
(2011) 12 RAJ CK 0076

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 3118, 3395, 4343, 5554 of 2008, 3374, 4808, 13193, 13737 of 2009 and 13685 of 2010

ITC Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 3 RLW 2812

Hon'ble Judges : Arun Kumar Mishra, C.J.;Narendra Kumar Jain, J

Bench : Division Bench

Advocate : K.K. Sharma, assisted by Ms. Alankrita Sharma, G.K. Garg, assisted by Ms. Anita Agarwal and Mr. Vijay Jangid, Anant Kasliwal with Vaibhav Kasliwal, Pranay Kasliwal on behalf of Amod Kasliwal, T.C. Sharma on behalf of S.S. Hora, for the Appellant; Dinesh Yadav, Additional Advocate General with Shantanu Sharma, Ram Gopal Khichi and Subhash Kuntal, for Respondent-State, Manoj Sharma, B.C. Chirania with Ravi Chirania and Ms. Naina Saraf with Nitin handari for Respondent-Jaipur Municipal Corporation, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Arun Kumar Mishra, C.J.—Heard learned counsel for the parties. In the present set of writ petitions, prayer has been made by the petitioners to quash and set aside Rajasthan Municipalities(Urban Development Tax) Rules, 2007 notified on 29.08.2007. Prayer has also been made to quash the notification issued on the same date inasmuch as it differentiate as to the rate of tax to be realised from four star and five star hotels, deluxe hotels and heritage hotels. Prayer has also been made to treat the petitioners" unit as an industrial unit and not a commercial unit; DLC rates of industrial units should be made applicable on Bhawani Singh Road and not on Tonk Road. However, in the other writ petitions filed by the hotels, more or less similar prayers have been made. In Writ Petition No. 13737/2009, in addition, a payer has been made that recovery of Urban Development Tax at exorbitant rate from the petitioner be declared as illegal.

Prayer has been made for refund of the amount also.

2. Facts are being narrated from CWP No. 5554/2008. It is averred that the petitioner is a private company and owns Rambagh Palace Hotel. The petitioner has submitted that earlier the Rajasthan Municipalities (Land and Building Tax) Rules, 1961 (hereinafter referred to as "the Rules of 1961") were in force, which were framed in exercise of powers conferred u/s 297 read with Section 104 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as "the Act of 1959"). Rules of 1961 were repealed by Rajasthan Municipalities(House Tax) Rules, 2003 (hereinafter referred to as "the Rules of 2003"). The petitioner has paid the tax under the Rules of 1961 and the Rules of 2003, ranging between 3-6 lakhs per annum.

3. The State Government, in exercise of the powers conferred u/s 104 of the Act of 1959, issued a notification dated 20.06.2006 deleting the condition No. 6, wherein it had been provided that the tax assessed shall not be more than 11/2 times of the tax as assessed on 01.04.2003. After the said notification deleting the maximum limit of the tax assessed, the petitioner was made to pay tax of Rs. 6,19,007/- with rebate of 10% in 2006-07.

4. The State Government has issued notification dated 29.08.2007, in exercise of the powers conferred u/s 290 read with Section 104 of the Act of 1959, framing the Rajasthan Municipalities (Urban Development Tax) Rules, 2007 (hereinafter referred to as "the Rules of 2007"). Urban Development Tax has been defined under Rule 2(g) of the Rules of 2007, which means the tax imposed on building or land or both u/s 104 of the Act. Rule 3 of the Rules of 2007 provides for levy of tax in a municipal area at the rate and from the date specified in the notification issued by the State Government from time to time u/s 104 of the Act. Rule 4 of the Rules of 2007 provides for preparation of assessment list. Rule 5 of the Rules of 2007 provides for notice by the Commissioner/Executive Officer, submission of self assessment, returns and deposit of tax etc. Rule 6 of the Rules of 2007 deals with the payment of tax, rebate and penalty. Rule 8 of the Rules of 2007 deals with the publication and revision of assessment, as provided under Sections 116 and 117 of the Act of 1959. Rule 9 of the Rules of 2007 has repealed the Rules of 2003 with a saving that any action taken or right, privilege, obligation or liability acquired under the previous rules including legal proceedings ana" for the purpose of recovery also, rules so repealed shall continue to operate. Formulae to work out Urban Development Tax have been given in the notification dated 29.08.2007 which provides for determination of Urban Development Tax separately for residential, multistoried buildings, institutional/industrial units and lastly for commercial on the basis of area as specified to be multiplied by DLC rates for kind of land to be divided by 2000.

5. The petitioner is sought to be covered under last category 4, which relates to commercial unit. The petitioner has submitted that in Rajasthan, tourism has been declared as an industry vide notification issued by Government of Rajasthan on 04.03.1989. From the said notification it is clear that the hotels are

to be treated as an industry. Reliance has been placed on decision of Indus Hotel Corporation Ltd. vs. State of Rajasthan & Others, 2001 (3) RLR 145 : RLW 2001 (3) Raj. 1461, in which the Single Bench of this Court has held that hotel, being a tourism related project, has to be treated as industrial building in the light of notification dated 27.05.1998 read with notification dated 04.03.1989. Certain exemptions have been provided under notification dated 27.05.1998 to tourism related projects by treating it to be an industry and hotel, being tourism related project, comes within umbrella of the said notification.

6. Reliance has also been placed by the petitioner on Rajasthan Industrial Areas Allotment Rules, 1959. Rule 1AA defines tourism, which includes heritage hotel and any other hotels etc. The same was replaced in the year 2001. However, heritage hotel or any other hotel, with accommodation of 25 rooms or more, has been included within the purview of tourism unit. Thus, hotel has to be treated as an integral part of tourism industry and has to be treated as an industry, whereas hotels up to three star have been treated as an industrial units and not the four star and five star hotels for the purpose of assessment of Urban Development Tax.

7. It is further averred in the petition that hotel and restaurant industry are having a great contribution to the growth of economy of the country and it is part and parcel of the tourism industry. The State Government is bound by the Tourism Policy of 2001, para 20 of which provides that Government of Rajasthan has granted status of the industry to tourism sector in the year 1989 and all the facilities in the State would also be available to tourism units in the State as per rules in force.

8. It is further averred that Rajasthan Land Revenue (Conversion of Agricultural Land for Non-Agricultural purposes in Rural Areas) Rules, 2007 includes all types of hotels, heritage hotels, holiday resorts etc. Thus, the notification, which has been issued with respect to Urban Development Tax, is discriminatory. Rates, as applicable to industry, ought to have been made applicable with respect to four star and five star hotels also.

9. It is further averred that Rules of 2007 provides for imposing tax up to 15 to 16 times, thus, it is unreasonable and unfair. DLC rate has not been defined anywhere in the Rules of 2007, The State Government has switched over altogether to a new method, which is unreasonable and is not covered by "any other method" provided in Section 104 of the Act of 1959. Any other method, which is not in consonance with other four methods provided in Section 104 of the Act of 1959, could not have been applied. The provision for calculation based on open area or constructed area, whichever is higher, is also discriminatory and bad in law. Unbridled powers have been given to the authorities. Provisions of the Rules of 2007 are violative of Article 14 of the Constitution of India. The DLC rates are merely advisory in nature and do not have any statutory force and thus, "cannot be made applicable for the purpose of determination of tax. Other grounds with respect to the merits of demand have also been raised by the

petitioner.

10. It is also averred in CWP No. 3374/2009 that figures prepared in respect of valuation in the DLC's report do not offer any guarantee about the truth and correctness of the market value, thus, the same could not have been made the basis for determination of the tax. They do not have any statutory force.

11. In the return, which has been filed by Respondent-State Government, it is contended that Rules have been framed in consonance with Section 104 of the Act of 1959; notification has also been issued in consonance thereof; classification of hotels has rightly been made, as hotels are engaged in commercial activities. There is no legal foundation for the petitioner-hotels to claim to be an industry for the purpose of assessment of Urban Development Tax. District Level Committee has been formed by the Stamp and Registration Department; petitioners could have filed appeal/objection with respect to assessment before the Board. There is specific provision for filing of appeal u/s 120 (1) of the new Act and corresponding provision of the old Act of 1959 is Section 139. The survey of the properties situated within limits of Jaipur Municipal Corporation had been done and the property owners have been provided information u/s 117 of the Act of 1959. Thereafter, assessment lists for 2007-08 and 2008-09 have been published for knowledge of the public in various newspapers. Complete procedure provided under Sections 116, 117 and 118 of the Act of 1959 has been followed. Other facts and grounds taken by the petitioners have also been denied in the return.

12. Mr. Kamalakar Sharma, Senior Counsel appearing with Ms. Alankrita Sharma, Mr. G.K. Garg, Senior Counsel appearing with Ms. Anita Agarwal and Mr. Vijay Jangid and Mr. Anant Kasliwal, counsel appearing with Mr. Vaibhav Kasliwal, Pranay Kasliwal and Mr. T.C. Sharma, counsel have submitted that the notification dated 29.08.2007 is in contravention of the provisions of Section 104 of the Act of 1959. DLC rates could not have been made the basis for determination of Urban Development Tax. The exorbitant increase in the tax, i.e. upto 15 to 20 times has been made. The DLC rates have not been specified under the Rules of 2007 or in the notification. It was incumbent upon the Government to provide for the rate as well as date, from which the rates have to come in force. As the rates have not been provided under the Rules of 2007 or the notification issued thereunder, thus, the levy of Urban Development Tax is illegal and arbitrary and the Rules of 2007 and the notification issued thereunder are ultra vires. Charging provision has to be in the main Act itself. Section 104 of the Act of 1959 does not empower the State Government to provide for the formulae for determination of Urban Development Tax. Under the guise of expression "any other method", it was not open to the State Government by way of subordinate legislation to provide for the formulae. The procedure provided under Sections 114, 115, 116 and 117 of the Act of 1959 has not been followed.

13. It was also submitted that tourism has been granted status of industry, as notified by the State Government vide notification dated 04.03.1989 read with

policy of the Rajasthan Government, hotels are to be treated as industry. Thus, hotel industry is an integral part of it and it is also to be treated as industry. There was no rhyme or reason to treat four star and five star hotels differently from the hotels up to three star. Industrial rate ought to have been applied to all the hotels, which would have been in consonance with the State Policy, whereas for hotels up to three stars, industrial rate has been applied. Discrimination has been meted out to four star and five star hotels. There is no basis for application of DLC rates. DLC rates cannot be the safe criteria for realisation of Urban Development Tax. DLC rates have no statutory force. In the absence of specific provision it is only an assumption that DLC rates, as provided under the Rajasthan Stamps Rules, 2004, have been adopted. Thus, the action of the respondents is illegal and arbitrary. Counsel appearing on behalf of the petitioners have relied upon various decisions to be referred later on.

14. Mr. Dinesh Yadav, Additional Advocate General, Mr. Manoj Sharma, Mr. B.C. Chirania with Mr. Ravi Chirania, Ms. Naina Saraf, Mr. Nitin Bhandari counsel appearing on behalf of the State Government and Jaipur Municipal Corporation respectively have supported the Rules of 2007 and notification issued thereunder. They have submitted that provisions contained in Section 104 of the Act of 1959 clearly authorise the State Government to prescribe any other method besides methods specified therein of annual letting value, capital cost, flat rate or by unit area base method. Thus, it was open to the State Government to specify the formulae. Rules of 2007 and the notification issued thereunder have to be read altogether. Rate has been clearly provided, which is .0005 to all the properties Urban Development Tax has to be worked out upon area multiplied by market value and divided by 2000. Otherwise also, it is clear that rate per sq. meter is worked out by the formula, which has been prescribed. Rajasthan Stamp Rules, 2004 (hereinafter referred to as "the Rules of 2004") provide for constitution of the District Level Committee under Rule 2(b) of the Rules of 2004 and under Rule 58 of the Rules of 2004, various rates are determined by the Registering Officer on the basis of DLC rates, such as for commercial, industrial and institutional purposes etc. Thus, District Level Committee is statutory committee under Rules of 2004. The DLC rates have correlation with the market value of the property determined by the statutory committee has been made the basis for determining the Urban Development Tax, which is payable, as per formulae. The action of the respondents is in consonance with Article 14 of the Constitution of India and the same cannot be said to be illegal or arbitrary. The submission that Tourism has been granted status of industry, thus, hotels may be treated as part of the industry for all the purposes, including determination of Urban Development Tax, cannot be accepted, as the hotels are engaged in commercial activities. Intelligible classification has been made, while segregating four star and five star hotels from other hotels and different rates have been prescribed for the hotels up to three star. Even land is allotted on different rates, as per category of the hotel, not at flat rate. The policy decision of the State Government cannot come in the way of statutory provisions contained in Section

104 of the Act of 1959 and the rules framed thereunder for realisation of Urban Development Tax. Counsel appearing on behalf of the respondents have also placed reliance on certain decisions, to be referred later on.

15. Before dilating upon rival submissions, it is appropriate to consider the statutory provisions contained in Section 104(1) of the Act of 1959 and the same are quoted below:

104 Obligatory Taxes (1) Every board shall levy, at such rate and from such date as the State Government may in each case direct by notification in the official Gazette and in such manner as is laid down in this Act and as may be provided in the rules made by the State Government in this behalf, the following taxes, namely ((1) a tax on buildings or lands or both situated within the municipal limits, either on their annual letting value or on capital cost or at flat rate or by unit area base method or by any other method; and;)

16. Rule 3 of the Rules of 2007, which have been framed, provides for levy of Urban Development Tax and the same is quoted below:

3. Levy of tax:-The Tax shall be leviable in a Municipal area at the rate and from the date specified in the notification issued by the State Government from time to time u/s 104 of the Act

17. The notification dated 29.08.2007 published on 03.09.2007 in the Official Gazette is quoted below:

18. It is clear from the provisions of Section 104 of the Act of 1959 that the tax on building or lands or both situated within the municipal limits can be levied by every board at such rate and from such date as the State Government may in each case direct by notification in the official Gazette and in such manner as is laid down in the Act and rules. Section 104(1) of the Act of 1959 provides that tax on buildings or lands or both situated within the municipal limits can be levied either on annual letting value or on capital cost or at flat rate or by unit area base method or by "any other method".

19. Rule 3 of the Rules of 2007 provides that tax shall be leviable in a Municipal area at the rate and from the date specified in the notification issued by the State Government from time to time u/s 104 of the Act. The notification, which has been issued on 29.08.2007 and published in the Official Gazette on 03.09.2007 prescribes how the rate of tax is to be worked out for residential, multi-storied flats, institutions/industrial units and for commercial units. Area of land or constructed area as the case may be is to be multiplied by DLC rate in per sq. meter and the same is to be divided by 2000. .0005 is the static multiplier on the basis of which Urban Development Tax is to be determined. It is clear that division by 2000 the figure obtained on multiplication of area X DLC rates is the same for all types of buildings and remains static, whereas area and DLC rate per sq. meter may differ in each case. Thus, it is clear that formula for determination of Urban Development Tax, contains not only the rate, but the

basis also, on which it is to be determined, i.e. area to be multiplied by DLC rate in per sq. meter and to be divided by static figure of 2000. Thus, it is clear that a rational formula has been worked out for determination of the Urban Development Tax. We find no force in the submission raised by learned counsel for the petitioners that rate has not been specified under the Rules of 2007 or the notification issued thereunder. It is clear that rate has been provided along with the mode for determination of the Urban Development Tax in the notification, for which the State Government is authorised u/s 104 of the Act of 1959 and the Rules framed thereunder. The notification and the rules cannot be said to be ultra vires of the provisions of the Act of 1959. The Act of 1959 provides that the State Government may notify any other mode, rate and the date. The State Government has specified the rate, date as well as mode, which cannot be said to be unauthorized, illegal or arbitrary in any manner. Notification issued by the State Government is fully in consonance with the provisions of the Act.

20. Coming to the submission that DLC rates have no statutory force and are based on assumption that it is the rate as provided under the Rules of 2004, the argument is wholly unworthy of acceptance. It is not the case that DLC rates are provided in any other enactment or the notification than Stamp Rules 2004. Since the District Level Committee has been recognized statutorily and has been formed under the provisions of Rules of 2004, the submission that the DLC rates have no statutory force, cannot be accepted. It is determined by statutory committee, constituted under Rules of 2004. As provided in Rule 2(b) of the Rules of 2004, the State Government is competent to form a District Level Committee, which has the statutory force and the Committee has been formed under the Rules of 2004.

21. It has not been disputed at Bar that DLC rate is akin to the market value of the property. Even it is lesser than prevailing market value. When determination has been done by statutory committee, it could not be said to be illegal and arbitrary, nor it is the case that determination made by the District Level Committee is illegal, arbitrary or exorbitant; the provisions of Rules of 2004 providing for constitution of District Level Committee have not been questioned in the instant set of writ applications. How the application of the rates determined by the District Level Committee can create anomalous situation, has not been demonstrated. Pleadings are in scars in that regard. Thus, we find that the petitioners have not been able to make out a case that prescription of the mode and the rate so determined are illegal and arbitrary in any manner. Determination of market value has not been left at the discretion of the assessment officer on case to case basis. Application of the DLC rates could not also be demonstrated to be irrational, arbitrary or oppressive. Even otherwise, the determination of value at any given time is guess work whereas DLC works out rates on factual matrix.

22. Coming to a submission raised by counsel appearing on behalf of the

petitioners that hotels, being an integral part of tourism industry, be also treated as an industry and the rate applicable to industry ought to have been applied to four star and five star hotels also, we find absolute no force in the submission. No doubt about it that State Government has declared the tourism to be an industry, but merely by the fact that tourism has been granted status of industry and hotels are part of said industry, Hotels remains commercial venture. Submission is against the statutory provisions contained in Section 104 of the Act of 1959, rules and notification issued thereunder. When statutory provisions clearly provide distinction with respect to the rates to be charged for determination of Urban Development Tax up to three star hotels at the rate applicable to industry and for four star and five star hotels at the DLC rates for commercial premises. In our opinion, it was intelligible differentiation carved out for realisation of Urban Development Tax. Hotels are definitely commercial venture. Four star and five star hotels stand on different footings than the other hotels up to three star. Thus, higher rates can be realised from four star and five star hotels. If the area in the five star hotels is more, that would not make the demand illegal or arbitrary. In principle, the rate is the same for all four star and five star hotels and up to three star hotels criteria is different. Thus, an increase in tax, which is based upon calculation of the area to be multiplied by DLC rate and in case open area is more, the assessment is to be made on that basis and in case constructed area is more, assessment has to be made on that basis. The said formula could not be demonstrated to be illegal or arbitrary in any manner whatsoever. To say, if constructed area is 5,000 sq. yards in a plot of 1000, that is to be basis of determination of the tax on the basis of DLC rate per sq. meter to be divided by 2000. The provision is wholesome and is in fact prevents uncertainty in the matter of determination of Urban Development Tax.

23. The Hotels are essentially commercial venture/The Hon"ble Supreme Court in ITC Ltd. Vs. State of Uttar Pradesh and Others, has laid down that when tourism is given the status of an industry, it does not mean tourism involves manufacturing, fabrication, processing or assembling. The term "industry" has different nuances. The traditional meaning of "industry" may be manufacture or production of goods. When used in the context of an "industrial area" or "a land for industrial use" the word "industry" will refer to use for manufacture, production and allied activities. On the other hand, when the word "industry" is used in the context of tourism/hotels, hospitals/nursing homes or banking, it refers to a service industry, that is, groups engaged in that particular organised activity, and does not refer to any manufacturing, processing, assembling etc. Hon"ble Apex Court further held that when the Government policy gave tourism and hotels, the status of an industry, it did not require hotels to undertake manufacturing or production activities. By giving the status of "industry", the policy enabled a particular service activity (in this case tourism and hotels) to secure certain benefits in allotment of land at concessional prices and certain tax exemptions. Therefore, the fact that tourism or hotels have been given the status of "industry" will not convert them into industries. The Hon"ble Apex Court

laid down thus:

68. When tourism is given the status of an industry, it does not mean tourism involves manufacturing, fabrication, processing or assembling. The term "industry" has different nuances. The traditional meaning of "industry" may be manufacture or production of goods. When used in the context of an "industrial area" or "a land for industrial use" the word "industry" will refer to use for manufacture, production and allied activities. On the other hand, when the word "industry" is used in the context of tourism/hotels, hospitals/nursing homes or banking, it refers to a service industry, that is, groups engaged in that particular organised activity, and does not refer to any manufacturing, processing, assembling, etc. 69. When the government policy gave tourism and hotels, the status of an industry, it did not require hotels to undertake manufacturing or production activities. By giving the status of "industry", the policy enabled a particular service activity(in this case tourism and hotels) to secure certain benefits in allotment of land at concessional prices and certain tax exemptions. Therefore, the fact that tourism or hotels have been given the status of "industry" will not convert them into industries, for the purpose of allotment of plots, nor will the use of land by such tourism or hotel industry, will be an industrial use. It does not also mean that all the hotels and tourist offices should be shifted from commercial areas to industrial areas or that hotels or tourist offices cannot operate in commercial areas, or that they cannot get allotment of land or building earmarked for commercial use. Running hotels, to repeat, is a commercial activity and the use of a land or building for a hotel is commercial use and therefore, allotment of plots for hotels in a commercial area is wholly in consonance with the Noida Regulations and the Master Plan which earmarks areas for specific land uses like industrial, residential, commercial, institutional, public, semi-public, etc.

70. We are therefore of the view that the allotment of plots situated in commercial areas earmarked for commercial use, to hotels did not violate any provisions of the Act or the Noida Regulations. We are also of the view that it was not necessary for Noida Authority to change the land use of plots to be allotted to hotels, from commercial to industrial use. The contentions of the respondents to the contrary are therefore, rejected.

It is apparent from the decision of the Hon''ble Supreme Court that hotels remain commercial activity and it can be treated as industry only for the purpose of allotment of land etc. There is difference between commercial use and industrial use. Thus, reliance placed on policy declaring Hotel to be industry and on allotment rules is of no avail. The allotment is made under the rules. Hotels are to be treated as industry only for the purpose of allotment of land and for the service, which they provide, not for the purpose of determination of Urban Development Tax, which is to be assessed under the provisions of the Act of 1959, Rules of 2007 and notification issued thereunder. Thus, no sustenance can be derived from notification dated 04.03.1989 or the Tourism Policy of the State

Government.

24. The decision rendered by the Single Bench of this Court in *Indus Hotel Corporation Ltd. vs. State of Raj. & Others*, 2001 (3) RLR page 145 : RLW 2001 (3) Raj. 1461 is based on notifications dated 04.03.1989 and 27.05.1998 which are of different user cannot be said to be binding with respect to Urban Development Tax in view of specific provision made with respect to four star and five star hotels in the notification, which has been issued under the Act of 1959 and Rules of 2007, no reliance can be placed on notifications dated 04.03.1989 and 27.05.1998 more so in view of decision of Apex Court in *ITC Ltd (supra)*. Apart from that, the decision was based upon Rajasthan Land and Building Tax Act, 1964 and in the instant case, provisions of Section 104 of the Act of 1959 and Rules of 2007 are attracted, which provide for determination of Urban Development Tax. Thus, this decision is also of no assistance to the petitioners.

25. We find no force in the submission raised by learned counsel for the petitioners that rates are exorbitant or arbitrary. In fact, the rate is determined on a reasonable basis considering user on the open land or constructed area, whichever is more to be multiplied by DLC rate per sq. meter and to be divided by 2000. The effective static rate comes to .0005. In terms of percentage it will be .05%. The mode of calculation as well as rate cannot be said to be exorbitant. Mere by the fact that much property is owned by a particular petitioner, hence tax is more, would not make it unreasonable one. So, the formula is uniform for all such buildings and open land, which are grouped in different classes as per user. Thus, we find no force in this submission.

26. Reliance has been placed on decision rendered by the Hon''ble Apex Court in *Bidhannagar (Salt Lake) Welfare Association Vs. Central Valuation Board and Others*, , in which the Hon''ble Apex Court had laid down that valuation of lands and buildings is a complex exercise. It requires certain amount of expertise. Valuation is made upon obtaining data prepared from a scientific study. Valuation of a land or building would depend upon several factors. Several methods of valuation may be applied for determination thereof. It is for the expert ordinarily to arrive at a decision as to which mode of valuation having regard to a particular set of factors would entail a correct evaluation. However, in determining the valuation of a land or building, it is not expected of a statutory authority to take recourse to a course of action, which may be arbitrary, unscientific or haphazard in nature. Such exorbitant increase in the tax on the public is indicative of arbitrariness, and hence, violative of Article 14 of the Constitution. The Hon''ble Apex Court has laid down thus:

14. Valuation of lands and buildings is a complex exercise. It requires certain amount of expertise. Valuation is made upon obtaining data prepared from a scientific study. Valuation of a land or building would depend upon several factors. Several methods of valuation may be applied for determination thereof. It is for the expert ordinarily to arrive at a decision as to which mode of valuation having regard to a particular set of factors would entail a correct evaluation.

However, in determining the valuation of a land or building, it is not expected of a statutory authority to take recourse to the course of action which may be arbitrary, unscientific or haphazard in nature. Although the proviso appended to Section 9 of the 1978 Act provided for certain safeguards and as thereby a legal fiction has been created, the same, as noticed hereinbefore, is optional. The Board is not bound to take recourse thereto. Who would be the surveyors eligible for carrying out the survey requires prior approval of the State. The learned Single Judge in his judgment noticed that in stead and in place of appointing experts in the filed, only casual employees were recruited by the Municipality, who made door to door survey of the properties situated within the area of Bidhannagar Municipality and collected the purported date of the premises concerned in a field book wherefrom an inspection book was prepared and only on the basis thereof valuation was determined by the Board. Such a course of action was not contemplated by law.

18. The result of such an unscientific study may produce a disastrous result and in fact from the pattern of increase in demands by Bidhannagar Municipality it appears that the increase in the valuation ranges from 3954% i.e. 39.5 times to 137% i.e. 1.4 times. Such exorbitant increase in the tax on the public is, in our opinion, itself indicative of arbitrariness, and hence, violative of Article 14 of the Constitution. In a democracy, the people are supreme, and all authorities must function for the public welfare. Excessive increase in the tax burden on the public is surely not for the public welfare. Also, in the aforementioned context, in our opinion, the very method applied by the Municipality and the Central Valuation Board must be held to be arbitrary in nature and hence violative of the Constitution. In *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, it was held that arbitrariness may be violative of Article 14 of the Constitution.

27. In the instant case, District Level Committee, which is a committee of experts, has been appointed by the State Government and it has worked out rates, which have been published in accordance with the provisions of the Act of 1959, as contended by the respondents in their reply and determination of the DLC rates, so made by Committee has not been questioned specifically in writ petitions, nor it has been pleaded that how the determination of DLC rates by Committee is illegal or arbitrary. There is no factual matrix in the case with respect to the determination so made and simplicitor pleading is that it would not be safe to act upon DLC valuation, neither it is the case that irrelevant considerations have been adopted by the committee, while making the determination of rates, nor it is shown that determination of DLC rates is based on unscientific study. It is not the case set up that how the market value has to be determined correctly. The determination of DLC rates has not been demonstrated to be arbitrary, unscientific and haphazard, nor it can be said to be exorbitant, considering the aforesaid divider of 2000 i.e. .0005, which is static for all the properties and in terms of percentage it is .05%. Thus, in our considered opinion, no help can be derived from the decision of the Hon"ble Apex Court in *Bidhannagar's* case (*supra*).

28. Reliance has also been placed on the decision rendered by the Hon''ble Apex Court in *The Member Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra Pradesh Rayons Ltd. and Others*, , in which it has been held that while interpreting Fiscal Act, provisions must be strictly construed in order to find out whether liability is fastened on a particular industry. There is no room for any intendment. One has to look merely as to what is clearly said. However, in the instant case we are not interpreting the provision by intendment, nor on the basis of equity. A clear cut provision has been carved out in terms of the Section 104 of the Act of 1959, the rules framed thereunder and the notification. So, in our opinion, there is no ambiguity, thus, no question of giving benefit of ambiguity to the hotels, as claimed in the instant case arises. It is only in the case where there is some doubt that benefit may be extended to subject. Fiscal provisions have to be considered strictly and tax is not to be fastened on the basis of intendment. Said principle is not attracted in the instant case. Reliance has been placed on decision rendered by the Hon''ble Supreme Court in *The Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others*, , wherein the Hon''ble Apex Court, while dealing with the provisions of Court Fees Act, has held that in the matter of taxing statute, its provisions have to be construed strictly in favour of the subject litigant. For the reasons aforesaid, the decision is distinguishable.

29. Reliance has also been placed on the decision of the Hon''ble Apex Court in *State of Kerala Vs. Madras Rubber Factory Ltd.*, , wherein in para 20, the Hon''ble Apex Court has dealt with the question of a charge under a taxing statute, which can only be under the Act and not under the Rules. The rules normally provide for the procedure to be followed for the realisation of the statutory dues. In the instant case, the Urban Development Tax is clearly provided by a charging provision under the Act of 1959. The basis as well as the rate have been left at the hand of the State Government by the Legislature, thus, it was open to the State Government to provide for the basis, rate as well as date, for which the State Government is specifically authorised u/s 104 of the Act of 1959. The decision rendered by the Hon''ble Apex Court in *State of Kerala's* case (supra) is not violated in the instant case.

30. Reliance has been placed on the decision rendered by the Hon''ble Supreme Court in *R.C. Jall Vs. Union of India (UOI)*, (V. 49 C 192), wherein it has been held that subject always to the legislative competence of the taxing authority, the tax in question can be levied at a convenient stage so long as the character of the impost, that is, it is a duty on the manufacture or production, is not lost. The method of calculation does not affect the essence of the duty. In our opinion, charging provision is contained in the Act of 1959 and machinery has been laid down under the Rules of 2007 and the notification issued thereunder. Thus, the action of the respondents in the instant case is also in consonance with the principles laid down by the Hon''ble Apex Court.

31. Reliance has been placed upon decision rendered by the Hon''ble Apex Court

in J.K. Industries Limited and Others vs. Union of India & Others, (2007) 13 SCC 673 : RLW 2005-06 (Suppl.) Raj. 138, in which the Hon''ble Apex Court has held that at the outset, on account of globalisation and socioeconomic problems (including income disparities in our economy), the power of delegation has become a constituent element of legislative power as a whole. Subordinate legislation does not carry the same degree of immunity, which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. It may also be questioned on the ground that it does not conform to the statute under which it is made. The Hon''ble Apex Court in Para 127 held thus:

127. At the outset, we may state that on account of globalisation and socio-economic problems (including income disparities in our economy) the power of delegation has become a constituent element of legislative power as a whole. However, as held in Indian Express Newspapers (Bombay) Private Ltd. and Others Vs. Union of India and Others, , subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be question on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is inconsistent with the provisions of the Act or that it is contrary to some other statute applicable on the same subject-matter. Therefore, it has to yield to plenary legislation. It can also be questioned on the ground that it is manifestly arbitrary and unjust. That, any inquiry into its vires must be confined to the grounds on which plenary legislation may be questioned, to the grounds that it is contrary to the statute under which it is made, to the grounds that it is contrary to other statutory provisions or on the ground that it is so patently arbitrary that it cannot be said to be in conformity with the statute. It can also be challenged on the ground that it violates Article 14 of the Constitution.

In view of the aforesaid dictum also, the action taken by the respondents could not be demonstrated to be illegal and arbitrary.

32. Reliance has been placed on the decision rendered by the Hon''ble Apex Court in Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttranchal and Others, , wherein it has been held that a new policy of the Government cannot be challenged on the ground that there was better policy earlier. Thus, it does not lie in the mouth of the petitioners that four star hotels and five star hotels ought to have been treated as industry. The State Government has decided, in its wisdom, not to give same benefits, as given to other hotels of the lesser rank. Imposition is based on intelligible and rationale classification and cannot be said to be illegal and arbitrary in any manner. Thus, we find that the Rules of 2007 and the notification dated 29.08.2007 cannot be said to be ultra vires, nor violative of Article 14 of the Constitution of India. In the last with respect to the merits of the demand, prayer has been made to agitate the issue before appropriate

authorities in appropriate proceedings. That liberty is available. The petitioners are free to question the merits of the demand raised in appropriate proceedings. Resultantly, writ petitions are found to be devoid of merits and they are, hereby, dismissed. Parties to bear their own costs.