
(2013) 03 AHC CK 0205

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition (Tax) No. 362 of 2011

Civil Aviation Training College

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Constitution of India, 1950 — Article 285
Uttar Pradesh Municipal Corporation Act, 1959 — Section 140(1)(a), 140(1)(b),
140(a), 173, 175
Uttar Pradesh Municipalities Act, 1916 — Section 128, 128(1)(i), 129

Citation : (2013) 4 ADJ 15 : (2013) 4 ALJ 86 : (2013) 5 AWC 4612 : (2013) 4 AWC 3379 : (2013) 2 UPLBEC 1148

Hon'ble Judges : Ram Surat Ram Maurya, J;Prakash Krishna, J

Bench : Division Bench

Advocate : S. Shekhar and V.K. Singh, for the Appellant; Rakesh Bahadur and S.K. Gupta, for the Respondent

Final Decision : Partly Allowed

Judgement

Prakash Krishna, J.—The petitioner, a Civil Aviation Training College, claims that it was initially established by the Ministry of Civil Aviation, Government of India as an institution owned by Central Government. The Parliament enacted Airports Authority Act, 1994 and now the petitioner is an institution under the Airports Authority of India. It claims that, in fact, the petitioner is an organization of Central Government and is totally owned and financially controlled by the Central Government. It is imparting training to the persons in the fields of Airports Management, Air Traffic Control and Navigation Surveillance Services and is an unique Institution in whole of the country. It has a huge compound spread over in 116 acres of land. In the said compound there are number of separate and independent buildings including dwelling houses, offices, hostels, hospitals, residential buildings and the building required for training to the students. It claims that each and every building of the petitioner in the said compound is independent and separate building. Further, the petitioner has not taken any

water connection. The petitioner has its own source of water. It has been further pleaded that the petitioner has itself provided all the civic amenities on its own to the entire campus by laying down the roads, water supply, sewerage etc. The petitioner is aggrieved by the action of respondents namely Municipal Authority and that of General Manager, Jal Kal Vibhag, Nagar Nigam, Allahabad (Water Works), Allahabad, asking the petitioner to pay water tax for the period 1st of April, 2009 and onwards. Notice dated 21st of September, 2010 issued by the respondent No. 2 asking the petitioner to deposit the water tax, is under challenge. By means of the present petition, quashing of the said notice dated 21st September, 2010 and the order dated 9.2.2011 rejecting the representation of the petitioner against the said notice, has been sought for. Also a Writ of Mandamus declaring the notification dated 9th April, 2003 filed, as Annexure-8 to the writ petition, as ultra-vires has been claimed besides the other incidental and ancillary reliefs.

2. Disputing the claim of the petitioner, the Nagar Nigam has filed a counter-affidavit wherein it is pleaded that the water tax has been levied as per the provisions of the U.P. Municipal Corporation Act, 1959 (hereinafter to referred as Act 1959) and the U.P. Water Supply and Sewage Act, 1975 (hereinafter to referred as the Act, 1975). The action has been sought to be justified on the ground that the campus of the petitioner constitutes one unit and in any case, part of the campus is within 100 meters radius of the water supply point. It has further been averred that whether the petitioner has taken water connection or not, is wholly irrelevant. The water tax has been charged at the rate 12.5% of the annual letting value of the building as determined by the Nagar Nigam. Further, the Explanation-1 to Section 175 of U.P. Municipal Corporation Act, 1959 justifies their action. It has been further stated that the earlier writ petition filed by the petitioner questioning the annual rental value of the building having been dismissed, the present writ petition is liable to be dismissed.

3. The State of U.P. has filed a separate counter-affidavit which is confined to the question of legality of the impugned notification. It has been stated that the fixation of the rate of water tax at the optimum permissible rate is justified as the cost of operation and maintenance of water supply is much more. The income from all sources of Jal Kal Vibhag, Nagar Nigam, Allahabad is estimated at 49.82 crores as against the estimated expenses of Rs. 53.52 crores. It has been stated that the notified rate of water tax at Rs. 12.5 per cent shall be even lower than the estimated expenses of the respondent (Jal Kal Vibhag) for the year 2012-2013 and thus, it cannot be said that the rate of tax at 12.5 per cent of the annual letting value is in any manner arbitrary.

The petitioner in the rejoinder-affidavit has reasserted and reaffirmed its stand as taken in the writ petition.

4. Heard Sri V.K. Singh, learned senior counsel alongwith Sri S. Shekhar for the petitioner, Sri Rakesh Bahadur for the contesting respondent Nos. 1, 2 and 3 and Sri S.P. Kesarwani, Additional Chief Standing Counsel for the other respondents.

5. At the very outset, we may deal with one preliminary objection with regard to the maintainability of the writ petition raised by Sri Rakesh Bahadur, Advocate for the respondent Nos. 1, 2 and 3. He submits that the petitioner had earlier filed a writ petition being writ petition No. 440 of 2011 challenging the valuation of property done by the respondents. The said writ petition was dismissed. The submission is that the petitioners have filed statutory appeal against the valuation of the property and as such, the present writ petition is not maintainable. In reply, the learned counsel for the petitioners invited our attention towards the following order passed by the Apex Court:

Learned Attorney General appearing for the petitioner seeks permission to withdraw this petition with a liberty to the petitioner to approach the High Court with an application for review. Permission is granted. The petition is dismissed as withdrawn with the liberty as prayed for. We request the High Court to dispose of the entire matter as expeditiously as possible.

6. The said order was passed on a SLP filed by the petitioners against the order dated 14th of March, 2012 by which the interim relief to the petitioners was denied by this Court. Taking into consideration that the pleadings are complete and the Apex Court has desired to dispose of the entire matter and the fact that only two legal issues have been sought to be raised through the present petition, we propose to decide the writ petition on merits after overruling the objection raised by the contesting respondent Nos. 1, 2 and 3.

7. Suffice it to say that this is a second round of litigation with regard to the water tax liability of the petitioner before this Court. Earlier, the petitioner had filed a writ petition No. 1496 of 2010 challenging the legality and validity of the imposition of water tax and its recovery which was decided by the judgment dated 29th October, 2010 directing the General Manager, Jal Sansthan, Allahabad to decide the representation of the petitioner in this regard. Consequent to the said judgment, the General Manager, Jal Sansthan, has decided the representation of the petitioners by rejecting it by the order impugned in the present writ petition. In this factual matrix, we do not find any merit in the preliminary objections of the contesting respondent Nos. 1, 2 and 3.

8. Coming to the merits of the case, the learned senior counsel for the petitioners, has raised the following two points for consideration:

1. There is no liability to pay the water tax in respect of the buildings and the land which fall beyond the radius of 100 meters from the water stand point of the respondent. The water tax has been levied on the premises that the entrance gate of the petitioners' institution is at a distance of 5.80 meters from the water stand point of the respondent and the several separate and independent buildings are being treated as one building. The submission in brief is that the petitioners' campus is spread over in 116 acres of land. Only a small/insignificant part of the land and some building which fall within the radius of 100 meters from the said fixed point, may be liable to water tax and not the other

buildings and land which are independent and beyond the fixed radius of 100 meters, will be subjected to water tax.

2. The notification dated 9th of April, 2003 filed as Annexure-8 to the writ petition providing the rate of water tax at the fixed rate of 12.5 per cent which is maximum, is arbitrary. The submission is that the Act provides levy of tax in the range of 6 per cent to 12.5 per cent. No reason has been assigned for not levying the water tax at a lesser rate.

9. The learned counsel for the respondent Nos. 1, 2 and 3 supports the levy of water tax on the ground that on the own showing of the petitioners, the entire buildings residential, non residential, hostels, school, hospital etc. are situate in one compound. The submission is that even a part of the said compound falls within the radius of 100 meters from the water stand point, on a true and proper interpretation of Section 175 of the U.P. Municipal Corporation Act, 1959 together with the Explanation attached thereto, the impugned levy is justified. Sri S.P. Kesarwani justifies the imposition of tax at the maximum rate with the help of estimated income and expenditure account as finds mention in the counter-affidavit.

10. Considered the respective submissions of the learned counsel for the parties and perused the record. The levy of water tax by local authority has been subject-matter of litigation before this Court many times. Earlier, the vires of such action was challenged on the ground of incompetency of the state legislature to levy such tax. The matter was examined by a Division Bench of this Court in Raza Buland Sugar Co. Ltd. Vs. Municipal Board, , with reference to the provisions of the U.P. Municipalities Act, 1916 wherein the levy of water tax has been held valid by holding that the water tax is a tax on land or building and the State Government has power under the Entry No. 49 in List II of Seventh Schedule of the Constitution of India to make laws in respect thereof. The matter was carried further in appeal unsuccessfully before the Apex Court in Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur, .

11. In Kendriya Nagrik Samiti, Kanpur and Others Vs. Jal Sansthan, Kanpur and Others, , a case under the Act of 1975, a Division Bench has held that subject-matter of water tax is not water charges. It is, in reality, tax on land and buildings though called water tax. Levy of such water tax is covered by the Entry No. 49 of List-II of Seventh Schedule. The validity of Section 52 of the Act, 1975 challenged on the ground of excessive delegation was repelled.

12. Similar view was taken in the case of Lucknow Grih Swami Parishad Vs. State of U.P. and others, .

13. It will not be out of place to mention here that although in the writ petition it has been raised that on the petitioner no water tax can be levied in view of the Article 285 of the Constitution of India, but no such plea was canvassed before us nor was pressed presumably in view of the authoritative pronouncement of the Apex Court holding otherwise.

14. Before entering into the controversy raised in the present writ petition, it is desirable to note certain statutory provisions for proper appreciation of the controversy on hand. The State of U.P. enacted the U.P. Water Supply and sewerage Act, 1975 (U.P. Act No. 43 of 1975) to provide for the establishment of Corporation, Authorities and Organisations for development and regulation of water supply and sewerage services and all the matters connected therewith. Prior to enactment of the Act, 1975, under which Jal Sansthan has been constituted, property taxes (which include a general tax, water tax, drainage tax etc.) were levied u/s 173 of the U.P. Nagar Mahapalika Adhiniyam, 1959. Under the Act, 1975 among the functions entrusted to Jal Sansthan are to plan, promote and execute schemes of and operate an efficient system of water supply vide Section 24 (1) of the Act. Power to levy taxes, fees and charges are dealt with under Chapter VI. Section 52 which is relevant for our purposes is reproduced below:

52. Taxes leviable,--(1) For the purposes of this Act, a Jal Sansthan shall levy, on premises situated within its area:

(a) where the area is covered by the water supply services of Jal Sansthan, a water tax; and

(b) where the area is covered by the sewerage services of Jal Sansthan, a sewerage tax.

(2) The taxes mentioned in sub-section (1) shall Ins. by Sec. 2 of Act No. 16 of 1989 [in a local area other than a city] be levied at such rate which in the case of water tax shall be not less than 6 per cent and not more than 14 per cent and in the case of sewerage tax shall be not less than 2 per cent and not more than 4 per cent of the assessed annual value of the premises as the Government may, from time to time after considering the recommendation of the Nigam, by notification in the Gazette, declare.

Ins. by Sec. 2 of Act No. 16 of 1989 [(3) The taxes mentioned in sub-section (1), shall, in a city, be levied at such rate which in the case of water tax shall not be less than 7.5 per cent and not more than 12.5 per cent and in the case of sewerage tax shall not be less than 2.5 per cent and not more than 5 per cent of the annual value of the premises determined under the Uttar Pradesh Municipal Corporations Act, 1959, as the State Government may, from time to time, after considering the recommendation of the Nigam, by notification in the Gazette, declare.]

Relevant portion of Section 55 providing restriction on levy of taxes mentioned in Section 52 is reproduced below:

Section 55. Restriction on Levy of Taxes.--The levy of taxes mentioned in Section 52 shall be subject to the following restrictions, namely

a.....

b. the water tax shall not be levied on any premises--

(i) of which no part is situate within the radius prescribed from the nearest stand post or other water works at which the water is made available to the public by the Jal Sansthan or

(ii).....

C.....

15. The crux of the petitioners' argument is that Section 52 levies water tax "on premises" situate within its area. Reading it together with restriction as provided u/s 55, the water tax shall not be levied on any premises of which no part is situate within the radius prescribed. The radius prescribed under Rule-2 of the Jal Sansthan (Radius Regarding the Levy of Water Tax) Rules, 1993 is 100 meters. The word "premises" has been defined u/s 2(18) of the Act, 1975 as "premises" means any land or building. The petitioner submits that on a conjoint reading of Sections 52 and 55 of the Act, 1975 only separate building or part of the buildings and/or land falling within the radius of 100 meters would be subjected to water tax liability. The word "building" has not been defined in the Act, 1975. The submission is that the building as is understood in common parlance should be taken into consideration.

16. The word "building" has been defined in the U.P. Municipal Corporation Act, 1959 vide Section 2(6) which reads as follows:

(6) "Building" includes a house, out-house, stable, shed, hut and other enclosure or structure whether of masonry, bricks, wood, mud, metal or any other material whatever, whether used as a human dwelling or otherwise, and also includes verandahs, fixed platforms, plinths, door-steps, walls including compound walls and fencing and the like but does not include a tent or other such portable temporary structures.

It also defines "land" vide Section 2(33) which reads as follows:

(33) "land" includes land which is being built upon or is built upon or is covered with water, benefits to arise out of and things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street.

17. At this juncture, we may notice the argument of the respondent Nos. 1, 2 and 3. He submits that the provision relating to water tax would be governed by Section 175 of the U.P. Municipal Corporation Act, 1959. For the sake of convenience the said section is reproduced below:

Subs. by U.P. Act No. 10 of 1978 (w.e.f. 1.12.1977) [175. [Restrictions on imposition of water tax] - The imposition of a tax under clause (b) of sub-section (1) of Section 173 shall be subject to the restriction that the tax shall not be imposed-

- (i) on any land exclusively for agricultural purposes, unless the water is supplied by the Corporation for such purposes; or
- (ii) on a plot of land or building the annual value whereof does not exceed rupees three hundred and sixty and to which no water is supplied by the Corporation; or
- (iii) on any plot or building, no part of which is within the radius prescribed for the City, from the nearest stand-pipe or other waterworks whereat water is made available to the public by the Corporation.

Explanation.--For the purposes of this section--

- (a) "building" shall include the compound, if any, thereof, and, where there are several buildings in a common compound, all such buildings, and the common compound;
- (b) "a plot of land" means any piece of land held by a single occupier, or held in common by several co-occupiers, whereof no one portion is entirely separated from any other portion by the land of another occupier or of other occupiers or by public property.]

18. Elaborating the argument, the learned counsel for the respondents submits that in view of the peculiar definition given to "building" in the Explanation reproduced above, the entire campus of the petitioners being surrounded by a boundary wall though for security purposes is a "common compound". Even if a small part of the said compound falls within the prescribed radius of 100 meters, the liability to pay water tax shall be on the annual letting value of the whole compound or in other words on the compound itself. To put it differently, the division of building or buildings or parts whereof within and beyond the radius of 100 meters from the water stand point is immaterial.

19. Now, the arguments of the learned counsel for the parties give rise to the two aspects of the case. Firstly, whether the levy of water tax will be governed by the provisions of the U.P. Act, 1975 or the Act, 1959. As according to counsel for the respondents, both the Acts operate in the same field. However, the counsel for the petitioner submitted that the U.P. Act, 1975 being a special Act and has been enacted subsequently, will have an overriding effect. Pointedly, a query was put to the learned counsel for the contesting respondent Nos. 1, 2 and 3 as to why the provisions of the U.P. Act, 1975 should not prevail being Special Act over the Act, 1959. But he could not give any reply. He continued to harp and rely on Section 175 of the Act, 1959. Besides the fact that the U.P. Water Supply and Sewerage Act, 1975 (Act of 1975) is a Special Act, there is definite indication therein which shows that the Act of 1975 will have precedence.

20. Chapter-VI of Act, 1975 deals with tax, fees and charges and contains Sections 52 to 64. Section 58 of Act, 1975 has made applicable certain provisions of Act, 1959. The provisions of Sections 178 and 214 etc. of the U.P. Nagar Mahapalika Adhiniyam, 1959 shall mutatis mutandis apply in relation to tax mentioned in Section 52, as they apply to the property described in Section

173 of Act, 1959. It, by necessary implication excludes Section 175 which contains besides the other things a special meaning to word "building" for the purposes of imposition of water tax. This brings us to the point that Section 175 which has been heavily relied upon by the learned counsel for respondents has not been made applicable to the Act, 1975. In other words, the word "premises" which means land or building occurring in Section 52 of Act, 1975 would apply. Interestingly while preparing the judgement, we could lay our hands on two Supreme Court judgments which should have been placed by the counsel for the parties but they failed. They are --

1. Municipal Board, Saharanpur Vs. Imperial Tobacco of India Ltd. and Another Etc., ; and

2. Municipal Board, Saharanpur Vs. Shahdara (Delhi) Saharanpur Light Rail Co. Ltd., 277.

21. These cases were decided with reference to the provisions of the U.P. Municipalities Act, 1916 which is similar to Section 175 of Act, 1959. Section 129 of the U.P. Municipalities Act, 1916 dealing with restriction in the imposition of water tax, definition of building and compound as defined in Section 2 sub-sections (2) and (5) of the U.P. Municipalities Act, for the sake of convenience, are also reproduced herein below:

Restriction in the imposition of water-tax is found in Section 129 of the Act, 1916. The said provision, as it stood at the relevant time, reads as under:

129 [Restriction in the imposition of water-tax] The imposition of a tax under clause (x) of sub-section (i) of Section 128 shall be subject to the following restrictions on the imposition of namely, water-tax.

(a) that the tax shall not be imposed on land exclusively used for agricultural purposes, or where the unit of assessment is a plot of land or a building as hereinafter defined, on any such plot or building of which no part is within a radius, to be fixed by rule in this behalf for each Municipality, from the nearest stand-pipe or other water-work whereas at water is made available to the public by the board; and

(b) that the tax is imposed solely with the object of defraying the expenses connected with construction, maintenance, extension of improvement of municipal water-works and that all moneys derived therefrom shall be expended solely on the aforesaid object.

Explanation.--In this Section-

(a) "building" shall include the compound (if any) thereof and, where there are several buildings in a common compound, all such buildings and the common compound;

(b) "a plot of land" means any piece of land held by a Single occupier, or held in common by several co-occupiers, whereof no one portion is entirely separated

from any other portion by the land of another occupier or of other co-occupiers or by public property.

The terms "building" and "compound" are defined by Section 2, sub-sections (2) and (5) respectively as under: Section 2. "Building" means a house, outhouse, stable, shed, hut or other enclosure or structure whether of masonry bricks, wood, mud, metal or any other material whatsoever, whether used as a human dwelling or otherwise, and includes any verandah, platform, plinth, staircase, doorstep, wall including compound wall other than a boundary wall of the garden or agricultural land not appurtenant to a house but does not include a tent or other such portable temporary shelter.

5. "Compound" means land, whether enclosed or not which is the appurtenance of a building or the common appurtenance of several buildings.

22. The Apex Court in the case of Municipal Board, Saharanpur (supra) the Court proceeded to find the meaning of words "common compound" not defined anywhere in the said Act. After considering the Explanation which enacts a separate definition of the terms "building and land" for the purposes of Section 129, the Court held that in view of the peculiar definition of "building and land" for the purposes of levy of water tax in the said Act, the words "common compound"--Where there are several buildings situate in a common compound will include all such buildings in the common compound together and will be treated forming one building for the purposes of finding out of the permissible radius from the nearest water stand point.

23. A close reading of the said decision would show that it is based on the special and separate definition of terms "building and land" for the purposes of Section 175 of Act, 1959. The Explanation attached to the section states in so many words that "building" shall include such compound (if any) thereof and, where there are several buildings in a common compound, all such buildings and the common compound.

24. In view of the discussion in the earlier part of this judgment we have held that the controversy in hand will be governed by the provisions of Sections 52 and 55 of the Act, 1975 and to the exclusion of Section 175 of Act, 1959, the principal of law laid down in the aforesaid decision may not be applicable here. We are called upon to decide the controversy on the touch stone of "premises" as contained in Section 52 bereft of any such Explanation as contained either in Section 129 of the Municipalities Act or the Explanation as attached to Section 175 of the U.P. Municipal Corporation Act, 1959 (Act of 1959). The word "premises" in view of Section 2(18) of the Act, 1975 means any land or building. The word "building" as defined in Act of 1959 reproduced above gives an extended and artificial definition for the purposes of Section 175, will not be applicable.

25. Our above view finds support from the judgement of Apex Court in Municipal Board, Saharanpur Vs. Shahdara (Delhi) Saharanpur Light Rail Co. Ltd., , wherein

the Court interpreted the "words" "Buildings" and "compound" with reference to their definition as defined in the Act, 1916, in the definition clause, though for the purposes of annual letting value of building, is germane for the present purposes, as it is based on the exclusion of specified definition of "building" as contained in Section 128 of Act, 1916. The relevant portion from para 7 is extracted below:

On a conjoint reading of these provisions therefore, it becomes clear that before the appellant Board can impose house tax u/s 140(a) on any property situated within its municipal limits if it is a "building" the unit of tax would be the building concerned including its compound wall and the compound wall would also cover within it the land situated in the said compound provided it is appurtenant to the building or a "compound" appurtenant to the several buildings. It is, therefore, obvious that if the "common compound" in which the housing complex belonging to the common owner is situated is not an appurtenance to several buildings within that complex, then the said land cannot be said to be a part and parcel of the building for the purpose of house tax. For imposing house tax on buildings u/s 140(1)(a) it has to be shown that the buildings with their common appurtenant land or the land in common appurtenance to several buildings situated nearby are available for imposing such a tax thereon. It is only such appurtenant land which can form part of the buildings for attracting house tax assessment proceedings. But if the "common compound" in which such buildings with appurtenant lands are situated also includes land which cannot be said to be a common appurtenance to several buildings situated therein or separately appurtenant to any given building, such land would be outside the sweep of the term "building". Such land, however, on its own could be legitimately made the subject-matter of separate levy of house tax as an independent unit being open land. As seen from Section 140(1)(b) itself as the Board can impose the tax on annual value of lands which may not be covered by the sweep of the definition of the term "building". Once that conclusion is reached, it becomes obvious that all the buildings situated alongwith their appurtenant lands in one "common compound" belonging to the same owner cannot be treated as one unit for the purpose of imposing house tax u/s 128(1)(i). The reasoning of the High Court in this connection cannot be found fault with on the scheme of the Act. It is pertinent to note that "common compound" which is relevant for the water-tax as per Section 129 of the Act to which we have made a detailed reference while deciding the companion appeal No. 1218 of 1976 is conspicuously absent in connection with imposition of house tax on the annual value of buildings or lands or both as found in Section 128(1)(i). We, therefore, endorse the reasoning of the Division Bench of the High Court which rejected this contention of the appellant Board. Point No. 2 is therefore answered in the negative against the appellant and in favour of the respondent.

26. It is not in dispute that the permissible radius for imposition of such water tax is 100 meters from the water stand point. Section 55 (b) (i) provides that water tax shall not be levied on any premises of which no part is situate within

the prescribed radius. The premises being land and building, only such land and building or part thereof which falls within the prescribed radius i.e. 100 meters will be subject-matter of water tax. Where several buildings as the case herein are spread over a vast piece of land measuring 116 acres, it is difficult to hold that the buildings which are independent and being not within the prescribed radius and they situate on land falling beyond the prescribed radius would be treated as part of those buildings which fall within the prescribed radius, for levy of water tax.

27. One acre consists of 4,840 sq. yards and is equivalent to 4046.856 sq. meters. The area of the plot is 116 acres which is equivalent to 561440 sq. yards = 4,69,435.296 sq. meters. In pursuance of the direction given in the earlier writ petition by this Court, a joint spot inspection was carried on 28th December, 2010 by the officials of the respondents and in the presence of the officials of the petitioner. It finds mention in para 5 of the impugned order that the entrance gate of the petitioner's campus is at 5.80 meters from the water stand point and the water tax has been levied on this premises alone. This itself is suggestive of the fact that only a very small portion/insignificant area of the petitioner's campus falls within the prescribed radius. It was urged before us that the petitioners have no grievance for payment of water tax for the land and building or part of the building falling within the prescribed radius. It was argued that the request to identify the buildings and land falling within the prescribed radius was made during joint inspection but no heed was paid. It is, therefore, desirable that again a joint inspection may be carried on in the light of the observations made above and the payment of water tax be modified suitably.

28. To clarify, it may be added that only such land which is lying in front or side of the building or the back Courtyard necessary for the enjoyment of the building and utilized by the residents of the building as of right shall be included as part of the building.

29. Viewed as above, we find sufficient force in the submission of the petitioner and the point No. 1 is decided accordingly in its favour as indicated above.

30. Now, we take up the second point with regard to the validity of notification. The learned counsel for the petitioner could urge only this much that when a slab of rate of tax has been prescribed by the statute, unless it is shown otherwise it is not open to levy the water tax at the maximum rate. Submission is that the State Government has issued the impugned notification dated 9th of April, 2003 authorising the Jal Sansthan, Allahabad to levy water tax at the rate of 12.5 per cent on the annual letting value of the property without any application of mind. Elaborating the argument, it was submitted that the notification is wholly unreasonable, illegal and arbitrary as it does not provide for the distinction between the user and non user of water at all. The Act provides water tax at the varying rate from 7.5 per cent to 12.5 per cent, the water tax should have been fixed depending upon the supply or use of water. In reply, the learned Additional Chief Standing Counsel invited our attention to paragraphs-7 (iii), (vi), (vii) and

(viii) of the counter-affidavit. For the sake of convenience these paragraphs are reproduced below:

(iii) Section 52 of the Act was amended by Section 2 of U.P. Act No. 16 of 1999. Prior to the aforesaid amendment a Notification No. 222/ukS-2-86-3(18) WSR-85 dated 1.4.1986 was issued u/s 52 of the Act declaring rate of water tax at 14% after considering the recommendation of the Jal Nigam established u/s 3 of the Act. Section 14 also provides for function of the Jal Nigam which includes advising on the tariff, taxes and charges of water supply in the areas of Jal Sansthan and local bodies. Thus the rate of 14% u/s 52 of the Act was declared by the aforesaid Notification dated 1.4.1986 on the recommendation of Jal Nigam. A true copy of the Notification No. 222/ukS-2-86-3(18)WSR-85 dated 1.4.1986, is annexed herewith and is marked as Annexure CA-2 to the counter-affidavit.

(iv)

(v)

(vi) Section 44 provides that a Jal Sansthan shall from time to time so fix and adjust its rate of taxes and charges under this Act as to enable it to meet, as soon as feasible, the cost of its operation, maintenance and debt service and where practicable to achieve an economical return on its fixed assets. As per budget of 2012-13 the income from all sources of Jalkal Vibhag, Nagar Nigam, Allahabad is estimated at 49.82 crores as against the estimated expenses of 53.52 crores. Thus at the notified rate of water tax of 12.5% the estimated income shall be even lower than the estimated expenses of Jalkal Vibhag for the year 2012-13. Thus the rate of tax of 12.5% is not arbitrary and it is well within the limits prescribed under the Act.

(vii) It is also relevant to mention that in the year 1986 Allahabad was included in the financial assistance scheme of the World Bank for improvement in water facility. The financial assistance has been made admissible with the condition that Jal Sansthan shall augment its financial resources to meet its expenses. Thus from this point of view also the rate of tax under the impugned notification dated 9.4.2003 is wholly reasonable and not arbitrary.

(viii) It is well-settled law that there is always presumption in favour of constitutional validity of a provision. The petitioners have completely failed to rebut this strong presumption.

The above quoted paragraphs fully justify the levy of water tax at the maximum permissible limit.

31. In *Kendriya Nagarik Samiti* (supra) it has been held that the opening words of section "for the purposes of this Act" give a clear direction about the object of the tax. Jal Sansthan is empowered to raise resources by way of tax for carrying out the purposes of this Act. It cannot be done for any purpose unconnected with the Act. The limit to which the tax may be levied has also been specified by

providing that the water tax and sewerage tax may be levied on the assessed annual value of the premises. The source of revenue is, thus, clearly indicated. A further safeguard has been provided by laying down that the recommendations of the Jal Sansthan has to be considered by the Government before notifying the levy of taxes. The reasonableness of tax has also been ensured by fixing the maximum limits. Earlier, we are informed, the maximum rate was 14 per cent which has been reduced to 12.5 per cent of the annual letting value of the building.

32. Before closing the judgment we may reproduce the following passage from the judgment of the Apex Court in Delhi Water Supply and Sewage Disposal Undertaking and another Vs. State of Haryana and others, --"Water is a gift of nature. Human hand cannot be permitted to convert this bounty into a curse, an oppression. The primary use to which the water is put being drinking, it would be mocking the nature to force the people who live on the bank of a river to remain thirsty."

33. The management for potable water needs meticulous handling and requires an excellent mechanism particularly when it is becoming scarce day by day (See Lucknow Grih Swami Parishad) (supra).

34. Viewed as above, we do not find any merit in the second point of the petitioner. The said point is decided by holding that the impugned notification is valid. Consequently, the writ petition succeeds and is allowed in part. The demand notice dated 21.9.2010, Annexure 1 and the order dated 9.2.2011 as contained in Annexure-5 of the writ petition are hereby quashed. The respondent authorities are required to revise the water tax bill in the light of the observations made above after having a joint inspection if they so desire and with the association of the officials of the petitioner, issue a fresh demand bill preferably within a period of one month. We have been informed that the petitioners have paid the amount under the impugned bill; if that is so, the excess amount shall be refunded alongwith interest at the rate of 6 per cent per annum from the date of deposit till the date of actual payment.

No order as to costs.