(2006) 05 GAU CK 0075

In the Gauhati High Court

Bus Parichalana Samity APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 08-05-2006

Acts Referred:

Assam Municipal Act, 1956 — Section 148, 3(3), 68(1)(g)

Citation : (2007) 1 GLR 342 : (2006) 4 GLT 394

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Both these writ petitions involve substantially the same parties, almost identical facts and these two writ petitions have been heard, on the request of the learned Counsel for the parties, together and are, therefore, disposed of by this common judgment and order.

Case of the petitioners in WP(C) Nos. 1653/2003 and 4889/2004

2. The petitioner, namely, Bus Parichalana Samiti is an association of the bus owners of the various districts in Assam, including the district of Barpeta. The petitioner is a registered society under the Societies Registration Act. The members of the petitioner-Association ply their buses throughout the district of Barpeta and beyond and while so plying their buses, the members of the petitioner-Association are required to take their vehicles through the area of Barpeta Road Municipal Board. The members of the petitioner-Association have been plying their buses since the days of independence and much before Barpeta Town Committee was established, in the year 1961, under the provision of Assam Municipal Act, 1956. Barpeta Road Municipal Board (in short, ''the respondent-Board'') replaced Barpeta Town Committee in the year 1976. The respondent-Board has started collection of parking fees from the buses of the members of the petitioner-Association on various rates and a notice inviting tender has already been issued by the respondent-Board, on 10.01.2003, for

settlement of six parking gates for the financial year 2003-04 for collection of parking fees. Since the respondent-Board has no authority to collect parking fees, the issuance of notice inviting tender for collection of parking fees is without jurisdiction and the respondent-Board needs to be stopped from levying or collecting any parking fees or from appointing any lessee for collection of parking fees.

3. While issuing notice of motion, on 7.3.2003, in WP(C) No. 1653/2003, the court stayed, until further order, levy or collection of parking fees from the buses within the municipal area of Barpeta Road and the respondents were directed not to collect any parking fees without leave of the court. In course of time, as the petitioner did not pursue the writ petition, the writ petition was dismissed, on 26.3.2004, for default. This writ petition was, however, restored to file on 8.4.2004 and the interim order, dated 7.3.2003, was directed to continue.

4. Pending disposal of WP(C) No. 1653/2003, the petitioner-Association filed yet another writ petition, which came to be registered as WP(C) No. 4889/2004, the case of the writ petitioner, in WP(C) No. 4889/2004, being, in brief, thus : There is a bus terminus situated in Barpeta Road town area, located at PWD road. The members of the petitioner-Association have been using the said place as a parking place for the purpose of picking up passengers and also to enable the passengers to alight from the buses. For the maintenance of this bus terminus, the respondent-Board has not spent anything; rather, the said bus terminus has always been maintained by the PWD with the contributions made by the members of the petitioner-Association. By a notice, dated 25.5.2004, the respondent-Board has imposed varied sums of money as parking fees on buses, trucks, taxis, tractors, etc. The bus, truck and mini bus do not fall within the definition of the term ''carriage'' as defined in Sub-section (3) of Section 3 of the Assam Municipal Act, 1956. This apart, the levy of parking fees on bus, truck and mini bus is not permissible, for, u/s 68(1)(g) of the Assam Municipal Act, 1956, the Municipal Board is empowered to collect licence fees from cart, carriage and animals other than motor vehicles as defined in the Assam Motor Vehicles Taxation Act, 1936. As the vehicles of the petitioner-Association fall within the ambit of the Assam Motor Vehicles Taxation Act, 1936, these vehicles are not amenable to the levy of parking fees by the respondent-Board. This apart, levy of such a parking fees need sanction of the Government under Clause (n) of Sub-section (1) of Section 68. The respondent-Board has sought to impose parking fees in purported exercise of its powers u/s 148 of the said Act, though Section 148 is attracted only when a parking place is established or when any improvement of such a parking place is sought to be made. In the case at hand, the bus stand has been in existence for long and, hence, the question of establishing the bus stand does not arise and since no improvement is sought to be made to any existing bus stand, the question of imposing parking fees for improvement of the bus stand does not arise. Above all, since the parking place is not on the land of the respondent-Board, the respondent-Board has no authority to collect parking fees. Though the respondent-Board has imposed

parking fees describing the parking place as a bus stand, the vehicles from which parking fees are sought to be realized are not only buses, but also trucks, taxis, etc. No such exercise of powers is permissible by the respondent-Board. The petitioner-Association, therefore, seek to get set aside and quashed the impugned notice, dated 25.5.2004, aforementioned.

Case of the respondents

5. The notice, dated 25.5.2004, which is the subject-matter of challenge in the writ petitions, has been issued by the chairman of the respondent-Board in pursuance of the resolution adopted, in this regard, by the respondent-Board in its meeting held, on 17.5.2004, deciding to collect parking fees from the buses, trucks, tractors, taxis, mini buses, mini trucks, tempo, auto-rickshaws, etc., the parking fees being different for different kinds of vehicles. Section 148 of the Assam Municipal Act, 1956, as the same stands amended since the year 1994, empowers the respondent-Municipal Board to collect parking fees from trucks, taxis, auto-rickshaws, etc., for parking the vehicles on the land provided by the Municipal Board. Under the provisions of Section 148, the respondent-Board is entitled to collect parking fees from the vehicles even if the land used for parking place is a private land. Neither for imposing the parking fees nor for fixing the rates of the parking fees, the respondent-Board is required to take prior approval or sanction from the State Government. Section 68(1)(g), which the petitioner-Association rely upon, is inapplicable to the facts of the present case inasmuch as Section 68(1)(g) relates to imposition of license fees, whereas the present case relates to the collection of parking fees, Section 68(1)(g) cannot, thus, bar the respondent-Board''s power, u/s 148, to levy parking fees. While imposition of licence fees on cart, carriage and animals used for riding or burden is provided u/s 117 of the said Act, the power to impose parking fees is contained in Section 148 of the said Act. Since the respondent-Board has the power to collect parking fees for providing space as a parking place, there is no impediment, on the part of the respondent-Board, to collect parking fees at such rates as deemed fit by it from any such vehicle, which may be parked at such a parking place. The writ petition has no merit and the same may, therefore, be dismissed with costs.

6. Though the writ petitioners have challenged the levy of parking fees on different grounds, all these grounds may, in substance, be summarized as follows:

(i) A Municipal Board, constituted under the Assam Municipal Act, 1956, is not empowered to collect any fee from any motor vehicle except licence fee in respect of cart, carriage and animal. Parking fees cannot be imposed on motor vehicles by any Municipal Board, for, a Municipal Board is, u/s 68(1)(g) of the Assam Municipal Act, 1956, empowered to impose only licence fees on cart, carriage and animal used for riding and burden. The word ''carriage", occurring in Sub-section (3) of Section 3, does not cover motor vehicles, such as, buses and, hence, the buses of the members of the petitioner-Association are not amenable to levy of parking fees.

(ii) A Municipal Board, under the Assam Municipal Act, 1956, has no power to impose or collect parking fees except with prior sanction from the State Government in terms of Clause (n) of Sub-section (1) of Section 68 of the said Act.

(iii) Since the land, where the buses are parked, does not belong to the Municipal Board, the collection of parking fees from the vehicles, which are parked there, is without jurisdiction and void ab initio.

(iv) Even if Section 148 is assumed to empower a Municipal Board to impose or collect parking fees, such power can be exercised only if the parking place, such as, the bus stand, taxi stand or truck stand, etc., is established by the Municipal Board or if any improvement is required to be made to an existing parking place. Since the parking place or bus stand, in the present case, had already been in existence, the question of respondent-Board having established it does not arise at all and since no steps for improvement of the existing bus stand has been taken by the respondent-Board, the power to impose parking fees cannot be exercised in such a case. The imposition and collection of parking fees, in such circumstances, is beyond the competence and jurisdiction of the authorities concerned.

7. I have heard Mr. R. Dubey, learned Counsel, for the petitioners, and Mr. A. Buragohain, learned Additional Advocate General, Assam, appearing on behalf of the State/Official respondents. I have also heard Mr. P. Pathak, learned senior counsel, appearing on behalf of the respondent-Board.

Has a Municipal Board, under the Assam Municipal Act, 1956, no power to levy or collect parking fees except with prior sanction from the State Government in terms of Clause (n) of Sub-section (1) of Section 68 of the said Act ?

8. In the present writ petition, since it has been contended, on behalf of the writ petitioners, that a Municipal Board cannot impose parking fees except with requisite sanction granted, in this regard, by the State Government in terms of Clause (n) of Sub-section (1) of Section 68 of the said Act, Section 68 is reproduced hereinbelow:

68. Taxes. - (1) Subject to the provisions of this Act and the rules made hereunder, the Board may, from time to time, at a meeting convened expressly for the purpose, of which due notice, shall have been given, impose, within the limits of the municipality, the following taxes, fees and tolls, or any of them:

(a) a tax on holdings situated within the municipality assessed on their annual value, payable by the owner;

(b) a water-tax payable by the owner or occupier, on the annual value of holdings;

(c) a lighting-tax, payable by the owner or occupier, on the annual value of holdings;

(d) a latrine-tax, payable by the owner or occupier, on the annual value of holdings;

(e) a drainage-tax, payable by the owner, where a system of drainage has been introduced;

(f) a tax on private markets payable by the owner ;

(g) licence fees on carts, carriages and animals used for riding, or burden;

(h) a fee on the registration of dogs and cattle ; (i) a fee on boats mooring within the municipality ; (j) toll and on bridges ;

(k) a betterment fee on holdings in any area of which value has increased due to improvement schemes completed at Board''s cost,

(l) fees for setting up and maintenance of fire brigade ;

(m) fees for conducting at the cost of the Board, any scheme of social service for the improvement of public health ;

(n) with the sanction of the State Government any other tax, toll, rate or fee:

Provided, -

(i) that both the taxes mentioned in Clauses (a) and (f) shall not be imposed in respect of the same premises ;

(ii) that when the Board has taken a loan from or guaranteed by the State Government, the Board shall not, without the previous sanction of the State Government, make any alteration in respect of any tax which may have the effect of reducing the income of the Board ; and

(iii) the State Government may, by order, exempt from the payment of any rate, tax, toll or fee payable under the provisions of this Act, any diplomatic or consular mission of a foreign State and the diplomatic and consular officer of such mission ;

(o) licence fee on boats.

(2) Taxes of providing Public Utility Services. - The Board may, from time to time at a meeting convened as aforesaid, and in accordant with a scale of fees to be approved by the State Government charge a fee in respect of the issue and the renewal of any licence which may be granted by the Board under the Act and in respect of which no-fee is leviable under Sub-section (1).

(3) Nothing in this section shall authorise the imposition of any tax or fee which the State Legislature has no power to impose in the State under the Constitution.

9. Before the endeavour to interpret Section 68 is made, what needs to be borne in mind is that the Assam Municipal Act, 1956, has undergone, in the year 1994, significant amendments with regard to the powers of the Municipal Board to levy

tax, tolls and fees and these amendments, as I shall shortly show, would have great bearing on the interpretation of Section 68 in the post-amendment period.

10. From a careful reading of what Section 68 embodies, it becomes abundantly clear that Section 68 does not permit a Municipal Board to levy parking fees, for, none of the clauses, embodied in Sub-section (1) of Section 68, specifically empowers a Municipal Board to levy parking fees.

11. A careful reading, as a whole, of Section 68 also reveals that levy of parking fees was possible if sanction, in terms of Clause (n) of Sub-section (1) of Section 68, was granted by the State Government, for, Clause (n) of Sub-section (1) of Section 68 empowers Municipal Boards to impose, with the sanction of the State Government, any fees, which obviously would include parking fees.

12. Before proceeding further, what may also be pointed out is that Section 148 of the said Act, as the same stood before the amendment, which this section has undergone in the year 1994, read as follows:

148.(1) The Board at a meeting may use their own land or building or, purchase, take on lease or otherwise acquire any land or building for the purpose of establishing a municipal market or improving any existing municipal market.

(2) The Board at a meeting may levy rents, tolls and fees at such rates as it may think proper for the right to expose goods for sale in a municipal market and for the use of shops, stalls and standings therein and also may regulate such rates in respect of private markets or places used or declared by the Board as a market place by public notice in the locality.

(3) The Board may grant a lease according to rules under this section for a period not exceeding three years for the collection of rents, tolls and fees in municipal markets at the rates prescribed by the Board under Sub-section (2).

(4) A lessee of a municipal market appointed under Sub-section (3) may refuse to allow any person to expose goods for sale in the market or to use shops, stalls, and standings therein until the proper rents, tolls and fees have been paid.

(5) Whoever, having rendered himself liable to the payment of rents, tolls or fees refuses to pay the same shall be liable to a fine which may extend to fifty rupees (and shall also be liable to be evicted from the place, shops, stall or standing in the market used by him.

(6) When resistance is offered to any person authorised to collect rents, tolls or fees, any police officer whom he may call to his aid, shall be bound to assist him, not such police officer shall for that purpose, have the same powers as he has in the exercise of his ordinary police duties.

(7) Whoever realises rents, tolls or fees at rates higher than rates fixed, under Sub-section (2) shall be liable to a fine not exceeding fifty rupees.

13. From a bare reading of Section 148, as the same stood before the

Amendment Act, 1994, it clearly emerges that Section 148 did not empower Municipal Boards to levy parking fees. What unamended Section 148, however, allowed the Municipal Board was to levy tolls and fees for goods, which were exposed for sale in the municipal market, or rents, tolls and fees for use of the shops, stalls and standings at the municipal market.

14. What, thus, emerges from a cautious and careful reading of Section 68 and pre-amended Section 148 is that under the pre-amended Assam Municipal Act, 1956, the Municipal Board had no authority to levy, on its own, any parking fees nor was it even entitled to establish a parking stand, parking area, parking lot, etc. The Municipal Board was, however, entitled, even under the pre-amended Section 148, to levy tolls and fees for goods, which were exposed for sale in the municipal market, and the Municipal Board was also empowered to levy rents, tolls and fees for use of the shops, stalls and standings, which were provided by the Municipal Board. That the power of the Municipal Board to levy tolls and fees for goods, which were exposed for sale in the municipal market, or levy of rent, tolls and fees by the Municipal Board for use of shops, stalls and standings in the municipal market, was independent of its power to levy limited classes of tax and fees, which were specified u/s 68, and also the fact that Section 68 did not control the powers of the Municipal Boards, which the Municipal Boards, otherwise, had u/s 148, was made clear by a Division Bench of this court in Shri Lohit Chandra Saikia and Ors. v. North Lakhimpur Municipal Board and Ors. reported in 1984 (2) GLR 412. In Lohit Chandra Saikia (supra), the Division Bench, speaking through K. Lahiri, J, (as his Lordship then was), observed and held,

3...A bare perusal of section makes it clear that these are different and distinct classes of taxes, toll and fees. The tax, toll and fees referred in Section 68(1)(a) to (n) cover those tax, toll and fees on or in respect of property other than the properties of the Municipal Board, like taxes on holding, latrine, drainage, etc. The section and the sections following deal with taxes for providing public utility services, taxes of Government holding, taxes on holding situated within the municipality but belonging to others. After exhaustively dealing with tax, tolls and fees of this kind, a separate provision has been made u/s 148 empowering the Municipal Board at a meeting to levy toll, fees and rents for using the municipal markets. The provisions of the sections operate in two different fields. In our opinion, if the provisions of Sections 68 onwards are read alongwith Section 148 of the Act it becomes crystal clear that the provisions of Section 148 is an independent and separate power conferred by the Legislature on the Municipal Board at a meeting to levy rents, tolls and fees in respect of their municipal markets. There is no conflict between the provisions of Section 148 and Section 68 of the Act. Reading as a whole every relevant provisions of "the Act" we find no conflict between the provisions of Section 148 and Section 68 of the Act dealing with levy of tax, toll and fees. On perusal of the entire scheme of the Act, its design and other connected provisions dealing with the tax, fee and toll we reach the irresistible conclusion that the interpretation that we have given to Section 148 accords with the intent of the Legislature. We have given full effect to legislative intent following the maxim "ut res magis valiat quam pereat". If the provisions of Sections 68 and 69 covered the entire field of power to levy tax, toll and fees there was no purpose in enacting a separate provision like Section 148 dealing with the power of the Board to levy rent, toll and fees for use of municipal markets. For the foregoings we hold that the Municipal Board at a meeting had the power and jurisdiction to levy rent, toll and fees, and, as such the first contention of the petitioner fails.

15. Thus, on an analysis of the provisions of Section 68, on the one hand, and Section 148 (as the same stood before amendment in 1994), on the other, the Division Bench, in Lohit Chandra Saikia (supra), concluded that Section 68, together with Section 69, does not cover the entire field of the Municipal Board''s power to levy tax, tolls and fees and that the power given to a Municipal Board, u/s 148, to levy rents, tolls and fees is in addition to the powers vested in the Municipal Board to levy those taxes and fees, which are mentioned in Section 68.

16. Section 148 of the Assam Municipal Act, 1956, has, however, undergone a revolutionary change by the Amendment Act, 1994. With the amendment, so incorporated, Section 148, now, reads as under:

148. Rents, tolls and fees. - (1) The Board, if decided in a meeting,...may use their own land or land with building or land purchased, taken on lease or otherwise acquired with or without building for the purpose of establishment of a Municipal Market, Bus Stand, Truck Stand, Taxi Stand, Auto Stand and Parking Yard for improving any existing Municipal Market. Bus Stand, Taxi Stand, Auto Rickshaw or Rickshaw Stand and Parking Yard.

(2) The Board, if decided in a meeting, may levy rent, tolls and fees at such rates as it may think proper for the light to expose goods for sale in a Municipal Market and for use of shops, stalls and stands therein and also in respect of parking lots and may also regulate such rates in respect of private markets or places used or declared by the Board as a market place, parking lot by public notice in the locality.

(3) The Board may grant a lease according to rules under this section for a period not exceeding three years for the collection of rents, tolls and fees in municipal markets and parking lots at the rates, prescribed by the Board under Sub-section (2).

(4) A lessee of a municipal market appointed under Sub-section (3) may refuse to allow any person to expose goods for sale in the market or to use shops, stalls and standings therein until the proper rents, tolls and fees have been paid.

(5) Whoever, having rendered himself liable to the payment of rents, tolls or fees refuses to pay the same shall be liable to a fine which may extend to two hundred rupees and shall also be liable to be evicted from the place, shop, stall or standing in the market used by him.

(6) When resistance is offered to any person authorised to collect rents, tolls or fees, any police officer whom he may call to his aid, shall be bound to assist him, and such police officer shall, for that purpose, have the same powers as he has in the exercise of his ordinary police duties.

(7) Whoever realises rent, tolls or fees at rates higher than the rates fixed under Sub-section (2) shall be liable to a fine not exceeding two hundred rupees.

17. With the amendment, which Section 148 has, thus; undergone, the Municipal Boards have, now, become entitled to not only establish municipal markets, but also bus stand, truck stand, taxi stand, auto-rickshaw stand, rickshaw stand and parking yard and the Municipal Boards are also entitled to improve any existing municipal market, bus stand, taxi stand, auto-rickshaw stand or rickshaw stand and parking yard. The Municipal Boards are, now, also empowered, under the amended Section 148, to impose parking fees at such rates as may be prescribed by the Municipal Board. The source of power of a Municipal Boards to levy parking fees can, therefore, be safely, now, traced to Section 148.

18. What crystallizes from the above discussion is that during the pre-amended period of Section 148, a Municipal Board could impose fees only in respect of such subject-matters, which were covered under Clauses (g), (h), (i), (1) and (m) of Sub-section (1) of Section 68. None of these clauses, admittedly, permitted the Municipal Boards to impose parking fees. Clause (n) of Sub-section (1) of Section 68, however, made it possible for a Municipal Board to impose parking fees with the sanction of the State Government.

19. To put it differently, during the pre-amended period of Section 148, the source of power of the Municipal Board to levy or collect parking fees could, thus, be traced to Clause (n) of Sub-section (1) of Section 68 ; but this power could have been exercised only with the sanction of the State of Government. However, even in the pre-amended era of Section 148, the embargo placed on the powers of the Municipal Board to impose fees did not control the power of the Municipal Board to levy tolls and fees on the goods, which were exposed for sale in a municipal market, or such rents, tolls and fees, as the Municipal Board deemed fit for allowing use of the shops, tolls and standings in the municipal market concerned. With the amendment, which Section 148 has undergone in the year 1994, the Municipal Board can, now, impose parking fees and this power is not controlled by Section 68 and/or Section 69. The amended Section 148 has empowered the Municipal Boards to establish municipal market or bus stand, taxi stand, auto-rickshaw stand or rickshaw stand and parking yard and since this power, in the light of the decision in Lohit Chandra Saikia (supra), is not controlled by Section 68 and Section 69, it will be incorrect to suggest or submit that a Municipal Board has no jurisdiction or power to establish a bus stand, truck stand, taxi stand, auto-rickshaw stand, rickshaw stand and parking yard or improve an existing bus stand, truck stand, taxi stand, auto-rickshaw stand, rickshaw stand and parking yard and levy parking fees for use of such parking areas or parking places.

20. What logically follows from the above discussion is that while there was a complete embargo on the powers of the Municipal Board to collect parking fees under Sub-section (1) of Section 68 except in terms of Clause (n) thereof and, that too, with the sanction of the State Government, the Municipal Board is, now, permitted, u/s 148, to impose and collect parking fees. Hence, it cannot be contended that a Municipal Board has no power to either provide a parking place or levy parking fees.

If a piece of land, where the buses are parked, does not belong to a Municipal Board, will levy of parking fees, in such a case, by the Municipal Board on the vehicles, which are parked there, be without jurisdiction and void ab initio ?

21. What is, now, pertinent to note is that the decision to use a piece of land as a parking place has to be of the Municipal Board. In other words, a decision by the Municipal Board to use a piece of land or provide a piece of land as a parking place must precede imposition of parking fees. In the case at hand, it is not contended, on behalf of the petitioners, that the respondent-Municipal Board has not taken the decision to provide the land, in question, as a parking place or to impose parking fees. It is, however, not necessary, as the language employed in Sub-section (1) and Sub-section (2) of Section 148 indicates, that the land, which is provided or used as a parking place, must belong to, or be owned by, the Municipal Board concerned. The Municipal Board may, as the language used by Sub-section (1) of Section 148 indicates, use either its own land or the land, which it has purchased or taken on lease or otherwise acquired for the purpose of establishment of, amongst others, bus stand or for improving any existing bus stand or parking place. The use of the word ''otherwise'', occurring in Section 148(1), is of great significance. A piece of land may be obtained by the Municipal Board from a private individual or the Government or any Government department and/or governmental agency. The establishment of such a piece of land as a parking place and/or imposition of parking fees on the vehicles, which may be parked at such a place, cannot be objected to by its users, though the owner of the land may raise objection to the use of the land as a parking place by the Municipal Board. In short, the mode of acquiring of a piece of land by a Municipal Board for the purpose of its use as a parking place is immaterial.

22. In the case at hand, it is the specific case of the respondents that the respondent-Municipal Board is in occupation of the land, in question. Thus, when the respondent-Municipal Board is in occupation of the land, in question, and when it is not material as to how the respondent-Municipal Board has come to occupy the land, which, admittedly, belongs to the Government, there is no legal or factual impediment, on the part of the respondent-Municipal Board, to allow this place to be used, in terms of Section 148, as a bus stand and levy parking fees on the vehicles, which may be parked there.

Whether parking fees can be imposed by a Municipal Board for allowing use of a parking place, which was already in use as a parking place ?

23. It has been strenuously argued by Mr. Dubey that the power of a Municipal Board to levy parking fees can be invoked only when the Board has established a bus stand, truck stand, taxi stand, auto-rickshaw stand or rickshaw stand and parking yard or when it has made improvements in any existing bus stand, truck stand, taxi stand, auto-rickshaw stand or rickshaw stand and parking yard. In the case at hand, points out Mr. Dubey, the bus stand, in question, already existed and no improvement on the said stand has been made. As the parking stand, in question, already existed and no improvement has been made thereon, the respondent-Board has, according to Mr. Dubey, no power to levy parking fees on the motor vehicles, which are parked at the said bus stand.

24. While considering the above aspect of the matter, the meaning of the word, ''establishment'', which occurs in Sub-section (1) of Section 148, needs to be carefully noted and one has to also bear in mind that the use of the word ''establishment'', occurring in Sub-section (1) of Section 148, shows that there is a difference between existence and establishment. A parking stand may, in course of time, develop and exist; but the same may not have been formally recognized or established as a parking stand. The establishment of such a parking stand would really mean formal acknowledgement, recognition or even declaration of the place as a parking stand by the Municipal Board. It will, therefore, not be correct to say that if a parking place has already been in existence and the Board decides to formally acknowledge or declare such a place as a parking place, the Board is incapable of doing so u/s 148. What might have been in existence without being formally acknowledged or declared as a parking stand has, now, with the present decision of the respondent-Board, can be said to have been established as a bus stand.

25. Coupled with the above, it is also worth emphasizing, as already indicated above, that for the purpose of establishment of a bus stand, truck stand, taxi stand, auto-rickshaw stand or rickshaw stand and parking yard, it is not necessary that the land, on which the stand is sought to be established, must belong to, and be owned by, the Municipal Board concerned. Sub-section (1) of Section 148 clearly empowers the Municipal Board to establish bus stand, truck stand, etc., on such land, which it may have acquired, the mode of acquisition being immaterial.

26. To put it differently, even if a place has been in use as a parking place by the owners of the buses, the respondent-Board may, if it either owns the land or acquires the land, establish the same as a parking place by formally recognizing or acknowledging such a land as the parking place. In short, the place, which might have already been in use as a parking place, may be formally decided to be used by the Municipal Board as a parking place.

27. The fall-out of the above discussion is that the Board is competent to formally recognize a place as a parking place, though the land, in question, might have already been in use or in existence as a parking place.

28. During the course of hearing, Mr. Dubey has brought to the notice of this court a letter, dated 13.11.1987, issued by the Department of Municipal Administration, Govt. of Assam, conveying the State Government''s approval u/s 68(1)(m)/(n) of the Municipal Act, 1956, authorizing the respondent-Board to impose parking fees on the buses parked in Barpeta Municipal Board bus stand. This letter has been furnished to show that without prior sanction of the State Government, levy of parking fees is not possible. I have already indicated hereinabove that with the amendment of the Assam Municipal Act, 1956, in the year 1994, a Municipal Board is empowered to levy parking fees and for this purpose, no sanction is required under Clause (n) of Sub-section (1) of Section 68. The mere fact, therefore, that parking fees was imposed by Barpeta Municipal Board yesteryear (i.e., in the year 1987), with prior sanction of the State Government, does not divest the Municipal Board today of the powers, which it, now, enjoys under the amended Section 148 to levy parking fees.

Can a Municipal Board impose parking fees merely by providing a piece of land as a space for parking of vehicles ?

29. Turning to the question as to whether the respondent-Municipal Board could have imposed fees, merely by providing space for parking, it is pertinent to note that fees are the amounts paid for a privilege enjoyed or special services received or benefits derived. The levy of fees are, however, correlated to the expenses incurred for rendering services or for offering the privilege and for extending the benefit. Observed the Apex Court, in Ratilal Panachand Gandhi Vs. The State of Bombay and Others, ,

25. "Fees" are the amounts paid for a privilege, and are not an obligation, but the payment is voluntary. Fees are distinguished from taxes in that the chief purpose of a tax is to raise funds for the support of the Government or for a public purpose, while a fee may be charged for the privilege or benefit conferred, or service rendered or to meet the expenses connected therewith. Thus, fee are nothing but payment for some special privilege granted on service rendered." (See also Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others, and Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another, .

30. From a minute reading of the authorities cited above, which explain as to what fees connote, it is clear that a fee may be charged for the privilege or benefit conferred or service rendered or facilities provided. In the case at hand, when the respondent-Board has provided the land, which the petitioners, and persons, similarly situated, have been using as parking place or as a bus stand, it cannot be held that the levy of the parking fees by the respondent-Municipal Board is without jurisdiction and/or illegal.

31. What I may, however, hasten to add is that a levy of fee must be correlated to the expenses incurred in extending the benefit or in conferring the privilege. Observed the Apex Court, in Southern Pharmaceuticals and Chemicals, Trichur

and Others Vs. State of Kerala and Others, ,

...If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should on the face of the legislative provision be co-related to the expenses incurred by Government in rendering the services.

32. In the case at hand, it is not the case of the petitioners that the fees charged are exorbitant and not correlated to the expenses incurred by the respondent-Municipal Board. Had it been the case of the petitioner that the rate or quantum of fees imposed is unreasonable, excessive or exorbitant and not correlated to the expenses incurred by the respondent-Municipal Board, the situation might have been a little different. Suffice it to point out here that in view of the fact that the rate or quantum of fees imposed is not a subject-matter of challenge in the present writ petition, I express no opinion on the legality or justification of the rates of fees imposed by the respondent-Town Committee.

Is a Municipal Board, constituted under the Assam Municipal Act, 1956, not empowered to collect any fee from any motor vehicle except licence fee in respect of cart, carriage and animal ?

33. Turning to the contention of Mr. Dubey that a Municipal Board is competent to levy fees only in the form of licence fees on cart, carriage and animal, what may be noted is that Clause (g) of Sub-section (1) of Section 68 empowers Municipal Board to levy licence fees on cart, carr age and animal. Section 68(1)(g) does not take away or divest the Municipal Board of its powers conferred under the amended Section 148 to levy parking fees.

34. The fact that the word ''carriage'', occurring in Section 68(1)(g), does not cover motor vehicles is merely indicative of the fact as far as the licence fees on motor vehicles is concerned, the same is imposed under the Assam Motor Vehicles Taxation Act, 1936. In other words, on account of the fact that the licence fee is leviable on motor vehicles under the provisions of Assam Motor Vehicles Taxation Act, 1936, the Municipal Boards have not been given the power to impose licence fees on motor vehicles. This cannot, however, if I may reiterate, be said to have divested or denuded the Municipal Boards of their power to levy parking fees, which are, otherwise, leviable u/s 148. Thus, there is no inherent lack of jurisdiction, on the part of a Municipal Board, to collect parking fees from motor vehicles in exercise of its powers u/s 148.

35. Coupled with the above, a careful reading of Section 117 of the said Act shows as to how licence fees on carts, carriages and animals can be imposed. Section 117, nowhere, deals with the levy of parking fees. Thus, Section 68(1)(g) read with Section 117 does not vest in the Municipal Board the power to impose parking fees on motor vehicles. This does not, however mean, I must hasten to add, that the Municipal Board is not empowered to levy parking fees in exercise of its powers u/s 148.

36. Because of what have been discussed and pointed out above, I find absolutely no merit in the present writ petitions. The writ petitions, therefore, fail and the same shall stand dismissed. The interim directions passed in the writ petitions shall accordingly stand vacated.

37. No order as to costs.