

(2019) 05 CHH CK 0017

In the Chhattisgarh High Court

Case No : Writ Petition No. 1055, 1273 Of 2003

M/S Bharti Airtel Limited And Ors

APPELLANT

Vs

State Of Chhattisgarh Through And Ors

RESPONDENT

Date of Decision : 14-05-2019

Acts Referred:

Indian Telegraph Act, 1885 — Section 10, 10(c), 12, 19B

Municipal Corporation Act, 1956 — Section 5(31), 132, 132(1), 132(1)(a), 132 (6)(j),
133, 133(4), 135

Gujarat Police Act, 1951 — Section 145A

Citation : (2019) 05 CHH CK 0017

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Single Bench

Advocate : Sachin Singh Rajput, Avinash Singh, H.B. Agrawal, Pankaj Agrawal

Final Decision : Dismissed

Judgement

1. In both the Writ Petitions, the issue arising for decision making is whether the petitioner, a cellular service provider, is liable to pay property tax in respect of or otherwise relating to under ground cable laid for the purpose of providing telephone services or other telecommunication facilities.

2. While WP No. 1055 of 2003 would seek quashment of the demand notice for payment of property tax by the Municipal Corporation, Bhilai, in WP No. 1273 of 2003, demand notice under assail has been issued by the Municipal Corporation, Raipur.

3. The petitioner has been granted licence by the Government of India to establish, maintain and operate telephone services in the area described as M.P. Circle covering present Chhattisgarh also. In order to provide telephone services, the petitioner has laid telecommunication cable in different parts of the State of Chhattisgarh including within municipal limits of the city of Raipur and Bhilai. For digging soil in public streets and/or the land belonging to local authorities/ municipal corporation, the petitioner has obtained permission under Section 12

of the Indian Telegraph Act, 1885 (hereinafter referred to as 'the Act, 1885'). Under Section 19-B of the Act, 1885, a licensee is conferred power of telegraph authority whereas Section 10 of the Act, 1885 authorizes telegraph authority including licensee to place and maintain telegraph lines and posts under, over along, or across and in or upon any immovable property subject to the conditions provided in the said section. However, Section 10 (c) provides that 'except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority.'

4. The Central Government issued a notification in the official gazette under Section 19-B of the Act, 1885 conferring such powers upon the petitioner company which are available to the telegraph authority under the Act, 1885.

5. On the basis of these provisions and notifications, the petitioner would contend that the local authority is not permitted to levy any compensation/premium for the use of land for laying down cables by the licensee under the Act, 1885. According to the petitioner, there is no provision in the Municipal Corporation Act, 1956 (henceforth 'the Act, 1956') empowering any Municipal Corporation to levy any property tax/compensation in respect of laying down cables by a person who has been granted licence under the provisions of the Act, 1885. The petitioner would refer to a circular issued by the Ministry of Surface Transport, Government of India under which there was no proposal for charging any ground rent for laying cables from the private telecom licensee over the national highways.

6. The petitioner satisfied some demand by depositing the amount under protest but his representation opposing the demand was not decided. The petitioner would further contend that Section 132 of the Act, 1956 does not allow or permit the Corporation to impose any tax on under ground telephone cables. It is also submitted that the petitioner is only user of the land but does not own the land, therefore, for this reason also, the property tax cannot be levied and that too without determining annual letting value. It is further submitted that under ground telephone cable is neither the land nor building and further that it does not had any gross or annual letting value.

7. Per contra, learned counsel for the Corporation would refer to Section 5 (31) of the Act, 1956, which defines that the "land" includes benefits arising out of land, houses and things attached to the earth, or permanently fastened to any thing attached to the earth and also land which is being built upon or is built upon or covered with water, to argue that the owner of cable is the owner of benefit arising out of the land, therefore, the petitioner company is covered within the definition. It is further argued that the Corporation is entitled to levy and recover property tax under Sections 132 and 135 of the Act, 1956. It is further put forth that Municipal Corporation, Bhilai has passed a resolution on 15.4.99 for adopting self assessment procedure and thereafter the objections were invited and public meeting was also convened for finalizing the rate of

property tax. The respondents' counsel would refer to the law laid down by the Supreme Court in the matter of *Anant Mills Vs. State of Gujarat* {AIR 1975 SC 1234} to argue that a person who has laid under ground cable is the actual occupier of the land and is primarily liable for payment of property tax.

8. The main thrust of argument of counsel for the petitioner is on the basis that the petitioner being not the owner of the land in which under ground cables are laid, the demand of property tax from the petitioner falls foul of Section 132 (1) of the Act, 1956, which implies that the property tax is payable by the owners of building or land. In other words, the petitioner not being the owner of the land, tax is on the cable itself, which is beyond the scope of the provision.

9. The argument though appearing attractive deserves outright rejection in view of the law laid down by the Supreme Court in the matter of *Ahmedabad Municipal Corporation Vs. GTL Infrastructure Limited and Others* {(2017) 3 SCC 545}. In the said matter, the Supreme Court was considering levy of property tax on mobile towers.

The High Court of Gujarat quashed the levy, however, the Supreme Court set aside the order of Gujarat High Court to hold that the levy is in accordance with law and the tax is on the occupier of the land and such liability to pay tax by the occupier instead of the owner is an accepted facet of the tax payable on land and building under Schedule VII List II Entry 49 of the Constitution.

10. In the above matter of Ahmedabad Municipal Corporation, the Supreme Court reproduced the definition of land as occurring in the Gujarat Provincial Municipal Corporations Act, 1949 (for short 'the Gujarat Act'), which is *pari materia* to the definition of land under the CG Municipal Corporation Act, 1956. The definition of land under the Gujarat Act and the CG Municipal Corporation Act is reproduced hereunder opposite to each other in the following box:-

Definition of land under the Gujarat Act	Definition of land under the CG Municipal Corporation Act (30)
"land" includes land upon or is arising out of land, houses and built upon or covered with things attached to the earth, or water, benefits to arise out of permanently fastened to any land, things attached to the earth thing attached to the earth and or permanently fastened to also land which is being built anything attached to the earth upon or is built upon or covered and rights created by legislative with water. enactment over any street.	(31) "land" includes benefits which is being built upon or is arising out of land, houses and built upon or covered with things attached to the earth, or water, benefits to arise out of permanently fastened to any land, things attached to the earth thing attached to the earth and or permanently fastened to also land which is being built anything attached to the earth upon or is built upon or covered and rights created by legislative with water. enactment over any street.

11. The Supreme Court, after dealing with competency of levying property tax on mobile towers decided the issue of levy of tax on mobile towers or levy on the yield from the land and building to conclude thus at para- 31:-

"31. The measure of the levy, though may not be determinative of the nature of the tax, cannot also be altogether ignored in the light of the views expressed by this Court in *Goodricke* {*Goodricke Group Ltd. Vs. State of W.B.*, 1995 Supp (1) SCC 707}. Under both the Acts read with the relevant Rules, tax on mobile

towers is levied on the yield from the land and building calculated in terms of the rateable value of the land and building. Also the incidence of the tax is not on the use of the plant and machinery in the mobile tower, rather it is on the use of the land or building, as may be, for purpose of the mobile tower. That the tax is imposed on the "person engaged in providing telecommunication services through such mobile towers". (Section 145- A of the Gujarat Act) merely indicates that it is the occupier and not the owner of the land and building who is liable to pay the tax. Such a liability to pay the tax by the occupier instead of the owner is an accepted facet of the tax payable on land and building under Schedule VII List II of Entry 49."

(Emphasis supplied)

12. Since the definition of land in the CG Municipal Corporation Act is *pari materia* with the definition of land in the Gujarat Act, it is incorrect on the part of the petitioner to treat the subject levy of property tax, merely because while collecting the levy, it has used the term for laying of cables. The levy is in fact for use of land for laying of cable.

13. The next argument of learned counsel for the petitioner is that the Corporation has not adopted the procedure provided under Section 133 of the Act, 1956 to impose the subject tax. However, it is to be understood that Section 133 is for imposition of new tax and it is precisely for this reason, Section 133 (4) provides that nothing contained in this section shall apply to tax mentioned in clause (a) of sub-section (1) of Section 132, which shall be charged and levied in accordance with Section 135. The property tax being charged under Section 132 (1)(a) read with Section 132 (6)(j), the argument resting on non-compliance of Section 133 has no force.

14. In the return filed by both the Municipal Corporations of Raipur and Bhilai, it has been stated on oath that the respective Municipal Corporation have passed a resolution to impose property tax for the use of land for laying under ground cable on the basis of per running meter. Based on the resolution, assessments on the basis of records were carried and such data for laying under ground cable has been used for imposition of property tax against all the telephone/cellular companies like BSNL, Reliance, Airtel, etc. Thus it appears, the Corporation has followed the procedure prescribed under the Act, 1956 for carrying out assessment before issuing demand notice and there is absolutely no violation of the provisions of the Act, 1956.

15. On the basis of above discussion, I do not find any substance in both the Writ Petitions, which deserve to be and are hereby dismissed.