

(2015) 10 MP CK 0016
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4719/2015

Essarjee Education Society

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 20-10-2015

Acts Referred:

Constitution of India, 1950 — Article 14
Madhya Pradesh Municipal Corporation Act, 1956 — Section 127, 132, 132(1), 132(1)(a), 132(1)(c)
Madhya Pradesh Upkar Adhiniyam, 1981 — Section 13, 6, 7

Citation : (2015) 10 MP CK 0016

Hon'ble Judges : A.M. Khanwilkar, C.J. and Sanjay Yadav, J.

Bench : Division Bench

Advocate : Siddharth Gupta, Learned Counsel, for the Appellant; Samdarshi Tiwari, Learned Dy. Advocate General, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjay Yadav, J.—Present case concerns itself with the legality of the demand notice dated 27.3.2015 issued under Section 175 of the M.P. Municipal Corporation Act, 1956 (hereinafter referred to as "1956 Act"); whereby, Regional Officer, Regional Office No. 3, Municipal Corporation, Bhopal has called upon the petitioner to deposit an amount of Rs. 21,69,756/- towards minimum essential consolidated tax, consolidated tax, general water cess, education cess and urban development cess (2%) for the financial year 2010-11 to 2013-14 and 2014-15.

2. Petitioner is a society registered under the provisions of M.P. Societies Registration Act, 1973 and is running a private professional technical institution in the name of Corporate Institute of Science and Technology within the municipal limits of respondent-Municipal Corporation, Bhopal.

3. Present writ petition is filed for declaration of Section 132(6)(o) and Section 132(5)(a) of the Act of 1956 as ultra vires the Constitution of India and for quashment of permanent orders No. 15/2014 and 2/2013 and the demand notice

dated 27.3.2015.

4. At the outset, the petitioner, however, gives up the challenge to the vires of Section 132(6)(o) and Section 132(5)(a) of 1956 Act, in view of decision by a Division Bench of this Court in Hoarding Advertisement People Welfare v. State of M.P.W.P. No. 3987/2008 on 12.3.2015. In view whereof, the petition so far it relates to the challenge to constitutional validity of Section 132(6)(o) and Section 132(5)(a) of 1956 Act, stands dismissed.

5. In respect of the challenge to the Permanent Orders No. 15/2014 and 2/2013 and the demand notice dated 27.3.2015, though an objection is raised on behalf of respondent-Municipal Corporation that the petitioner has an alternative efficacious statutory three tier remedy under Sections 147 , 148 and 149 respectively, providing a forum for settlement of dispute relating to valuation and the liability. However, taking into consideration the nature of challenge on the ground of sustainability of the imposition of tax/cess on the touchstone of Section 132 of 1956 Act, we decline to accede to the objection raised on behalf of respondents that the petitioner be relegated to avail the remedy under the statute.

6. It is the contention of the petitioner that being an educational institution and having been exempted from payment of property tax levied under Section 135 of 1956 Act, it is not liable to pay the tax levied under Section 132(1) , (c), (d) and (e) unless separately determined under Section 132(5)(a) of 1956 Act. It is further contended that the petitioner is not liable to pay general water cess, educational cess and urban development cess (2%) which has been imposed by the Corporation in purported exercise of power under Section 132(6)(o) either, in absence of prior approval of the State Government, as contemplated therein. It is also the contention that having been exempted from property tax, the respondent-Corporation are not justified in realizing other taxes from retrospective year.

7. As regard to challenge of permanent order No. 15/2014, it is contended by learned counsel for the petitioner that vide said order, respondent-Corporation has decided for imposition of various other taxes specified under Section 132(1) (c) , (d) and (e) of 1956 Act on the basis of property tax values applicable and determined with reference to commercial properties situated at Bhopal. It is also contended that procedure laid down under Section 132(5)(a) has not been followed specifically for determining the rate of taxation with respect to the buildings and lands of educational institution which are exempted from property tax. Instead, determination of tax levied under Section 132(5)(a) is on the basis of determination of tax under Section 132(5)(b) . It is contended that since the Corporation has failed to follow the procedure laid down under Section 132(5)(a) for imposition of tax other than property tax, the impugned permanent order No. 15/2014 is bad in the eyes of law.

8. As regard to challenge of imposition of urban development cess, educational

cess and water cess, it is urged that the same fall under Section 132(6)(o) of 1956 Act which mandates prior approval of the State Government before imposition of tax thereunder. And, as no prior approval has been sought by the Municipal Corporation for imposing these cess and taxes, that too at highly exorbitant rate of 20% of the property tax leviable on the building, the same is invalid.

9. As regard to challenge of demand notice dated 27.3.2015, it is the contention of learned counsel for the petitioner that no previous notice having been sent to the petitioner and since it is for the first time that the demand is being raised, it was beyond the authority of the Municipal Corporation to have raised demand of tax and cess prior to 2014-15. It is, accordingly, urged that demand of tax/cess qua financial year 2010-11 to 2013-14 is invalid having no authority of law.

10. Respondent-Corporation, however, contradicted these submissions. It is urged that fixation of rates of tax and cess having been left by the legislature with the Municipal Corporation, it is within its power conferred under Section 132(5) of 1956 Act to levy the rate of tax under clauses (c), (d) and (e) of sub-section (1) of Section 132 . As to challenge to the imposition of development cess, education cess and water cess. It is contended that the challenge to imposition of development cess and education cess under Section 132(6)(o) of 1956 Act has been considered in the case of Madhya Pradesh Housing Society v. State of M.P. 2002 (4) MPHT 252, wherein the competency of the Municipal Corporation to impose the development cess and education cess has been upheld. As to contention regarding water cess, learned counsel for the respondent has relied upon the provisions contained under Section 132-A inserted vide M.P. Act No. 15 of 2010 and the decision in Confederation of Real Estate Developers Association of India (CREDAI) Vs. State of MP wherein the constitutional validity of Section 132-A has been upheld. Turning on the submission as to incompetency of the respondent-Corporation in imposing tax by taking into consideration the benchmark fixed for the buildings and lands assessed to property tax at the commercial rate, it is urged that the properties within the Municipal Corporation limits being residential and non-residential and the lands and buildings being nomenclatured as "residential" and "commercial or industrial" under the Madhya Pradesh Municipality (Determination of Annual Letting Value of Building/Lands) Rules, 1997 and the buildings and lands of the petitioner-establishment being not a residential nor any industrial activity is carried out, the rate of property tax applicable to a premises where business activity is carried out has rightly been made applicable for determination of rate of tax/cess under Section 132(1)(c) , (d) and (e) and under Section 132(6)(o) of 1956 Act. With these submissions, the respondents justify their action of subjecting the petitioner-establishment to the taxes vide impugned resolution.

11. After considering the rival submissions, issues which crops up for consideration are -

"(i) whether for levy of various taxes under Section 132(1)(c) ,(d) and (e) of

1956 Act with respect of premises/properties exempted from the payment of property tax under Section 136 determination of rate of tax under Section 132(5) (a) would require a separate process than taking the determinant arrived at under Section 132(5)(b) .

(ii) Whether imposition of development cess, education cess and water tax is without prior approval of State Government under Section 132(6)(o) and therefore, invalid.

(iii) Whether recovery of tax since 2010 is invalid because of retrospective demand."

12. To take up the issue as to imposition of development cess and the education cess first. The challenge to imposition of these two taxes were subject-matter in M.P. Co-operative Housing Society (supra); wherein, dwelling on the challenge to the education cess and urban development cess, it has been held -

"17. Counsel for respondents has challenged the imposition of education cess on the ground that State Govt. could not issue a mandatory direction for imposition of education cess. Education cess can be levied as per Section 132(6)(o) of the Act, 1956. The State Govt. has directed the maintenance of the Govt. Schools to be made by local bodies, it becomes necessary for such local bodies to have resources, hence education cess has been imposed. It is not in dispute that such cess could be imposed by the State Govt. and whenever any other tax which the State Govt. has power to impose under the Constitution of India can be imposed by Corporation with the prior approval of the State Govt. The Corporation has taken the decision to impose 1% of the education cess on the Annual Letting Value, it has modified its previous resolution which was for 3%. There is authority conferred on it by the State Govt. as per Rule 7. It has followed the procedure as per Rule 8. Thus it cannot be said that imposition of education cess is illegal or arbitrary in any manner. The Corporation has indicated that it had spent the amount on the maintenance of the schools and the matter connected therewith. Thus, I find no merit in the submission of the Counsel for petitioner that amount collected is not being spent.

(Emphasis supplied)

18. The next submission is about the imposition of the urban development cess, that has been imposed under M.P. Upkar Adhiniyam. Learned Counsel for petitioner submitted that the Corporation is not remitting the urban development cess to the State Govt. The submission cannot be accepted as stand has been taken in the return that amount is being credited in the fund of the State Govt. and respondent No. 1 has not raised any objection that it is not being credited. In any case the imposition and realisation cannot become bad on the ground raised by the petitioner. The realization is a matter between Corporation and State Govt. The Corporation is involved in the urban development activities. The submissions raised by the learned Counsel for the petitioner is devoid of substance."

13. The Rules which are adverted to in this paragraph are M.P. Urban Development Cess (Collection) Rules, 2007, framed by the State Govt. in exercise of the power conferred by subsection (1) of Section 13 read with sub-section (2) of Section 7 of the Madhya Pradesh Upkar Adhiniyam, 1981; whereunder i.e. under the Act of 1981, the urban development cess under Part II is levied under Section 6 which provides for -

"6. Levy of cess on lands and buildings. (1) there shall be charged, levied and paid for each year an urban development cess on all lands or buildings or both situated in municipal area or urban area at the rate of 2 per centum of the annual letting value or annual value:

Provided that where the lands or buildings or both are in occupation of the owner himself, the rate of cess shall be one half of the rate aforesaid:

Provided further that no cess shall be charged, levied and paid in respect of lands or buildings or both, for which property tax is not leviable under the provisions of the law relating to local authority or the Sampatti Kar Adhiniyam, as the case may be.

(2) The cess charged and levied under subsection (1) shall be in addition to tax charged and levied on lands or buildings or both in respect of annual letting value or annual value thereof under the law relating to local authority or the Sampatti Kar Adhiniyam, as the case may be, and shall be payable by the owner in the same manner as that tax.

(3) Subject to the provisions of this part, the provisions of the law relating to local authority or the Sampatti Kar Adhiniyam, as the case may be, and the rules made thereunder shall apply to the cess as if the cess were a tax levied under the said law or the Sampatti Kar Adhiniyam, as the case may be."

14. The second proviso to Section 6 has been substituted by M.P. Act No. 11 of 2007 w.e.f. 21.5.2007.

15. Since the legislature has exempted the lands or buildings or both, for which property tax is not leviable from cess, in our considered opinion, the respondent-Corporation have no authority even under Section 132(6)(o) to impose urban development cess. The imposition of urban development cess and its recovery, therefore, cannot be upheld. The decision in M.P. Cooperative Housing Society (supra) so far it upheld the Corporation's power to recover the urban development cess is of no help to the respondents because of insertion of second proviso in sub-section (1) of Section 6 of the M.P. Upkar Adhiniyam, 1981 w.e.f. 21.5.2007.

16. As regard to imposition of education cess, since we are not commended to any decision by State Government of exempting the lands and buildings or both for which property tax is not leviable, we concur with the findings in M.P. Cooperative Housing Society (supra) upholding the power of the respondent-corporation in imposing the education cess.

17. Now, coming to the water charges, we find that Section 132-A was inserted in the Act of 1956 by M.P. Act No. 15 of 2010 w.e.f. 19.4.2010. That, clause (a) of sub-section (1) thereof provides that -

"(1) Notwithstanding anything contained in Section 132, the Corporation shall, subject to any general or special order which the State Government may make in this behalf, impose the user charges for the following services, namely:--

(a) a water charge for provision of water supply in respect of lands and buildings to which a water supply is furnished by Corporation;"

18. That, sub-section (2) of Section 132-A further mandates that:--

"(2) The user charges in clause (a), (b), (c) and (d) of (1) shall be imposed -

(i) on buildings and lands which are exempted from property tax, at a rate as shall be determined by the Corporation;

(ii) on buildings and lands which are not exempted from property tax, as determined in clause (a), (b), (c) and (d) of sub-section (1) plus such percentage of the property tax, as shall be determined by the Corporation.

Provided that the user charge for water under clause (a) of sub-section (1) shall not be levied on building and land owned by freedom fighter during their life time, if they are exempted from Income Tax and the water connection is for domestic purpose and which does not exceed half inch connection."

19. The validity of imposition of "Narmada Tax" has been upheld by the Division Bench of this Court in Confederation of Real Estate Developers Association of India (CREDAI) (supra) holding:--

"10. In the present case, a resolution for imposition of 'Narmada Tax' was passed by the Municipal Corporation in exercise of its powers under Section 136(6)(o) of the Act of 1956. After passing of the resolution a proposal was sent to the State Government for its approval. The State Government considered the proposal and decided to approve the resolution regarding imposition of 'Narmada Tax' on the land in its cabinet meeting.

11. Entry 49 of List-II of the Seventh Schedule provides that a tax can be levied on the lands and buildings. The Supreme Court has held that imposition of tax on the land alone is permissible and it is not that the tax is to be imposable on the lands and buildings together. Interpreting Entry 49 of List-II of the Seventh Schedule regarding lands and building the Supreme Court observed that the State Legislature can enact a law for levying tax in respect of the area beneath the surface of the earth. It has also been observed that the land includes not only the face of the earth, but everything under it or over it. The Supreme Court has also held that the word 'land' cannot be assigned a narrow meaning so as to confine it to the surface of the earth. It includes all strata above or below. It also held that under Entry 49 in List-II, the land remains a land without regard to the use to which it is being subjected. It is open for the legislature to ignore the

nature of the user and tax the land. At the same time, it is also permissible to identify for the purpose of classification, the land by reference to its user. While taxing the land it is open for the Legislature to consider the land which produces a particular growth or useful for a particular utility and to classify it separately and tax the same. See [Ajoy Kumar Mukherjee v. Local Board of Barpetal, Assistant Commissioner of Urban Land Tax, Madras and others v. Buckingham and Carnatic Company Limited 2, The State of Bihar and others v. Indian Aluminium Company and others 3 & India Cement Limited and others v. State of Tamil Nadu and others].

12. Having regard to the aforesaid legal propositions, in our considered view, the challenge of the petitioner about competency of the State Government for levying of 'Narmada Tax' on the lands has no merit and cannot be accepted and, therefore, we hold that the levy of 'Narmada Tax' on the lands is within the competence of the State under Entry 49 of List-II of the Seventh Schedule.

(Emphasis supplied)

20. In view whereof, since the imposition of water charges meets the requirement of law under Section 132(6)(o) of 1956 Act, the challenge to its imposition is negated.

21. This brings us to the issue as to whether the Municipal Corporation while exercising its power of fixing rates of tax under Section 132(5)(a) of 1956 Act is under an obligation to first draw a separate category of lands and buildings for which property tax is exempted.

22. Section 132(1)(a) of 1956 Act mandates that "for the purpose of said Act, the Corporation shall, subject to any general or special order which the State Government may make in this behalf, impose in the whole or in any part of the Municipal Area, a tax payable by the owners or building or lands situated within the city with reference to the gross annual letting value of the buildings or lands, called the property tax, subject to the provisions of Sections 135 , 136 and 138 ". Thus, the imposition of property tax on the lands and buildings situated within the Municipal Area is a rule and the exception is carved out under Section 136 containing types of the buildings and lands exempted from property tax levied under Section 135 .

23. Section 138 which is brought in vogue w.e.f. 21.4.1997 vide M.P. Act 18 of 1997 in its sub-section (1) stipulates:--"Notwithstanding anything contained in this Act or any other law for the time being in force, annual letting value of any building or land, whether revenue paying or not, shall be determined as per the resolution of the Corporation adopted in this behalf on the basis of per square meter of the carpet area of a building or land, as the case may be, taking into consideration the area in which the building or land is situate, its location, situation, purpose for which it is used, its capacity for profitable user, quality of construction of the buildings and other relevant factors and subject to such rules as may be made by the State Government in this behalf".

24. Further, sub-section (2) of Section 138 stipulates -

"(2) On the basis of the resolution adopted by the Corporation under sub-section (1), every owner of land or building shall assess the annual letting value of his land or building and deposit the amount of property tax along with a return in this behalf, in the prescribed form, on or before the date fixed by the Corporation, failing which a surcharge at the rate, as may be determined by the Corporation, shall be charged."

25. Thus, Section 138(2) does not make any distinction between the owner of land or building which are residential or non-residential, industrial, commercial or exempted under Section 136 . It takes within its fold "every owner of land or building."

26. That, while upholding its validity, a full Bench of this Court in Sakhi Gopal Agrawal and Others Vs. State of M.P. and Others, held in paragraph 5.4 (vii) that Section 138 of 1956 Act is "not defiant of Article 14 of the Constitution of India and do not suffer the frown of the equality clause or any kind of arbitrariness or irrationality."

27. That, the State Government in exercise of its powers conferred by Section 433 read with Section 138 of 1956 Act has framed Rules for determination of Annual Letting Value, these Rules are : "The Madhya Pradesh Municipality (Determination of Annual Letting Value of Building/Lands) Rules, 1997 (referred to as Rules of 1997)".

28. Rule 2(f) of Rules of 1997 defines "Residential" to mean "any land reserved for residential purposes which are being used for the residential purposes provided that it shall not include any building which was constructed for the residential purpose but they are being used for commercial purpose."

29. That, Rule 2(g) of Rules of 1997 defines "commercial or industrial" to mean such building or land on which any business is carried out shop is being run, workshop is established, trade, business is being done or any other similar activities are being conducted or reserved for such activities."

(Emphasis supplied)

30. Thus, it is the "use" or the "activity" over the land or building or both which is the basis for classification and a distinction between the residential and commercial or industrial is as per use or the activity carried thereover. This would further be clear from Rule 4 of the Rules of 1997 which classify the buildings and lands in the following terms -

"4. Classification of buildings and lands. - The classification of buildings and lands situated in every zone shall be as follows:--

(a) Quality of construction -

(i) Building having roof made of R.C.C.R.B.C. or stone;

- (ii) Buildings having roof made of sheets of cement or iron or tiles;
- (iii) Other semi pakka or kuccha buildings which does not fall within sub-clause (1) or (11).

(b) On the basis of use -

- (i) Buildings/lands for the purpose of commercial or industrial;
- (ii) Buildings/lands for the purpose of residential.

(c) On the basis of location -

- (i) Building/land situated at main road;
- (ii) Buildings/land situated at main market.

31. Furthermore, Rule 5 of Rules 1997 empowers Municipal Corporation as per criteria prescribed under Rule 4 to fix separate rates for each type of houses and lands situated in each zone on the basis of their quality of construction, use and location for the purpose of determination of their annual letting value. And, as per second proviso to Rule 4 and subject to provisions of Sections 135 , 136 and 138 , a Municipal Corporation "may also fix separate criteria". This proviso, thus, gives additional power to Municipal Corporation to fix separate criteria for determination of rate of tax.

32. That, Rule 10 of Rules 1997 makes self-assessment of the property tax imperative for every owner of building or land for self assessment of the property tax. It stipulates:

"10. Self assessment; of the property tax. -

(1) Every owner of the building or land of the municipal area, shall himself calculate the annual letting value of his property and the amount of the property tax as per the rates of annual letting value described in resolution published by the municipality as per provisions of Rule 8 and by adding the amount of water tax and the consolidated amount of general sanitary cess, general lighting tax and general fire tax as determined under sub-sections (4) and (5) of section 132 , in case of Municipal Corporation and under sub-sections (4) and (5) of section 127 , in case of Municipal Council and Nagar Panchayats, in the amount of property tax payable and after indicating the information in the return appended to these rules, deposit the consolidated amount of the aforesaid taxes in the municipality within the prescribed time along with the return.

(2) If any person is the owner of more than one house or land in the municipal area, then every such owner shall pay the amount along with the separate return for each house or land, provided that the consolidated annual letting value of all his houses or lands or both, shall be deemed to be the basis for purpose of exemption under the provisions of clause (b) of section 136 in case of Municipal Corporation and clause (b) of sub-section (2) of section 127-A in case of Municipal Council and Nagar Panchayats.

(3) If the owner of building or land finds any mistake in the return filed by him as above, then such owner of building or land may submit the revised return within sixty days from the date on which he had submitted the return and if the amount of property tax exceeds according to the revised return, then he shall deposit such amount in the municipality along with the revised return;

Provided that if the amount of property tax deposited earlier exceeded according to the revised return, then he may demand to refund such excess amount and after scrutinising of the demand is found to be correct, then the municipal officer shall order to refund such excess amount."

33. The "Return For The Self Assessment of Property Tax" appended with the Rules of 1997 prescribes the details which every owner of buildings or lands or both has to give.

"RETURN FOR THE SELF-ASSESSMENT OF PROPERTY-TAX

[See Rule 10(1)]

Year

1. Name of the owner of the property (with Father's/Husband's name and permanent address. Telephone No., if any)

2. Full address of the property, where it is situated.

3. Constructed area : [Rule 2(h)]

4. Whether building is pakka or kachcha "Rule 4(a)]

5. Property is residential or commercial or industrial [Rule 4(b)]

6. Area of the open land which is in the use only for the commercial or industrial purpose. [Rule 2 (g)]

7. Per square foot annual rate, as determined by the municipality for calculation of annual letting value. [Rule 6(c)]

8. Annual letting value as calculated [Rule 9]

9. Property tax payable on the annual letting value [Rule 10]

[10. Water tax (minimum amount prescribed by the Government + amount of percentage of property tax determined by the municipality)]

Note - If the owner of the building is paying the water tax as per minimum rate fixed on monthly basis then here only the amount as per percentage of the property tax determined by the municipality be indicated)

11. Consolidated amount of general sanitation tax, general lighting tax and general fire tax

(minimum amount prescribed by the Government + the amount of percentage of

property tax determined by the municipality).

12. Amount of surcharge, if payable

13. Total amount being paid to the municipal fund (Total of 9+10+11+12) (In figures and words)

Note. - (1) Fifty percent property tax shall be payable on such property which is in occupation of owner for his residence.

(2) Extracts of the rules as referred to in the return may be seen at the next page.

(3) For each property separate return shall be filed in.

..... (Signature of the owner of the property)

Verification

I Son of resident of do verify that the information given in the return is true and that I am the owner of the building/land for which I have given the return.

..... (Signature of the owner of building/land)

Receipt

Received the return alongwith the copy of the receipt of amount paid/challan relating to the year

..... Signature of the recipient officer/employee (Indicate full name and designation) -----"

34. It is this Return which is the basis for levy of taxes under clause (c), (d) and (e) of sub-section (1) of Section 132 of 1956 Act. Thus, though there may be an exemption from levy of property tax in respect of buildings and lands or portions thereof used exclusively for educational purposes including schools, boarding houses, hostels and libraries if such buildings and lands or portions thereof are either owned by the educational institutions concerned or have been placed at the disposal of such educational institutions without payment of any rent under Section 136(c) . But, obligatory it is for the owner to file the Return under the Rules of 1997.

35. A situation may arise that an owner of buildings or lands in Municipal Area has failed to file return under Rules of 1997 may be on an assumption that property tax is not leviable under Section 136 . In that event, it will still be within the competence of the Municipal Corporation as empowered vide second proviso to Rule 5 of Rules of 1997 to adopt the criteria applicable to lands or buildings used for commercial activities for fixing rate of tax.

36. The contention on behalf of petitioner that in absence of separate determination of rate of taxes under clauses (c), (d) and (e) of sub-section (1) of

Section 132 under sub-section (5)(a) of Section 132 of 1956 Act the levy is invalid; therefore, must fail and accordingly, negatived.

37. This brings us to the contention that the taxes leviable under Section 132(1) (c) , (d) and (e) and under Section 132(6)(o) of 1956 Act cannot be levied from retrospectivity is taken note of and is rejected at the outset. That, being not exempted from these taxes, the tax or the cess is payable with the passing of resolution under Section 133 of 1956 Act in respect of relevant financial year. It being not the case of the petitioner that it is by virtue of resolution passed in the year 2013 or 2014 that the taxes are levied from retrospective financial year. In other words, the petitioner having failed to establish from the Permanent Order No. 2/2013 that the taxes and cess are levied for the first time, the contention that the petitioner has been subjected to levy of tax from retrospective year, being misconceived, is rejected. Rather, it is non-payment of taxes and cess of previous years that the demand of those years have been raised.

38. In the result, the levy of taxes under Section 132(1)(c) , (d) & (e) and levy of educational cess under Section 132(6)(o) and water cess under Section 132-A of 1956 Act is upheld. Whereas, the levy of urban development cess being exempted by virtue of second proviso appended to Section 6 of M.P. Upkar Adhiniyam, 1981 is set aside.

39. The petition is disposed of finally in above terms. Parties to bear their respective costs.