definition of "owner" was altered to include a lessee, if the land had been leased out by the Government for any commercial purpose, industrial or other non - agricultural purpose. The Constitution Bench after examining the issues stated that demands for non - agricultural assessments subsequent to the amendment have to be upheld since the property that is to be taxed is not of the Union of India but of a distinct and separate legal entity. It had been held that the appellant being the company registered under the Companies Act, they are entities other than the Union of India. It had been therefore held that the question of reading down does not therefore arise. It had been held as follows:

"13. With effect from 1st July, 1974, Section 12 of the Act was amended so that it now applied to land which was owned by Central or a State Government and was leased



out for any commercial, industrial or other non-agricultural purpose. With effect from that date, by reason of the amendment of Section 2(j), an owner included a lessee of land owned by the Central or a State Government if the land was leased out by such Government for a commercial, industrial or other non-agricultural purpose. By virtue of Section 3, the obligation to pay non-agricultural assessment on the leased land lay upon the owner lessee.

14. It is the case of the appellant company in its writ petition that it is the lessee of the Department of Atomic Energy of the Union of India in respect of the said land. The said land, therefore, is of the ownership of the Central Government and, being leased out to the appellant company for an industrial and commercial purpose, is land to which the Act applies. By virtue of the amended definition of owner under Section 2(j) of the Act, the appellant company is the owner of the said land and, by virtue of Section 3, is liable to pay non-agricultural assessment thereon.

15. A clear distinction must be drawn between a company and its shareholder, even though that shareholder may be only one and that the Central or a State Government. In the eye of the law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares.

16. In *Western Coalfields Limited vs. Special Area Development Authority, Korba & Anr.*, 1982(1) SCC 125, this Court reviewed earlier judgments on the point. It held that even though the entire share capital of the appellant before it had been subscribed by the Government of India, it could not be predicated that the appellant itself was owned by the Government of India. Companies, it was said, which are incorporated under the Companies Act, have a corporate personality of their own, distinct from that of the Government of India. The lands and the buildings in question in that matter were vested in and owned by the appellant. The Government of India only owned the share capital.

17. In *Rustom Cavasjee Cooper vs. Union of India*, 1970 (1) SCC 248, it was held, A company registered under the Companies Act is a legal person, separate and distinct from its individual members. Property of the company is not the property of the shareholders. A shareholder has merely an interest in the company arising under its Articles of Association, measured by a sum of money for the purpose of liability, and by a share in the distributed profit.

18. In *Heavy Engineering Mazdoor Union vs. State of Bihar*, 1969(1) SCC 765, this Court held that an incorporated company has a separate existence and the law recognises it as a juristic person, separate and distinct from its



19. We are, in the premises, left in no doubt that the State Government was entitled to levy non-agricultural assessment upon the said land and recover it from the appellant company.

20. Learned counsel then submitted that, in any event, the recovery of non agricultural assessment in respect of the said land could not have been effected from the appellant company by reason of the application of the principle of promissory estoppel. In this behalf he referred to a letter dated 7th February, 1967 addressed by the Under Secretary to the Government of India to the Secretary of the Government of Andhra Pradesh, Industries Department, in regard to the transfer of land to the Department of Atomic Energy for the location of the Electronics Plant and other plants. The letter stated that it had been agreed by the State Government that this land would be exempt from the levy of tax under the Act irrespective of whether the plants are managed departmentally or through a Public Section Undertaking. The letter requested that notifications exempting the lands already handed over to the Department of Atomic Energy or to be handed over in future from levy of tax under Andhra Pradesh Act 14 of 1963, while vesting in the Department of Atomic Energy or in public sector projects would also require to be issued. The issuance of the same was, therefore, requested. In reply, the Deputy Secretary of the Government of Andhra Pradesh, Industries Department, stated on 17th October, 1967 that no separate notification is required exempting the land given to the Atomic Energy Department for establishment of Atomic Energy Complex at Hyderabad from payment of non-agricultural assessment under the A.P. Non- Agricultural Assessment Act so long as the units are run by the Government of India in Public Sector. It was contended by learned counsel that the appellant company had acted upon this promise. Accordingly, the State Government was bound by its promise and was estopped from going back upon it.

21. There are two short answers to this contention. In the first place, there can be no estoppel against a statute. In the second place, the letter dated 17th October, 1967 needs to be carefully read. It says that no notification was required for exempting the land from payment of non-agricultural assessment so long as the units are run by the Government of India in Public Sector. The appellant company is a separate and distinct legal entity that runs its own industry. The letter dated 17th October, 1967 cannot be read as promising exemption to companies, though their shares be held wholly by the Union of India.

22. Mr. Dholakia, learned counsel for M/s. Parel Investment and Trading Co. Limited (appellant in Civil



Appeal Nos.3937-38 of 1990), adopted the submissions aforementioned. He submitted that Article 285 was intended to protect public revenues; the shares of the appellant companies being fully owned by the Central Government, their funds were public revenues. It was, therefore, necessary to read down the provisions of Section 2(j) and Section 12 of the Act to exclude therefrom all but private owners and lessees of land. The question of reading down comes in if it is found that these provisions are ultra vires as they stand. We have held that these provisions are not ultra vires because Article 285 does not apply when the property that is to be taxed is not of the Union of India but of a distinct and separate legal entity. Each of the appellants being companies registered under Companies Act, they are entities other than the Union of India. The question of reading down does not, therefore, arise."

109.It had been very clearly held by the Hon'ble Constitution Bench of the Hon'ble Supreme Court of India that when a property which is to be taxed has very clearly vested with a distinct and separate legal entity registered under the Companies Act, the properties belong to entities other than the Union of India. It is again to be pointed out that the petitioner has deliberately not impleaded the Union of India as a party / respondent in the writ petition. It has therefore to be concluded that the petitioner is asserting absolute rights over the property and is also asserting their rights to commercially exploit the building. The petitioner may exploit to any extent possible. The building consists of Basement, Budget Hotel, Anchor Store, Retail Shops, Banquet Hall, Food Plaza, Shops, Pharmacy, Cafe, Book Shop and ATM. The total built up area is 6,179.49 sq.mts. The petitioner has also been permitted to operate Food Plaza / Court or sub-lease the same. What the petitioner pays to the 3rd respondent under the lease agreement is a fixed lease amount which has been specified in the lease agreement. The petitioner has also undertaken to pay all taxes necessary with the 1st respondent. The petitioner is bound by such undertaking. The petitioner cannot claim a right for supply of water and electricity and seek exemption from payment of property tax. They both go hand in hand.

110.In this case, the building had been constructed by the 3rd respondent. They had later been sub-leased to the petitioner herein. The petitioner, as repeatedly pointed out, is a distinct entity registered under the Companies Act. They are not a Government Company. They are a Private Limited Company. The Railways had only given a No Objection Certificate for the construction and for putting up amenities. The buildings have been constructed under the rules of the 1st respondent.



111.The 1st respondent has an inherent right to demand tax. The petitioner's claim that the buildings are exempted from tax based on Article 285 of the Constitution of India falls flat on the very words of the Hon'ble Constitution of Bench of the Hon'ble Supreme Court of India in **(1999) 4 Supreme Court Cases 458 (Electronics Corporation of India Limited and others Vs. Secretary, Revenue Department, Government of Andhra Pradesh and others)** referred supra, wherein, the Hon'ble Constitution of Bench of Hon'ble Supreme Court of India had very clearly held as follows:

"We have held that these provisions are not ultra vires because Article 285 does not apply when the property that is to be taxed is not of the Union of India but of a distinct and separate legal entity. Each of the appellants being companies registered under Companies Act, they are entities other than the Union of India. The question of reading down does not, therefore, arise."

112.In view of the above, I hold that the Writ Petition has no merits and has to be dismissed and accordingly, the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The Commissioner, Madurai Corporation, Madurai.
- 2.The General Manager/Railway Infrastructure,
Rail Land Development Authority,
Near Safdarjung Railway Station,
Moti Bagh, New Delhi 110 021.
- 3.The Chief Executive Officer,
IRCON Infrastructure and Services Limited,
Plot C-4, Saket District Center, New Delhi-17.

order made in

W.P. (MD) No.18477 of 2018

06.05.2020

SCR(CO)

TR(15.05.2020) 48P 4C

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