

(2016) 05 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No. 56279 of 2015 (LB-BBMP)

Manyata Promoters Private Limited

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 25-05-2016

Acts Referred:

Citation : (2016) 3 AirKarR 306 : (2016) 4 KantLJ 464

Hon'ble Judges : L. Narayana Swamy, J.

Bench : Single Bench

Advocate : Sri Jayakumar S. Patil, Senior Counsel for Sri Suraj Govinda Raj, Advocate, for the Appellant; Sri V.G. Bhanuprakash, Additional Government Advocate, Sri Ashok S. Harnahalli, Senior Counsel for Sri K.N. Puttegowda, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

L. Narayana Swamy, J.—This writ petition is filed by the petitioner praying for the following main reliefs:

(1) Quash demand notice dated 1-6-2015 issued by the Assistant Revenue Officer demanding a sum of Rs. 9,60,70,489/- together with interest and penalty from 2008-09.

(2) Quash order dated 24-8-2015 passed by respondent 3-Joint Commissioner - BBMP directing payment of difference amount at the rate of Rs. 10 per sq. ft., based on notification dated 21-12-2012 issued by respondent 2-BBMP.

(3) Quash the show-cause notice dated 5-10-2015 issued by respondent 4-Assistant Revenue Officer seeking payment of Rs. 83,45,16,845/- as difference of property tax from 2008-09 to 2015-16.

(4) Quash the notification dated 21-12-2012 issued by the BBMP, and

(5) Declare, respondents have no authority to make any fiscal demand or levy tax either as property tax or in the name of "Central Air-conditioning Units" and

to accept the tax in respect of the schedule property at Rs. 8/- per sq. ft., in terms of Category XIV(i) provided in notification dated 31-1-2009 produced at Annexure-E irrespective of whether the property is provided with or without "Central Air-conditioning Facility".

(6) Strike down Rule 4 of Bruhat Bangalore Mahanagara Palike Property Tax Rules, 2009 so far as it relates to use of words "facilities offered therein" for the purpose of determination of the unit area value, being ultra vires, unconstitutional and contrary to the statute.

2. The facts leading to filing of the present writ petition are as follows:

(i) Petitioner is a company incorporated under the provisions of the Companies Act, 1956 which is engaged in real estate development. The Karnataka Industrial Area Development Board had allotted and lease-cum-sale agreement came to be executed by the KIADB in favour of the petitioner herein in respect of property measuring 125 acres 29.50 guntas. The petitioner has set up a Special Economic Zone for Information Technology and/or Information Technology Enabled Services in the allotted land. The petitioner had obtained necessary approvals, permissions, NOC's and sanctions from the concerned authorities, and developed the entire Schedule properties into an Information Technology Park and other Infrastructure Industry, with several wings/blocks. As a part of it central Air-conditioning has also been provided to various buildings in the IT Park for the purpose of using it in relation to the IT park business activities.

(ii) With the introduction of Section 108-A of the Karnataka Municipal Corporations Act, 1976 Unit Area Value was prescribed for the categories of properties mentioned in Table I and Table II and classification of area or street within the jurisdiction of Bruhat Bangalore Mahanagara Palike into 6 zones i.e., Zone A to Zone F. Table 2 which is relevant for the present case deals with non-residential property. Category VIII deals with non-residential building provided with Central air-conditioning facility, Category XIV deals with Industrial park, Information Technology Companies etc. The petitioner claims that it comes within the four corners of Category XIV(i) and accordingly paid tax at the rate of Rs. 8/- per sq. ft., from the assessment year 2008-09, which was accepted by the respondents 2 to 4 without any objection.

(iii) The petitioner applied for consolidated khata in 2012 in respect of the buildings constructed in the schedule properties. At that time, the jurisdictional Revenue Officer, made a random scrutiny of the property tax as provided under Rule 12 of the BBMP Property Tax Rules, 2009. The jurisdictional Revenue Officer inspected the schedule properties, look note of all the buildings and facilities provided including the central Air-condition, and affirmed the property tax calculated and paid at the rate of Rs. 8/- as provided under Category XIV(i) of Table II and issued a special notice dated 20-6-2012 intimating the order effecting khata in the name of petitioner.

(iv) That on 30-6-2014 the respondent 4-Assistant Revenue Officer issued a

notice to the petitioner, demanding it to pay the tax on the schedule properties calculated at the rate of Rs. 10/- per sq. ft., as provided under Category VIII of the notification dated 21-12-2012, which the petitioner suitably replied by the reply dated 18-7-2014. Subsequent to 30-6-2014 also the petitioner paid property tax under Category XIV(i) of Table II of the notification dated 31-1-2009. The respondent 4 issued another notice demanding tax calculated at the rate of Rs. 10/- under Category VIII (D Zone) of the notification dated 21-12-2012. Subsequently, respondent 3 initiated an enquiry and passed an order on 24-8-2015 holding that the property tax in respect of the schedule properties has to be assessed at Rs. 10/- per sq. ft.

(v) Hence being aggrieved of the demand calculating the tax at the rate of Rs. 10/- per sq. ft., under Category VIII of the notification dated 21-12-2012 and the order passed by the respondent 3 to that effect, the petitioner has filed the present writ petition raising the following grounds:

(1) The respondents having accepted property tax at the rate of Rs. 8/- per sq. ft., in terms of notification dated 30-1-2009 under Category XIV(i) of Table II from the year 2008-09 till date without any objection, the impugned notice and the order are not justified.

(2) In 2012 the Revenue Officer has made random scrutiny of tax under Rule 12 of BBMP Property Tax Rules, 2009 and affirmed at the rate of Rs. 8/- and issued special notice which has become final. The decision passed in the year 2012 cannot be reopened by respondent 3-Joint Commissioner in the guise of mistake, wrong calculation etc.

(3) Category VIII relating to premises provided with Central Air-conditioning was in existence when Revenue Officer made assessment in 2012 providing for unit area value at Rs. 20/- per sq. ft., irrespective of location. He having affirmed and accepted the self-assessment for assessment years 2008-09 to 2010-11, self-assessments having reached finality, it cannot be reopened by respondents 2 to 4. It is an abuse of process of law, colourable and arbitrary exercise of power vested in the respondents.

(4) The schedule property is in industrial estate and used for non-residential purposes i.e., for setting up Information Technology and Biotechnology firms. It falls under Category XIV(i) of Table II of notification dated 31-1-2009 making it liable to pay Rs. 8/- per sq. ft., which the petitioner has paid since 2008 under self-assessment Scheme and respondents have accepted without any objection. Hence Annexure-B order passed by respondent 3 is without any authority just to make an unlawful enrichment.

(5) In respect of Block Nos. F-3 and H2 occupied by the petitioner on 1-4-2014, respondents have assessed the property tax at Rs. 8/- per sq. ft., under Category XIV(ii) of Table II vide notification dated 30-1-2009, which is accepted by respondent 3-Joint Commissioner on 1-3-2014. In spite of that impugned notices have been issued, which are not sustainable.

(6) Air-conditioning is only fitting to the structure and it cannot be artificially included for capital value or rateable value of the property. Hence claim is unjust, illegal, arbitrary and unconstitutional.

(7) After lapse of more than three years from the date of random scrutiny made by Revenue Officer, respondent 3 had no jurisdiction to reopen the said decision on the ground that the assessment of tax under Category XIV(i) is a mistake etc.

(8) The basis for reassessment of tax under Category VIII of notification dated 21-12-2012 and passing of impugned order dated 24-8-2015 is ill founded, arbitrary and unjustified.

(9) The alleged claim and the show-cause notice cannot be retrospective and it is hopelessly barred by time.

(10) The classification of property on the sole basis of "centralised Air-conditioning Facility" in terms of Category VIII is ultra vires Articles 14 and 19(1) (g) of Constitution of India. There is no such power vested in the respondents to give retrospective effect from 1-4-2008 much before Section 108-A came into force i.e., on 13-1-2009 to levy property tax on the criteria of "Centralised Air-conditioning Facility".

(11) The Bruhat Bangalore Mahanagara Palike Property Tax Rules, 2009 do not provide for classification for commercial or non-residential building on the basis of "central Air-conditioning Facility" and therefore the classification on that basis is ultra vires the rules and the Act.

(12) The power of tax on property is derived under Article 246 of the Constitution read with Entry 49 of List II of Seventh Schedule which speaks of tax on "lands and buildings". Therefore, imposition of property tax on "Central Air-conditioning Units" by making a discriminatory differentiation is based on unintelligible criteria having no rational nexus. The definition of building cannot bring within its purview a "Central Air-conditioning Unit".

(13) The power of imposition of tax by delegate authority must be on the basis of a very specific criteria on the basis of express power and cannot be implied. The delegate authority must act strictly within the parameters of the authority delegated to it under the Act.

(14) Section 108-A(14) of the Karnataka Municipal Corporations Act, 1976 mandates that the assessment or reassessment of tax shall not be made after three years after filing of tax returns under Section 108-A. Hence the impugned action is clearly barred by time.

3. The respondents 2 to 4 have filed objections statement raising the following contentions in answer to the writ petition:

(1) Classification of building with "Central Air-conditioning Unit" as a separate category is in accordance with the clarification by way of circular issued by the Commissioner in terms of Section 108-A(17) of KMC Act. Without challenging the

said circular, writ petition is not maintainable.

(2) In W.P. No. 17094 of 2000, this Court upheld the Self-Assessment System and suggested that instead of keeping the scheme optional the Government could consider bringing suitable amendment to the KMC Act, 1976 and make it obligatory for all taxpayers to avail the scheme. In March 2008 Government constituted a sub-committee the issues involved in the property tax system. The sub-committee arranged for a meeting with the Taxpayers Association where the public unanimously demanded to bring in legislation to introduce S.A.S. for the taxpayers within the jurisdiction of BBMP. Accordingly, Section 108-A was introduced in KMC Act, 1976.

(3) The draft rules were published, the citizen were clearly informed about the zonal classification and the rates that were proposed for different classes of buildings depending on their usage. Thus the taxpayers were clearly made known the method of assessment under the amended provisions of KMC Act.

(4) The Act has provided enabling provisions for the Commissioner to determine the different unit value rates per sq. ft., of built-up area having regard to different types of building and usages.

(5) On the basis of guidance value of 2007, streets have been classified ward wise and the rate has been fixed according to the six bands and grouped as Zone A to Zone F. This rational method was published in the draft notification calling for objections and thereafter Zones have been reclassified by issuing final notification by the Commissioner. The very objective criteria has been adopted by the Commissioner in determining the zonal classification and the rates applicable to the respective zones. Therefore, zonal classification is not arbitrary.

(6) Section 108-A(17) provides that the Commissioner can clarify any doubt with regard to classification of zones unit area value and class of property. The power of classification of Zones vests with the Commissioner and zonal classification is done in terms of the powers vested under Section 108-A.

(7) The authorities having noticed that the petitioner has been filing returns applying Category XIV for the purpose of calculation of property tax, conducted spot inspection of the area in question and on being satisfied that the property in question being a "Central Air-conditioned Building" coming under Category VIII decided to reassess the building.

(8) The petitioner was served with demand notice for difference of tax which resulted in evasion of property tax and thus demand was made under Section 108-A(13) of the Act including interest and penalty.

(9) During pendency of writ petitions (W.P. No. 21079 of 2012 and connected matters) challenging Category VIII, the respondents have decided to charge the rate of tax on the basis of Zones. The notification dated 21-12-2012 comes into effect from 1-4-2008-Category XIV takes into its fold those properties coming under Industrial Estates/Layout formed or approved by the Government which

included information Technology/ Biotechnology Companies and Firms, except "Central Air-conditioning Facility" buildings irrespective of its use such as for Information Technology/Biotechnolog - coming under industrial estate.

(10) The Principal Accountant General having raised an objection called upon the Principal Secretary to provide specific remarks in relation to evasion of property tax by the petitioner.

(11) The Commissioner of BBMP issued a circular dated 28-5-2015 clarifying the position regarding imposition of rate of tax on the buildings utilised by the information Technology and Biotechnology Companies having "Central Air-conditioning Facility" coming under industrial estate in terms of Section 108-A(17) of the Act.

(12) In the light of the above Circular, Assistant Revenue Officer issued notice dated 1-6-2015 calling upon the petitioner to pay the difference of property tax. The petitioner filed objections thereto. After considering the objections, the Joint Commissioner, provided opportunity of hearing to the petitioner and detailed order came to be passed on 24-8-2015 calling upon the petitioner to pay the property tax at Rs. 10/- per sq. ft., for D Zone under Category VIII.

(13) The Assistant Revenue Officer has issued consequential notice dated 5-10-2015 based on the order of the Joint Commissioner.

(14) In a taxing statute the State has wider discretion in respect of classification of objects. The mere assertion of the petitioner in the absence of sufficient materials or grounds is not enough to declare a particular classification as arbitrary, irrational or illegal.

(15) The petitioner not having raised any objections to the draft notification cannot be allowed to question the same that too at this length of time. The relief is liable to be rejected on the ground of delay and laches alone.

(16) Section 108-A(13) provides that the Corporation can reassess the property tax in the event of an incorrect returns are filed or the property has been under assessed resulting in evasion of property tax.

(17) The mere acceptance of the property tax "ipso facto" will not take away the statutory right of the authorities either to reassess or demand the difference of actual property tax payable.

4. I have heard the learned Senior Counsel for the respective Counsel on record and perused the entire case papers.

5. On the basis of the contentions and counter contentions raised by the parties, the points that arise for consideration are:

(i) Whether the petitioner is liable to pay tax either under Category VIII as contended by the respondent-authorities or Category XIV(i) of Table II of notification dated 21-12-2012 as contended by the petitioner?

(ii) Whether Rule 4 of Bruhat Bangalore Mahanagara Palike Property Tax Rules, 2009 so far it relates to use of words Facilities offered therein" for the purpose of determination of the unit area value is ultra vires, unconstitutional and contrary to the statute?

(iii) Whether the demand notices issued by the respondent 4 and the order passed by respondent 3 suffer from any illegality or irregularity as sought to be contended by the petitioner?

(iv) Whether the petitioner is entitled to any of the reliefs prayed for?

6. My answer to the above points are in favour of the respondents for the following reasons.

7. Before going to examine the points raised for consideration, it is necessary to refer to relevant provisions of the Karnataka Municipal Corporations Act, 1976, hereinafter referred to as "the Act".

In Chapter X, Section 103 of the Act it enables the Corporation to levy any one or more of the tax on the buildings or vacant lands or both situated within the City. Section 108 of the Act deals with description and class of property tax, as follows:

"108. Description and class of property tax. -(1) Unless exempted under this Act or any other law, property tax shall be levied every year on all buildings or vacant lands or both situated within the city.

(2) The property tax shall be levied in case of. -

(a) commercial building at such percentage not being less than 0.5 per cent (rupees five per thousand) and not more than three per cent of taxable capital value of the building;

(b) residential building and buildings other than commercial building, at such percentage not being less than 0.3 per cent (rupees three per thousand) and not more than one per cent (rupees ten per thousand) of taxable capital value of the building."

Section 108-A of the Act deals with levy and calculation of property tax in respect of Bruhat Bangalore Mahanagara Palike, which reads as under:

"108-A. Levy and calculation of property tax in respect of Bruhat Bangalore Mahanagara Palike. -(1) Notwithstanding anything contrary contained in this Act, subject to such exemptions provided under this Act and such rules as may be prescribed, the property tax of all buildings or vacant lands or both situated within the city of Bruhat Bangalore Mahanagara Palike area shall be levied every year in the following manner.

(2) The property tax shall be levied by the Bruhat Bangalore Mahanagara Palike by resolution passed as specified in Section 106 at such percentage not being less than 20 per cent and not more than 25 per cent of the taxable annual value

of a building, vacant land or both. The taxable annual value of a building, vacant land or both shall be calculated by multiplying the corresponding "unit area value" with the total built-up area of a building, vacant land or both for ten months, minus depreciation at such rate, as may be prescribed, depending on the age of a building.

Explanation. -For the purpose of this section, "Unit Area Value" means an average rate of expected returns from the property per sq. ft., per month determined by the Commissioner, Bruhat Bangalore Mahanagara Palike on the basis of the average market rate determined through mass appraisal method or real estate market information or any other reliable source or combination of these sources that he may considers it as sufficient and reasonable having regard to the location, type of construction of the building, nature of use to which the vacant land or building is put, area of the vacant land, built-up area of the building, age of the building, parking area of vehicles in non-residential building where it is charged and such other criteria as may be prescribed. Different rates may be determined for different area or street by classifying into zones, different nature of use to which the vacant land or building is put and for different class of buildings and vacant lands:

Provided that no such "unit area value" shall come into force unless it is previously published in the Official Gazette for the information of the persons likely to be affected and an opportunity is provided to make representation or suggestions, if any, in this regard."

Further sub-sections (10), (14) and (15) of Section 108-A of the Act reads as under:

"(10) Every return filed by a owner or occupier shall he deemed to have been assessed to tax except in cases where the Commissioner, or Authorised Officer may take-up or authorise Subordinate Officers the cases for random scrutiny of the returns filed in the manner prescribed:

Provided that Commissioner may suo motu or otherwise has reason to believe that there is an evasion of tax by the owner or occupier, he may cause inspection of such building, and assess the tax.

....

(14) An assessment or reassessment under this section shall not be made after the following time-limits.-

(i) three years after filing the tax return under this section;

(ii) three years after the evidence of facts, sufficient in the opinion of the Commissioner or the Authorised Officer to justify making of the reassessment, comes to its knowledge, whichever is later.

(15) In computing the period of limitation specified for assessment or reassessment, as the case may be under this Act, the period taken for disposal of

any appeal against an assessment or other proceedings by the Appellate Authority, a Tribunal or Competent Court shall not be taken into account for assessment or reassessment as the case may be."

8. BBMP Property Tax Rules, 2009, hereinafter referred to as the Rules", the relevant Rules 4 and 12(3)(e) read as under:

"4. Categorization of use of building.

-For the purpose of determination of unit area value, the Commissioner may categorise the buildings used for residential purpose as Reinforced Concrete Construction (RCC), tiled or sheet of any kind, houses allotted by the Government for the poor and such other categorisation as he deems fit. For commercial or non-residential building, the Commissioner, may follow a different categorisation based on the nature of commercial use of the building or the quality and facilities offered therein.

.....

12. Method of random scrutiny. -(1) Every returns filed by a owner or occupier shall be given a continuous serial number in a chronological order by the computer and thereafter it shall be taken up for random scrutiny on the basis of random computer generated numbers under supervision of an officer authorised by the Commissioner.

.....

(3) Selection of cases for random scrutiny and detail inspection shall have the approval of the Commissioner and be done in the following manner, namely.-

.....

(e) All cases selected for random scrutiny shall be completed within the financial year, failing which they shall lapse. However the lapsed cases may figure for the random scrutiny for the next financial year in the manner specified in sub-rule (1)."

9. Under Schedule III, Rule 19 of the Karnataka Municipal Corporations Act, 1976, an appeal against any claim included in the notice of demand served under sub-section (1) of Section 113 maybe made to the District Court having jurisdiction over the area concerned.

10. Entry 49 of List II of Schedule VII of Article 243 of the Constitution, levying tax on the buildings and land, it is subject-matter of State.

11. After going through the relevant provisions, it is now time to consider points one by one.

12. The petitioner is a company and also permitted to set up a Special Economic Zone for Information Technology and Information Technology enabled services. So, for the purpose of tax, no doubt the petitioner is a company as it is provided

under Category XIV of the notification, which provides that: "Industrial buildings (industrial units as defined by the Director of Industries and Commerce) Government of Karnataka or Government of India and set up in industrial estates formed by the Government or industrial layout approved by the Government". This category of non-residential use of properties includes Information Technology and Biotechnology companies or firm set up in such industrial estate. It is the case of the petitioner that it falls under Category XIV and accordingly" it has paid the tax at the rate of Rs. 8/- per sq ft. The particulars furnished in Category XIV" must have convinced the petitioner or the petitioner must have understood, it falls under the said category and paid Rs. 8/- per sq. ft. It is true that the tax paid under the said category was also accepted and the respondent-Corporation has not raised any objections and necessary notices have been issued. When this is the position, it is stated by the petitioner that the Assistant Revenue Officer had issued notice on 1-6-2015 demanding payment of property tax calculated at the rate of Rs. 10/-per sq. ft., under Category VIII fixed for D" Zone. Pursuant to which an enquiry was conducted and the Joint Commissioner by its order dated 24-8-2015 upheld the case of the respondent-Corporation to calculate the tax at the rate of Rs. 10/- per sq. ft., on the ground that building of I he petitioner is provided with central air condition facility, which is a separate category.

13. Category VIII of the notification, which provides that irrespective of location (zones), all non-residential use of property, which are provided with central air conditioning facility, whether or not put to use, and where one occupier or several occupiers together have a built-up area of (8) 5000 and more square feet have to pay Rs. 10/- per sq. ft. On plain reading of Category XIV one could understand that all the industrial units are entitled to pay tax at the rate of Rs. 8/- per sq. ft. Accordingly, the petitioner has understood that it falls under Category XIV since it is in an industrial area and the same has been accepted since 2008-09 by the Corporation.

14. A letter was addressed to the Corporation by the Office of Audit and Accounts Department, Office of the Principal Accountant General in Karnataka that tax accepted under Category XIV from the petitioner it false and incorrect and the tax has to be calculated under Category VIII. On the basis of the said information, the Corporation has inspected the premises and found that the petitioner has made a false claim under Category XIV instead of Category VIII, hence notices have been issued to the petitioner for payment of difference of property tax. Pursuant to the notice, the petitioner has filed objections and after considering the objection, an order has been passed by the third respondent-joint Commissioner.

15. In a case of this nature where the parties who suppose to pay tax, find it difficult to understand the appropriate category, it is proper for them to approach the authority who has issued such a notice or in whose favour the said notification has been issued lay the Government. Section 108-A of the Act is very

clear that central air condition non-residential unit has to pay tax at the rate prescribed therein. The contention of the petitioner that it got to understand that it is liable to pay tax under Category XIV itself is not a ground to accept the said contention. Acceptance of the tax by the respondent-Corporation and issuance of some notices also will not dispense the petitioner from payment of tax under Category VIII under which the petitioner is liable to pay tax. What should have been the payment of tax in the peculiar nature of this case, the right person would be the Corporation, who is in a right position to clarify the same. However, the Corporation also did not give its thought accepting the tax paid by the petitioner under Category XIV until the Principal Accountant General raised an objection whereby the respondent-Corporation swung into action and issued fresh notices after determining the tax payable by the petitioner. The notice issued as per Annexure-A, dated 17-6-2015 under the provisions of the Act and Rules have been rightly objected by the petitioner by preferring an appeal before the Assistant Revenue Officer, Byatarayanapur Sub-Division, dated 8-7-2014 as per Annexure-P and the same has been considered in detail and order has been passed as per Annexure-B by holding that the petitioner has to pay tax under Category VIII and not under Category XIV. This clarification should have been accepted by the petitioner. As it is already observed, that in a case of this nature, right person would be the person who is the author or for whose benefit legislation is made, is to be consulted for such a clarification. Even in case of ambiguity, it is the authority who could give clarification. The respondent-Corporation has passed an order as per Annexure-B clarifying and conveying the petitioner that the tax to be calculated under Category VIII, which is perfectly correct and the petitioner is liable to pay tax under Category VIII at the rate of Rs. 10 per sq. ft.

16. It is the submission on behalf of the petitioner that Item 49 of List II of Schedule VII which permits the State to collect tax only on lands and buildings and the facilities provided therein is not the criteria to collect tax by the Corporation. In this regard, definition in Section 2(1-A) was referred, which states "Building" includes: (a) a house, outhouse, stable, privy, shed, hut, wall, verandah, fixed platform, plinth, doorstep and any other such structure, ... Similar definition is also found in the Rules, Rule 2(1)(v) "Building" also includes towers and hoardings. Rule 2(1)(vi) of the Rules defines "Built up area" means total area covered by building or high rise buildings above the plinth level, and including all covered area like basement, mezzanine flooring, balcony whether covered or not, etc. Section 103 of the Act which enables the Corporation to levy tax only on buildings or vacant lands or both. It is the contention of the petitioner that there is no provision either in the Act or the Rules which empower the Corporation to collect tax on "other facilities provided therein" and therefore Rule 4 of the Rules which categorises the building on the basis of qualities and facilities provide therein itself is unconstitutional and it is ultra vires the provisions of law. It is submitted by the petitioner that on plain reading of the definition of clause under the Act and the Rules and also under the provisions of

the Constitution, the Corporation shall levy tax only on the building and vacant land and not on the facilities provided therein. What has been not provided under the Act particularly under Sections 108 and 108-A of the Act, should not have been included in Rule 4 of the Rules. Hence Rule 4 is ultra vires of the statute.

17. Category VIII with its plain reading, it could be understood that the non-residential building with central air condition are brought or classified as a separate class. The buildings cannot be understood in a common manner. The buildings as it is defined under the Act and the Rules which means and includes shed, verandah etc., shall not be ordinarily grouped as buildings. Category VIII classifies the buildings with central air condition, which is the building for the purpose of classification. A reasonable and rationale classification is to be made before levying tax, It is exclusively permitted for the Corporation to classify a building on the basis of its facilities used as it is said in Rule 4 of the Rules. Definition of building is a contextual definition which depends upon each context. The interpretation is always to be made on the basis of the purpose for which the building is used more particularly for levying the tax. The Corporation has understood on the basis of definition in the Act that central air condition buildings are altogether different classification and buildings which cannot be compared with the particulars given in the definition under Section 2 or Section 103 of the Act or under Rule 4 of the Rules. All the buildings though look fall under the definition of building, but building with central air condition, it has to be a special category for the purpose of tax, which I do not find any arbitrariness on the part of the respondents in classifying such building under a different category and levying tax accordingly.

18. It is to be mentioned here that definition of building is left open to the Corporation to define as and when it is required for the purpose of levying tax. What is taxable today and what is the definition today, may not be the same tomorrow and if the tax is made applicable under Category VIII if it is extended to all the buildings, which are not either central air condition or have no escalators facilities, then it would have been arbitrary and further when the draft notification was issued inviting objection from the public, petitioner did not raise any objection and it is not appropriate for it now to raise objection at this stage.

19. It is made clear that it is not for the Court to prescribe the mode and method of classification and category for the purpose of tax. It is left to the State Government since List II of Schedule VII it is for the State subject and it is only the State would legislate for the purpose of tax. Therefore, interference by the Court in such matters only limited on the ground of action being arbitrary, unconstitutional, irrational etc. No such grounds are substantiated, though raised by the petitioner. Therefore, there is no merit in the contention of the petitioner that Rule 4 of the Rules is ultra vires the provisions of the statute.

20. The Hon''ble Supreme Court in Gopal Narain v. State of Uttar Pradesh and Another, AIR 1964 SC 370, considering the power of classification under Article 14 has observed thus in paras 9 and 14:

"9. The duties cannot be discharged If so much is conceded, that is different parts of a municipality may require special treatment in that matter of provisions of amenities, it would be reasonable to collate the power of taxation in a part of a municipality with such separate treatment. While the former two sections by necessary implication, enable a municipality to provide special amenities in a part of the municipality, the latter section empowers it to impose taxes in that part. If so understood, the legislative guidance is apparent from the said three provisions; that is to say, a municipality can impose a tax in a part of a city, if that part, because of its peculiar situation or otherwise, has to be provided with special amenities throwing a heavy financial burden on the Municipality..

.....

14. The next question is.....It will be seen from the aforesaid provisions that the rate of tax to be levied and the persons or the class of persons liable to pay the same have a reasonable relation to the subjects taxable under the Act. The said rate to be imposed and the persons or the class of persons liable to pay the same are ascertained by a quasi-judicial procedure after giving opportunity to the parties affected, subject to revision by the State Government. We cannot, therefore, say that the power conferred upon the Municipal Board is an arbitrary power offending Article 14 of the Constitution."

21. The Hon'ble Supreme Court in *V. Venugopala Ravi Varma Rajah v. Union of India and Another*, AIR 1969 SC 1094 : (1969) 1 SCC 681 : (1969) 74 ITR 49 (SC) has observed that the State or the Authority is allowed to pick and choose the object, persons, methods and even rates for taxation, Paras 14, 15 and 16 therein read thus:

"14. Equal protection clause of the Constitution does not enjoin equal protection of the law's as abstract propositions. Laws being the expression of legislative will intended to solve specific problems or to achieve definite objectives by specific remedies, absolute equality or uniformity of treatment is impossible of achievement. Again tax laws are aimed at dealing with complex problems of infinite variety necessitating adjustment of several disparate elements. The Courts accordingly admit, subject to adherence to the fundamental principles of the doctrine of equality, a larger play to legislative discretion in the matter of classification. The power to classify may be exercised so as to adjust the system of taxation in all proper and reasonable ways: the Legislature may select persons, properties, transactions and objects and apply different methods and even rates for tax, if the Legislature does so reasonably. Protection of the equality clause does not predicate a mathematically precise or logically complete or symmetrical classification: it is not condition of the guarantee of equal protection that all transactions, properties, objects or persons of the same genus must be affected by it or none at all. If the classification is rational, the Legislature is free to choose objects of taxation, impose different rates, exempt classes of property from taxation, subject different classes of property to tax in

different ways and adopt different modes of assessment. A taxing statute may contravene Article 14 of Constitution if it seeks to impose on the same class of property, persons, transactions or occupations similarly situate, incidence of taxation, which leads to obvious inequality. A taxing statute is not, therefore, exposed to attack on the ground of discrimination merely because different rates of taxation are prescribed for different categories of persons, transactions, occupations or objects.

15. It is for the Legislature to determine the objects on which tax shall be levied, and the rates thereof. The Courts will not strike down an act as denying the equal protection of laws merely because other objects could have been, but are not, taxed by the Legislature.

16. Willis in his Constitutional Law of the United States has stated at p. 587:

"A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably."

The Hon^{ble} Supreme Court in the above judgments has held that the classification and categorisation, it is for the State to do it who are supposed to run the State by spending huge amount on the society and it is not for the Courts.

22. In *State of Karnataka and Others v. D.P. Sharma*, (1975) 1 SCC 391 para 10: it is in respect of the Stage Carriers and classification of Stage carriers on one hand and the Contract Carriers on the other for the purpose of a higher levy of vehicle tax on contract carriages on the basis that they have greater facilities for running more miles on an average than the stage carriages and the inference made by the Legislature therefrom and based also on local conditions that they run more miles and thus cause greater wear and tear to the roads, was reasonable.

23. In *The Anant Mills Company Limited v. State of Gujarat and Others*, AIR 1975 SC 1234, it has been observed by the Hon^{ble} Supreme Court that Article 14 of the Constitution forbids class legislation but does not forbid classification. It was also observed that the power of Legislature to classify of wide range and flexibility so that it can adjust its system of tax in all proper and reasonable way.

24. The responsibility and duty of the State under the Constitution of India is growing day by day in a wider perspective. The State is required to spend huge money to implement the object of social legislations to cater to the needs of the people. Unless the tax is collected, the State would not be in a position to meet its expenses. The persons who have a duty to pay tax under the Constitution of India as it is a pious duty. Escape from payment of tax or improper payment of tax, it has to be presumed that it is going against the interest of the society, State and nation. In the circumstances, even individual and local persons should pay more attention to payment of tax. They should believe that escape from

payment of tax it ultimately goes against the interest of nation as a whole.

25. In the light of the above, the classification is permissible since it is in consonance with Article 14 of the Constitution of India. As it is submitted by the petitioner, if all the buildings, as put in the definition, are accepted, it causes violation of Article 14 of the Constitution of India. All the buildings referred therein cannot be treated on similar footing and tax cannot be collected uniformly irrespective of central air condition etc. For different rate of tax, there shall be effective classification. Notification issued and also rules made thereunder are therefore perfectly in accordance with the provisions of the Constitution of India.

26. In *Federation of Hotel and Restaurant v. Union of India and Others*, (1989) 3 SCC 634 it has been observed that tax is different from the measure of levy and purpose of measure of levy, there can be any number of classifications. Economic superiority can also be one of the factors for the purpose of classification. The only requirement is that the same classification/object it cannot be treated unequally or differently. It is pertinent to refer para 43 which reads thus:

"43. The subject of a tax is different from the measure of the levy. The measure of the tax is not determinative of its essential character or of the competence of the Legislature. In *M/s. Sainik Motors, Jodhpur and Others v. State of Rajasthan*, the provisions of a State law levying a tax on passengers and goods under Entry 56 of List 11 were assailed on the ground that the state was, in the guise of taxing passengers and goods, in substance and reality taxing the income of the stage carriage operators or, at any rate was taxing the "fares and freights", both outside of its powers. It was pointed out that the operators were required to pay the tax calculated at a rate related to the value of the fare and freight. Repelling the contention, M. Hidayatullah, J., speaking for the Court said:

"we do not agree that the Act, in its pith and substance, lays the tax upon income and not upon passengers and goods. Section 3 in terms, speaks of the charge of the tax "in respect of all passengers carried and goods transported by motor vehicles", and though the measure of the tax is furnished by the amount of fare and freight charged, it does not cease to be a tax on passengers and goods.... ."

27. In *P.M. Ashwathanarayana Setty and Others v. State of Karnataka and Others*, AIR 1987 SC 182, the Hon'ble Supreme Court observed that though other legislative measures dealing with economic regulation are not outside Article 14 it is well-recognised that the States enjoy the widest latitude where measures of economic regulation are concerned.

28. The definition of buildings as is referred under the Act and the Rules it is an inclusive definition. As and when it is required, the Competent Authority can include and also exclude which depends upon each given case. This Hon'ble Court in *State of Karnataka v. Ganesha Krishna Bhat*, ILR 1990 Kar. 1045 (DB), has observed that a classification can be over inclusive/under inclusive. The

Court allow a wide latitude a legislative classification as they could be one classification. It is further observed, the Court to interfere only where classification is capricious or arbitrary or unjust.

29. The Hon"ble Supreme Court in *State of Bihar and Others v. Bihar State + 2 Lecturers Association and Others*, AIR 2007 SC 1948. Has observed in para 11 that Article 14 prohibits discrimination and not classification, which reads thus:

"11. Now it is well-settled and cannot be disputed that Article 14 of the Constitution guarantees equality before the law and confers equal protection of laws. It prohibits the State from denying persons or class of persons equal treatment provided they are equals and are similarly situated. It, however, does not forbid classification. In other words, what Article 14 prohibits is discrimination and not classification if otherwise such classification is legal, valid and reasonable."

30. The Hon"ble Supreme Court in *Dilip Kumar Garg and Another v. State of Uttar Pradesh and Others*, (2009) 4 SCC 753 , has observed in para 15 that Article 14 should not be stretched, otherwise it will make the function of administration impossible. Para 15 reads thus:

"15. In our opinion Article 14 should not be stretched too far, otherwise it will make the functioning of the administration impossible. The administrative authorities are in the best position to decide the requisite qualifications for promotion from Junior Engineer to Assistant Engineer, and it is not for this Court to sit over their decision like a Court of appeal. The administrative authorities have experience in administration and the Court must respect this and should not interfere readily with administrative decisions."

31. The person who approaches the Court alleging action of the respondent either violative of any provisions of the Constitution or it being capricious or arbitrary, it is burden on him to substantiate as otherwise it would remain mere contentions not substantiated to the satisfaction of the Court. In this regard, the decision in *The Twyford Tea Company Limited and Others v. State of Kerala and Others*, AIR 1970 SC 1133 paras 15, 16 and 18 are relevant, which read thus:

"15. We may now state the principles on which the present case must be decided. These principles have been stated earlier but are often ignored when the question of the application of Article 14 arises. One principle on which our Courts (as indeed the Supreme Court in which United States) have always acted, is nowhere better stated than by Wills in his "Constitutional Law" page 587. This is how he put it:

"A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation of it does so reasonably... The Supreme Court has been practical at page SC 1138.

And has been permitted a very wide latitude in classification for taxation."

The principle was approved by this Court in *M/s. East India Tobacco Company v. State of Andhra Pradesh and Another*, AIR 1962 SC 1733 (at p. 1735) : (1963) 1 SCR 404 (at p. 410), applying it the Court observed:

"If a State can validly pick and choose one commodity for taxation and that is not open to attack under Article 14, the same result must follow when the State picks out one category of goods and subjects it to taxation."

This indicates a wide range of selection and freedom in appraisal not only in objects of taxation and the manner of taxation but also in the determination of the rate or rates applicable. If production must always be taken into account there will have to be a settlement for even year and the tax would become a kind of income tax.

16. The next principle is that the burden of proving discrimination is always heavy and heavier still when a taxing statute is under attack. This was also observed in the same case of this Court (at page 411 of SCR - at P. 1735 of AIR) approving the dictum of the Supreme Court of the United States in *Madden v. Kentucky*, (1940) 309 U.S. 83 : 84 Law Ed 590.

"In taxation even more than in other fields Legislature possess the greatest freedom in classification. The burden is on the attacking the legislative arrangement to negative every conceivable basis which might support it."

As Rottschaefter said in his Constitutional Law at p. 668:

"A statute providing for the assessment of one type intangible at its actual value while other intangible are assessed at their face value does not deny equal protection even when the both are subject to the same rate of tax". The decision of Supreme Court in this field have permitted a State Legislature to exercise an extremely wide discretion in classifying property tax purposes so long as it refrained from clear and hostile discrimination against particular persons or classes."

The burden is on a person complaining of discrimination, the burden is proving not possible inequality but hostile unequal treatment. This is more so when uniform taxes are levied. It is not proved to us how the different plantations can be said to be hostilely or unequally" treated.

18. What is meant by.....

Simply stated the law is this: differences in treatment must be capable of being reasonably explained in the light of object for which the particular legislation is undertaken. This must be based on some reasonable distinction between the cases differently treated. When differential treatment is discriminatory. If different subjects are equally treated there must be some basis on which the differences have been equalised otherwise discrimination will be found. To be able to succeed in the charge of discrimination, a person must establish conclusively that person equally circumstanced have been treated unequally" and

vice versa."

32. The Hon"ble Supreme Court in *New India Assurance Company Limited v. Nusli Neville Wadia and Another*, (2008) 3 SCC 279, has observed in para 51 that the provision of law has to be interpreted and it has to be constructed in such a manner so as to see that the object and purpose of the Act is fulfilled.

33. In *Rajsheker R. Nadgoud and Another v. State of Karnataka and Another*, AIR 2004 Kant. 126 Para 14, the Hon"ble Supreme Court has stated thus:

"14. Under the Constitution of India, property tax is leviable by the State Government under Entry 49 - "Taxes on Land and building" List II within this ambit of tax on land and building, a wide variety of options regarding property related cases could be imposed by the local self-Government. These include various property related cases including conservancy tax, as well as the general property tax which include components of tax on land and buildings. The choice of design for the tax base is to choose from, a tax based on the annual or rental value of the property tax, a tax based on the capital value of the property, a tax based on vacant land or site and lastly, a combination of above three methods. The annual rental value system derives valuation of levy of tax on the estimated annual net value from the use of the property in the capital value system, property tax is derived on the assessed value of the land and improvements. The site or land value system includes only site or the land value as the base including improvements."

34. In *M/s. Lohia Machines Limited and Another v. Union of India and Others*, AIR 1985 SC 421 para 25, the Hon"ble Supreme Court has held that delegation of power to the authorities to determine the rate of tax, classification and selection of subjects and persons cannot be termed as unconstitutional:

"25. Mr. Palkhivala then contended... Now the authorities are clear that it is not unconstitutional for the Legislature to leave it to the executive to determine details relating to the working of taxation laws such as the selection of persons on whom the tax is to be laid the rates at which it is to be charged in respect of different classes of goods and the like."

35. Therefore, classification made by virtue of the notification with regard to industrial units and non-residential buildings having central air condition is rationally based classification strictly in compliance of Article 14 of the Constitution and at no stretch of imagination it can be rendered as unconstitutional or arbitrary.

36. Under Section 108-A read with Explanation of the Act, Tax has to be made on Unit Area Value. This Unit Area Value means an average rate of expected returns from the property per sq. ft., per month determined by the Commissioner. The Commissioner has got power under the said provision to determine what could be the unit area value. The proviso to section provides that Unit Area Value shall not come into force unless it is previously published in the Official Gazette for the

information of the persons likely to be affected and an opportunity is provided to make representation or suggestions if any in this regard. This Unit Area Value has been considered and made applicable to BBMP Area only after considering the objections raised by the public. If the petitioner has not made use of the draft notification, it is for it to blame and it cannot figure it out to the respondent-Corporation.

37. It is contended by the petitioner that tax paid under Category XIV since 2008-09 has been accepted and it has got deemed acceptance under sub-section (1) of Section 108-A of the Act. It provides that every return filed by an owner or occupier shall be deemed to have been assessed to tax except in case where the Commissioner or Authorised Officer may take up or Authorise Subordinate Officer, the case for random scrutiny of the returns filed in the manner prescribed. No doubt it is undisputed that a tax paid, it is a deemed acceptance unless it is scrutinised and taken for random scrutiny. However, the petitioner is not permitted to take shelter under sub-section (1) of Section 108-A of the Act for the reason that if the tax had been filed under Category VIII, which is an applicable category, then it would have been correct to accept the fact that tax deemed to have been accepted by the respondent-corporation. But the petitioner has not paid the tax under Category VIII and paid under Category XIV. In the circumstances, deemed acceptance of tax is not extendable to the petitioner's case.

38. It is also the contention of the petitioner that reassessment has been taken by the respondent beyond 3 years which is impermissible and it is contrary to sub-section (14) of Section 108-A of the Act also cannot be accepted. As long as the petitioner who approaches the Court has not approached with clean hands, he cannot be permitted to take that plea. It may be for the petitioner that it had taken intentionally that it comes under Category XIV but that itself is not a ground for the purpose of limitation. In the case on hand, 3 years limitation for the purpose of reassessment or reopening the case, is not applicable to the petitioner since he himself has committed an illegality in declaring under S.A.S. as it falls under Category XIV when it is liable to pay tax under Category VIII. Rule 12 of the Rules which is in respect of method of random scrutiny shall be completed within a financial year failing which, it shall lapse. However, the lapsed cases may figure for the random scrutiny for the next financial year in the manner specified in sub-rule (1). Therefore, the said submission cannot be accepted. It could have been accepted if the petitioner had paid the tax under Category VIII. A fraud or misrepresentation or illegality can be earthed out at any stage.

39. The Hon'ble Supreme Court and the High Courts have held in any number of matters right to environment, right to clean potable water, right to shelter, it is a fundamental right. It is also further held that proper road and safety of a person who uses the road, it is also a fundamental right. When these rights have been enshrined in the Constitution and have been fortified by the Courts, it shall be

the duty of the State to provide them to the citizen since it is a fundamental right. The State failing to provide these facilities cannot be called a social welfare State. In order to provide all these facilities in compliance of the Constitution and the judgment of the Courts, tax amount is only a basis to provide all these facilities. Non-payment of admissible tax, in most of the time, results in not providing these basic facilities to the people which are fundamental in nature. In these circumstances, it shall be the duty of every citizen to pay tax, in case, it is not paid, one should feel that he has committed a breach of his duty. In order to avoid escape of tax or payment of tax, it is advisable to the Corporation and the State to make available the particulars which is available as it is provided by the Central Telecom Department, telephone numbers of the persons or the users of the telephone for the public. If such particulars of taxpayers are provided to the public, then any public spirited person could be in a position to inform the State in case if any violations of payment of tax is there. Under the Corporations Act, all the buildings and the lands are taxable. Each building is assessed for the purpose of payment of tax for each year. If such being the case, all buildings and vacant lands available within the limits of Corporation if it is made known to all the public as it is done by the Telecom Department in the form of directory, then any of the neighbor, he would definitely complain to the concerned Corporation as the neighbor would be in a better position to know than the Corporation because the infrastructure of the Corporation may not be able to catch each and every building under its random scrutiny. This observation is made particularly to the Corporation Commissioner to look into it for its furtherance.

40. it is one of the contentions of the petitioner that the Commissioner of the Corporation is the only competent person under the Act to issue such notices and quite contrary to the same, the demand notices have been issued by the Assistant Revenue Officer based on the assessment made by Joint Commissioner, who is not Competent Authority, cannot be accepted. During the course of arguments, it is placed before this Court that the power has been delegated to the Joint Commissioner under the relevant provisions which is permissible. Such an objection is not available to the petitioner since the petitioner is a defaulter having not made the payment of tax under Category VIII. The petitioner knew fully well that with the central air condition non-residential building, petitioner has to pay tax at the rate of Rs. 10/- per sq. ft., and contrary to the same in order to evade payment of tax, petitioner has chosen Category XIV. Industrial buildings in which Information Technology Park and Biotechnology Park is established, they would pay tax at the rate of Rs. 8/- per sq. ft., whereas all the other non-residential buildings would pay Rs. 10/- which would definitely result in inequality and arbitrary under Article 14 of the Constitution. Non-residential buildings might be any other building but they have to pay the tax if they are central air condition at Rs. 10/-. Similarly the industrial units or the buildings which are running Information Technology or Biotechnology, their main motive is to make profit whereas in case central air condition buildings, their main aim may not be only to make profit. In the circumstances, it is categorised that

industrial buildings of Information Technology and Biotechnology units, they should pay tax if their premises is centrally air conditioned at Rs. 10/- per sq. ft., is well accepted.

41. In the circumstances and for the reasons mentioned as above, I am of the view that petitioner is liable to pay property tax at the rate of Rs. 10/- under Category VIII of the notification, petitioner has not made out any case for declaring Rule 4 of the Rules as ultra vires, there is no illegality or irregularity in the notices or the orders passed by the respondent-authorities and the petitioner is not entitled to any of the reliefs prayed for in the writ petition.

42. In the result, the writ petition is rejected.