
(2012) 05 AHC CK 0107
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 1129, 1455 and 44856 of 2011

Shiv Sewak Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-05-2012

Acts Referred:

Constitution of India, 1950 — Article 285
Land Acquisition Act, 1894 — Section 23
Uttar Pradesh Municipal Corporation Act, 1959 — Section 122, 123, 148, 172,
172(a)

Citation : (2012) 7 ADJ 724

Hon'ble Judges : Sunil Ambwani, J; Pankaj Naqvi, J

Bench : Division Bench

Advocate : K.K. Roy, for the Appellant; S.M. Shukla, S.D. Kautilya and C.S.C.,
for the Respondent

Judgement

1. The petitioners are the elected corporators, ex-officio corporators, ex-corporators of Nagar Nigam and public spirited persons of the City of Allahabad. In these writ petitions, they have questioned the authority, the manner and the process of increase of the property tax levied on the properties situate within the municipal limits of Allahabad by the Municipal Commissioner, Nagar Nigam, Allahabad for the year 2011-12, u/s 172 of the U.P. Municipal Corporation Act, 1959 (in short the Act of 1959). (The last increase was made in the year 2003-04). They have questioned the adoption of Geographical Information System (GIS) in identifying and calculating the property tax, the fixation of the annual value of the properties for imposition of house tax, and have challenged the enhancement of monthly rates of rent and assessments of house tax by the Municipal Commissioner, Nagar Nigam w.e.f. 1.4.2011, and the orders passed by the State Government dated 21.9.2011, by which the Resolution Nos. 340 and 342 passed by the Nagar Nigam, Allahabad resolving to increase the house tax only by 2% from 11% to 13% and to cancel the GIS survey report have been suspended. They have also sought the relief to direct the Nagar Nigam to

increase its income by imposing legally permissible tax and fees under the Act of 1959. In Writ Petition No. 1129 of 2011, Shiv Sewak Singh and others v. State of U.P. and others, the petitioner Nos. 1 to 5 are the elected corporators of Nagar Nigam. Their term of 5 years has come to an end in December, 2011, during the pendency of these writ petitions. The Petitioner No. 6 is the ex-corporator. They have prayed for writ of certiorari for quashing the order dated 8.7.2011 passed by the Municipal Commissioner, Nagar Nigam, Allahabad by which he has in view of the various resolutions of the Nagar Nigam, with regard to proposed house tax assessment on increasing rates per sq. feet on the basis of GIS and local surveys stayed with immediate effect the increased revised unit area rates applicable w.e.f. June, 2010 and had directed that the unit area rates will continue to be operative on the basis of the previously applicable rates w.e.f. 1.4.2003 on the basis of the informations received by GIS and local surveys. They have also prayed for writ of mandamus commanding the respondents to invite objections from the public at large regarding imposition of new slab of house tax in accordance with the provisions of the Municipal Corporation Act and the Rules made thereunder.

2. In Writ Petition No. 44856 of 2011, Shri Kamlesh Singh, Shri Giri Shankar "Prabhakar" and Shri Chandra Prakash "Manga" claim themselves to be active social and political worker espousing social causes for the benefit of the society and for upholding and promoting the peaceful means of civil liberties and democratic way of life, combating the evils of the society and defending the weaker sections of the society and of women and children. They have prayed for similar reliefs namely for quashing the order dated 8.7.2011 of the Municipal Commissioner, Allahabad and for writ of mandamus directing the respondents to charge house tax on the basis of the method prevailing prior to the passing of the order dated 8.7.2011.

3. In Writ Petition No. 1455 of 2011, Shri Anugrah Narain Singh, Member of the Legislative Assembly from City North Constituency of Allahabad, who has been re-elected to the Legislative Assembly in March, 2012, and is also an ex-officio member of Nagar Nigam, Allahabad has prayed for quashing the order dated 21.9.2011 passed by the Principal Secretary, Urban Development, Lucknow, whereby execution of Resolution No. 340 and 342 of the House by Nagar Nigam was prohibited by the State Government. He has also prayed for directions in the nature of mandamus commanding the respondents not to enforce the new assessment of general tax as per GIS survey till the system is implemented fully in accordance with the guidelines of the Central Government.

4. We have heard Shri Umesh Narain Sharma, Senior Advocate assisted by Shri Chandan Sharma for the petitioners in Writ Petition Nos. 1129 of 2011 and 1455 of 2011, and Shri K.N. Tripathi, Sr. Advocate assisted by Shri Neeraj Tripathi in Writ Petition No. 44856 of 2011. Learned Standing Counsel appears for the State respondents. Shri Ravi Kant, Sr. Advocate assisted by Shri S.D. Kautilya appears for the Municipal Commissioner, Nagar Nigam, Allahabad.

5. The U.P. Municipal Corporation Act, 1959 provides for corporation authorities u/s 5 for carrying out the provisions of the Act for each city to be (a) Corporation; (aa) the Ward Committees; (b) An Executive Committee of the Corporation; (bb) the Mayor; (c) the Development Committee of the Corporation; (d) A Municipal Commissioner and an Additional Municipal Commissioner appointed by the Corporation under the Act and (e) in the event the Corporation establishes or acquires electricity supply or public transport undertaking or other public utility services, such other Committees as the Corporation may with the previous sanction of the State Government establish with respect thereto. The Corporation u/s 6 consists of a Mayor and (a) Corporators, whose number shall be fixed by the State Government but which shall not be less than 60 or more than 110, in addition to the nominated members; (b) nominated members, who shall be nominated by the State Government from amongst persons having special knowledge or experience in municipal administration and which shall not be less than 5 and more than 10; (c) ex-officio members comprising of the members of the house of the people and State Legislative Assembly representing constituencies comprising whole or part of city; (d) the ex-officio members, who are members of the Council of States and the State Legislative Council and who are registered as electors in the city and (e) the Chairpersons of the Committees, if any, established under Clause (e) of Section 5, if they are not members of the Corporation. Out of these the Mayor and the Corporators are chosen by direct elections from the wards.

6. The Corporation u/s 122 of the Act of 1959 can require the Municipal Commissioner to produce the documents and furnish returns and reports etc. Such powers u/s 123 are subject to sanction by Corporation of the necessary expenditure. Whereas elected body consisting of Mayor, elected corporators, nominated ex-officio member and Chairperson of the Committee is the legislative wing of the Corporation, the office of the Municipal Commissioner, Joint Commissioner, Tax Superintendent and others is the executive wing of the Corporation.

7. Section 172 of the Act provides for the taxes, which the Corporation is authorised to impose under the Act. Section 199 to Section 204 of the Act provides for the manner in which a tax is imposed by the Municipal Corporation. Section 172 to 181; Sections 199 to Section 204 and Sections 207 to 227 of the Act of 1959, relevant to decide the issues raised in these writ petitions are quoted as below :

172. Taxes to be imposed under this Act.--(1) For the purposes of this Act and subject to the provisions thereof and of Article 285 of the Constitution of India the Corporation shall impose the following taxes, namely,

(a) property taxes;

(b) a tax on vehicles other than mechanically propelled vehicles, and other conveyances plying for hire or kept within the City or on boats moored therein;

[(c) a tax on helicopters or any other type of planes, when they land on or take off from the helipads, airports, airsteps (sic airstrip) or places made for this purpose situated within the Corporation. The tax so imposed shall be paid by the airport authority or person or persons, or managers, or director or institution or department or agency involved in the maintenance, management and supervision of the airport, airstrip, helipad or the place as the case may be;

(d) a tax on trades and professions;

(e) a tax on deeds of transfer of immovable property situated within the city;

(f) a tax on vacant land situated within the city;]

(2) In addition to the taxes specified in sub-section (1) the Corporation may for the purposes of this Act and subject to the provisions thereof impose any of the following taxes, namely,--

[(a) a tax on callings and on holding a public or private appointment;

(b) [* * *]

(c) [* * *]

(d) [* * *]

(e) a tax on dogs kept within the City;

(f) a betterment tax;

(g) [* * *]

(h) a tax on advertisements not being advertisements- published in newspapers;

(i) a theatre tax; and

(J) [* * *]

[***]

(3) The Corporation taxes shall be assessed and levied in accordance with the provisions of this Act and the rules and bye-laws framed thereunder.

(4) Nothing in this section shall authorize the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution of India:

Provided that where any tax was being lawfully levied in the area included in the City immediately before the commencement of the Constitution of India such tax may continue to be levied and applied for the purposes of this Act until provision to the contrary is made by Parliament.

173. Property Taxes leviable.--(I) For the purposes of Sub-section (1) of Section 172 property taxes shall comprise the following taxes which shall, subject to the exceptions, limitations and conditions hereinafter provided, be levied on building

and lands in the city-

(a) a general tax which may be levied, if the Corporation so determines, on a graduated scale;

(b) a water tax;

(c) drainage tax leviable in areas provided with sewer system by the Mahapalika;

(d) a conservancy tax in areas in which the Mahapalika undertakes the collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cesspools.

(2) Save as otherwise expressly provided in this Act or Rules made there under, these taxes shall be levied on the annual value of buildings or land as the case may be.

Provided that the aggregate of the property taxes shall in no case be less than 22 percent and not more than 32 per cent of the annual value of the building or land or both assessed to such taxes, so however, that the general tax shall not be less than 10 per cent and not more than 15 per cent, the water tax shall not be less than 7.5 per cent and not more than 12.5 per cent, the drainage tax shall not be less than 2.5 per cent and not more than 5 per cent and the conservancy tax shall not be more than 2 per cent of the annual value.

174. Definition of "annual value".-- [(1)] "Annual value" means -

[(a) in the case of railway stations, colleges, schools, hostels, factories, commercial buildings, and other non-residential buildings, a proportion not below 5 per cent, to be fixed by rule made in this behalf of the sum obtained by adding the estimated present cost of erecting the building less depreciation at a rate to be fixed by rules, to the estimated value of the land appurtenant thereto; and]
[(b) in the case of a building or land not falling within the provisions of clause (a), twelve times the value arrived at on multiplying the carpet area of the building, or the area of the land, by the applicable minimum monthly rate of rent per square foot of the carpet area in the case of building or the applicable minimum monthly rate of rent per square foot of the area in the case of land, as the case may be, and for this purpose the minimum monthly rate of rent per square foot shall be such as may be fixed once in every two years by the Municipal Commissioner on the basis of the location of the building or the land, nature of the construction of the building, the circle rate fixed by the Collector for the purposes of the Indian Stamp Act, 1899 and the current minimum rate of rent in the area for such building or land and such other factors, and in such manner, as may be prescribed:

Provided that where the annual value of any building would, by reason of exceptional circumstances, in the opinion of the Corporation, be excessive if calculated in the aforesaid manners, the Corporation may fix the annual value at any less amount which appears to it equitable.

Explanation-I.--For the purpose of calculation of annual value the carpet area shall be calculated as under :

- (i) Rooms - fully measurement of internal dimension;
- (ii) Covered Verandah-full measurement of internal dimension;
- (iii) Balcony, Corridor, Kitchen and Store 50 per cent measurement of internal dimension;
- (iv) Garage one-fourth measurement of internal dimension;
- (v) Area covered by bathroom, latrines, portico and staircase shall not form part of the carpet area.

Explanation II.--The standard rent, the agreed rent or the reasonable annual rent of a building for the purposes of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 shall not be taken into account while calculating the annual value of that building.]

[(2) Where the Corporation so resolves, the annual value for the purpose of assessment of property taxes shall

(a) in the case of land and owner-occupied residential building which is not more than ten years old, be deemed to be 25 per cent less and if it is more than ten years but not more than twenty years old, be deemed to be 32.5 per cent less, and if it is more than twenty years old, be deemed to be 40 per cent less than the annual value determined under clause (b) of sub-section (1); and (b) in the case of residential building let on rent, which is not more than ten years old, be deemed to be 25 per cent more, and if it is more than ten years but not more than twenty years old, be deemed to be 12.5 percent more than the annual value determined under clause (b) of sub-section (1), and if it is more than twenty years old, be deemed to be equal to the annual value determined under clause (b) of sub-section (1).]

[175. [Restrictions on imposition of water tax]--The imposition of a tax under clause (b) of sub-section (1) of Section 173 shall be subject to the restriction that the tax shall not be imposed-

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

Explanation.--For the purposes of this section -

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

(b) "a plot of land" means any piece of land held by a single occupier, or held in common by several co-occupiers, whereof no one portion is entirely separated from any other portion by the land of another occupier or of other occupiers or by public property.]

176. Pooling of income from water-works, drainage works, etc.--The proceeds of the water, drainage and conservancy taxes and all other incomes derived from waterworks, drainage works, drains and excrementitious and polluted matter collected from privies, urinals and cesspools and from disposal of such matters and income from sullage farms shall be pooled together and shall be defrayed on purposes connected with the construction, maintenance, extension or improvement of such waterworks and drainage works and with the collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cesspools including maintenance of sullage farms,

177. General tax on what premises to be levied.--The general tax shall be levied in respect of all buildings and lands in the City except --

(a) buildings and lands solely used for purposes connected with the disposal of the dead;

(b) buildings and lands or portions thereof solely occupied and used for public worship or for a charitable purpose;

[(c) building solely used as schools and intermediate colleges whether aided by the State Government or not, fields, farms and gardens of Government aided institutes of research and development, playgrounds of Government aided or unaided recognised educational institutions and sports stadium;]

(d) ancient monuments as defined in the Ancient Monuments Preservation Act, 1904, subject to any direction of the State Government in respect of any such monument;

[(e) any building or land the annual value of which is rupees three hundred and sixty or less, provided that the owner thereof does not own any other building or land in the same city 14[and provided further that in the case of a building situated within thirty metres from the main or branch sewer line of the Corporation it has a latrine with arrangements for flushing]; [* * *]

(f) buildings and lands vesting in the Union of India except where provisions of clause (2) of Article 285 of the Constitution of India apply;

[(g) any owner-occupied residential building constructed on a plot of land measuring thirty square metres, or having a carpet area up to fifteen square metres provided that the owner thereof does not own any other building in the city; and

[(h) residential buildings occupied by the owner of building, which is located in such area which has been included in the limit of Corporation within five years or the facilities of roads, drinking water and street light provided in the area, whichever is earlier.]

178. Remission by reason of non-occupation --(1) When a building or land has remained vacant and unproductive of rent for ninety or more consecutive days during any year, the Municipal Commissioner shall remit or refund so much of each of the property taxes of that year as may be proportionate to the number of days that the said building or land has remained vacant and unproductive of rent.

(2) When a building consists of two or more separate tenements and one or more such tenements has remained vacant and unproductive of rent during any such period as aforesaid, the Municipal Commissioner may remit or refund such portion (if any) of each tax or instalment as may be prescribed:

Provided that no remission shall be granted unless notice in writing of the fact of the building or land being vacant and unproductive of rent has been given to the Corporation; and that no remission or refund shall take effect for any period previous to the day of the delivery of such notice.

(3) The burden of proving the facts entitling a person to remission or refund under this section shall be upon the person claiming the same.

(4) For the purposes of this section a building or land shall not be deemed to be vacant, if it is maintained as a pleasure resort or town or country house, or be deemed to be unproductive of rent, if it is let to a tenant who has a continuing right of occupation thereof, whether he is in actual occupation or not.

179. Primary responsibility for certain property taxes on annual value.--(1) Except where otherwise prescribed, every tax (other than a drainage tax or a conservancy tax) on the annual value of buildings or lands shall be leviable primarily from the actual occupier of the property upon which the tax is assessed, if he is the owner of the buildings or lands or holds them on a building or other lease from the Central or the State Government or from the Corporation, or on a building lease from any person.

(2) In any other case the tax shall be primarily leviable as follows, namely, -

(a) if the property is let from the lessor;

(b) if the property is sublet from the superior lessor;

(c) if the property is unlet from the person in whom the right to let the same vests.

[(d) if the property is let in pursuance of an order under the Uttar-Pradesh Urban Buildings (Regulations of Letting, Rent and "Eviction) Act, 1972, from the tenant.]

(3) On failure to recover any sum due on account of such tax from the person primarily liable, the Municipal Commissioner may recover from the occupier of

any part of the buildings or lands in respect of which it is due that portion thereof which bears to the whole amount due the same ratio as the rent annually payable by such occupier bears to the aggregate amount of rent payable in respect of the whole of the said building or lands, or to the aggregate amount of the letting value thereof in the authenticated assessment list.

(4) An occupier who makes any payment for which he is not primarily liable under the foregoing provisions shall, in the absence of any contract to the contrary, be entitled to be reimbursed by the person primarily liable.

180. Liability for payment of other such taxes.--(1) A drainage tax, or a conservancy tax on the annual value of buildings or lands shall be levied from the actual occupier of the property upon which the taxes are assessed:

Provided that, where such property is let to more occupiers than one, the Municipal Commissioner may at his option levy the tax from the lessor instead of from the actual occupiers.

(2) A lessor from whom a tax is levied under the proviso to sub-section (1) may, in the absence of a contract to the contrary, recover the tax from any or all of the actual occupiers.

181. Property taxes to be a first charge on premises on which they are assessed.--(1) Property taxes due under this Act in respect of any building or land shall, subject to the prior payment of the land revenue, if any, due to the State Government thereupon, be a first charge, in the case of any building or land held immediately from the State, upon the interest in such building or land of the person liable for such taxes and upon the movable property, if any, found within or upon such building or land and belonging to such person; and, in the case of any other building or land, upon the said building or land and belonging to the person liable for such taxes.

Explanation.--The term "property taxes" in this section shall be deemed to include any charges payable for water supplied to any premises and the costs of recovery of property taxes as specified in the rules.

(2) In any decree in a suit for the enforcement of the charge created by sub-section (1), the Court may order the payment to the Corporation of interest on the sum found to be due at such rate as the Court deems reasonable from the date of the institution of the suit until realization, and such interest and the cost of enforcing the said charge, including the costs of the suit and the cost of bringing the premises or movable property in question to sale under the decree, shall, subject as aforesaid, be a first charge on such premises and movable property alongwith the amount found to be due, and the Court may direct payment thereof to be made to the Corporation out of the sale proceeds.

199. Framing of preliminary proposals. --(1) When a Corporation desires to impose a tax specified in Sub-section (2) of Section 172 it shall by resolution direct the Executive committee to frame proposals specifying--

(a) the tax, being one of the taxes described in Sub-section (2) of Section 172 which it desires to impose;

(b) the persons or class of persons to be made liable, and the description of property or other taxable thing or circumstances in respect of which they are to be made liable, except where and in so far as any class or description is already sufficiently defined under Clause (a) or by this Act;

(c) the amount or rate leviable from each such person or class of persons;

(d) Any other matter referred to in Section 219 which the State Government requires by rule to be specified.

(2) Upon a resolution being passed under Sub-section (1) the Executive Committee shall frame the proposals and also prepare a draft of the rules which it desires the State Government to make in respect of the matters referred to in Section 219.

(3) The Executive Committee shall, thereafter, publish in the manner prescribed by rule the proposals framed under Sub-section (1) and the draft rules framed under Sub-section (2) alongwith a notice in the form to be prescribed by rule.

200. Procedure subsequent to framing proposals.--(1) Any inhabitant of the city may, within two weeks from the publication of the said notice, submit to the Corporation an objection in writing to all or any of the proposals framed under the preceding section, and the Corporation shall take any objection so submitted into consideration and pass orders thereon by special resolution.

(2) If the Corporation decides to modify the proposals of the Executive Committee, or any of them the "Municipal Commissioner shall publish the modified proposals and, if necessary, revised draft rules alongwith a notice indicating that the proposals and rules (if any) are in modification of proposals and rules previously published for objection.

(3) Any objection which may be received to the modified proposals shall be dealt with in the manner prescribed in Sub-section (1).

(4) When the Corporation has finally settled its proposals, the "Municipal Commissioner shall submit them alongwith the objections (if any) made in connection therewith to the State Government.

201. Power of State Government to reject, sanction or modify proposal.--Upon receipt of the proposals and objection under the preceding section the State Government may either refuse to sanction the proposals or return them to the Corporation for further consideration or sanction them without modification or with such modification not involving an increase of the amount to be imposed, as it seems fit.

202. Resolution of Corporation directing imposition of taxes.--(1) When the proposals have, been sanctioned by the State Government, the State

Government, after taking into consideration the draft rules submitted by the Corporation, shall proceed forthwith to make such rules in respect of the tax as far the time being it considers necessary.

(2) When the rules have been made the order of sanction and a copy of the rules shall be sent to the Corporation, and thereupon the Corporation shall by special resolution direct the imposition of the tax with effect from a date to be specified in the resolution.

203. Imposition.--(1) A copy of resolution passed u/s 202 shall be submitted to the State Government.

(2) Upon receipt of the copy of the resolution the State Government shall notify in the official Gazette, the imposition of the tax from the appointed date, and the imposition of tax shall in all cases be subject to the condition that it has been so notified.

(3) A notification of the imposition of a tax under Sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act.

204. Procedure for altering taxes.-- The procedure for abolishing a tax, or for altering a tax in respect of the matters specified in Clauses (b) and (C) of Sub-section (1) of Section 199 shall, so far as may be, be the procedure prescribed by Sections 199 to 202 for the imposition of a tax.

207. Preparation of assessment list.--[The Municipal Commissioner shall cause areawise rental rates and an assessment list in the city or part thereof to be prepared from time to time, in accordance with the manner prescribed in the Rules.]

[207-A. Option to deposit self-assessment property tax.--Notwithstanding any other provisions of this Act, the owner or occupier primarily liable for payment of tax in respect of a residential building may himself assess every year his liability regarding the amount of property tax payable by him and in doing so he may himself determine the annual value of the building in accordance with the provisions of clause (b) of Section 174, and deposit the property tax so assessed by him in such manner, together with a statement of such self-assessment in such form, as may be prescribed.]

[207-B. Submission of the details of houses or lands for assessment of tax.-- (1) For the purposes of annual rental value, the owner or the occupier of every house or land shall submit a property return up to a date as may be prescribed.

(2) Any person failing to submit the return referred to in sub-section (1) without proper reasons shall be liable to pay penalty as may be prescribed.

(3) The penalty referred to in sub-section (2) may be compounded by the Municipal Commissioner.]

208. Publication of list--[The Municipal Commissioner shall publish the list prepared u/s 207 in accordance with the manner prescribed in the rules.]

[209. Objections on proposed rates and list.--(1) The Municipal Commissioner or an officer authorised by him in this behalf shall dispose of the objections in accordance with the manners prescribed in the rules.]

[210. Authentication and custody of list--[(1) The Municipal Commissioner or an officer authorised by him in this behalf, shall authenticate by his signature the areawise rental rates and the assessment list of the city or any part thereof, as the case may be.]

(2) Every list so authenticated shall be deposited in the office of the Corporation.

(3) As soon as the list for the entire City is so deposited it shall be declared by public notice to be open for inspection.]

211. Revision and duration of list-- (1) A new assessment list shall ordinarily be prepared in the manner prescribed by Sections 207 to 210 once in every 31 [two] years.

(2) Subject to any alteration or amendment made u/s 213 and to the result of any appeal u/s 472 every valuation and assessment entered in a valuation list shall be valid from the date on which the list takes effect 32[in the City or part thereof and until the first day of the month next following the completion of the new list]:

[Provided that where as a result, of any order or adjudication of a Court of law the new assessment list or any portion thereof cannot take effect, the old assessment list or the corresponding portion thereof shall, subject to such order or adjudication, be deemed to have continued to be effective.]

212. Conclusiveness of entries in list.--An entry in an assessment list shall be conclusive proof -

(a) for any purpose connected with a tax to which the list refers, of the amount leviable in respect of any building or land during the period to which the list relates, and

(b) for the purpose of assessing any other Corporation tax, of the annual value of any building or land during the said period.

213. Amendment and alteration of list.--[The Municipal Commissioner or an officer authorised by him in this behalf] may at any time alter or amend the assessment list.

(a) by entering therein the name of any person or any property which ought to have been entered or any property which has become liable to taxation after the authentication of the assessment list; or

(b) by substituting therein for the name of the owner or occupier of any property

the name of any other person who has succeeded by transfer or otherwise to the ownership or occupation of the property; or

(c) by enhancing the valuation of, or assessment on, any property which

[has become incorrectly valued or assessed or which, by reason of fraud, misrepresentation or mistake, has been incorrectly valued or assessed]; or

(d) by revaluing or re-assessing any property the value of which has been increased by additions or alterations to buildings; or

(e) where the percentage on the annual value at which any tax is to be levied has been altered by the Corporation under the provisions 36 [of this Act] by making a corresponding alteration in the amount of the tax payable in each case; or

(f) by reducing upon the application of the owner or on satisfactory evidence that the owner is untraceable and the need for reduction established, upon its own initiative, the valuation of any building which has been wholly or partly demolished or destroyed; or

(g) by correcting any clerical, arithmetical or other apparent error:

Provided that the Executive Committee or the sub-committee, as the case may be, shall give at least one month's notice to any person interested in any alteration [or amendment] which the Executive Committee or sub-committee proposes to make under clauses (a), (b), (c) or (d) of sub-section (1) and of the date on which the alteration [or amendment] will be made.

[(1-A) For the removal of doubts it is hereby declared that it shall not be necessary to follow the procedure laid down in Sections 199 to 203 or in Sections 207 to 210 in respect of any alteration made under clause (e) of subsection (1) as a result of a determination of the rate of tax u/s 148.]

(2) The provisions of sub-sections (2) and (3) of Section 209 applicable to the objections thereunder mentioned shall, so far as may be, apply to any objection made in pursuance of a notice issued under sub-section (2) and to any application made under clause (f) of sub-section (1).

(3) Every alteration 40 [or amendment] made under sub-section (1) shall be authenticated by the signature or signatures of the person authorized by Section 210 and, subject to the result of an appeal u/s 472, shall take effect from the date on which the next instalment falls due.

[214. Obligation to supply informations for purpose of amendment.--(1) When any building is constructed or reconstructed or any addition is made thereto by an owner or occupier and the covered area exceeds by more than 25 per cent then it shall be compulsory for him to submit its information to the Municipal Commissioner within sixty days of the date of completion or date of occupation whichever is earlier, in the prescribed form.

(2) The owners or occupiers, who do not submit information referred to in sub-section (1) without proper reasons, shall be liable to be punished with fine which may extend to an amount equal to double of the assessed general tax or Rs. 500 per day of the delay whichever is less.

(3) The Municipal Commissioner may compound the proposed penalty under sub-section (2).]

215. Obligation to give notice of re-occupation.--The owner of a building or land for which a remission or refund of the tax has been given u/s 178 shall give notice of the re-occupation of such building or land within fifteen days of such re-occupation.

216. Consolidation of taxes.--For the purpose of assessing, levying or collecting, but not for the purpose of imposing or granting exemption from, the property taxes described in Section 173 a Corporation may consolidate any two or more of such taxes:

Provided that in any register or assessment list relating to a consolidated tax and used for the purpose of informing a person of his liability thereunder or for the purpose of securing compliance with the provisions of Section 175 or Section 176 the Municipal Commissioner shall, in the manner prescribed, apportion the consolidated tax amongst the several taxes comprised therein, so as to show approximately the amount assessed or collected on account of each separate tax.

217. Deduction required by exemptions. --(1) In assessing a consolidated tax effect shall be given to any partial or total exemption from any single tax comprised therein.

(2) Such effect shall be given (a) in the case of partial exemption, by means of the deduction from the total amount of the consolidated tax which would otherwise be leviable or assessable in respect of any buildings, or lands or both, to which the exemption applies, of a proportionate part, corresponding to the exemption, of the amount which might otherwise have been assessed on account of the single tax, and

(b) in the case of a total exemption, by means of the deduction from such total amount of the whole amount assessed on account of the single tax.

218. Summary proceedings may be taken against persons about to leave the City.--(1) If any sum recoverable under the provisions of this Chapter is due or is about to become due from any person, and if the Municipal Commissioner shall have reason to believe that such person is about to leave the limits of the City the Municipal Commissioner may direct the immediate payment by such person of such sum and cause a bill for the same to be presented.

(2) If, on presentation of such bill, the said person does not forthwith pay the said sum or does not furnish security to the satisfaction of the Municipal Commissioner, the amount shall be levied by distress and sale of his movable

property or by attachment and sale of his immovable property in the manner specified in Chapter XXI except that it shall not be necessary to serve upon him any notice of demand and the Municipal Commissioner's warrant for distress and sale may be issued and executed without any delay.

219. Rules as to assessment, collection and other matters.--The following matters shall be regulated and governed by rules except in so far as provision therefore is made by this Act, namely -

- (a) the assessment, collection or composition of taxes, and, [* * *] 42;
- (b) the prevention of evasion of taxes;
- (c) the system on which refunds shall be allowed and paid;
- (d) the fees for notices demanding payments on account of a tax and for the execution of warrants of distress;
- (e) the rates to be charged for maintaining livestock distrained; and
- (f) any other matters relating to taxes in respect of which this Act makes no provision or insufficient provision and provision is, in the opinion of the State Government, necessary.

220. Composition.--(1) Subject to the provisions of any rule, a Corporation may, by a special resolution confirmed by the State Government, provide that all or any persons may be allowed to compound for a tax.

(2) Every sum due by reason of the composition of a tax under sub-section (1) shall be recoverable in the manner provided by Chapter XXI.

221. Exemption.--(1) A Corporation may exempt, for a period not exceeding one year, from the payment of a tax, or any portion of a tax imposed under this Act, any person who is in its opinion, by reason of poverty unable to pay the same, and may renew such exemption as often as it deems necessary.

(2) A Corporation may, by a special resolution confirmed by the State Government, exempt from the payment of a tax, or any portion of a tax, imposed under this Act, any person or class of persons or any property or description of property.

(3) The State Government may, by order, exempt from the payment of a tax, or any portion of a tax, imposed under this Act, any person or class of persons or any property or description of property 43[for such period as may be specified in the order],

[221-A. Interest payable by owner or occupier.--(1) Where the owner or occupier primarily liable for payment of tax in respect of any premises has not paid by the date fixed by the Corporation in this behalf the tax or a part of the tax payable by him under this Act, simple interest at the rate of twelve per cent per annum from the date fixed for payment of tax up to the date of payment shall be

payable by him upon the amount that has remained unpaid.

(2) Without prejudice to the provisions of sub-section (1), where the owner or Occupier of any premises has paid tax u/s 207-A on the basis of his own assessment and the tax so paid is found by the Corporation to be less than the amount of tax payable by him, simple interest at the rate of twelve per cent per annum upon the amount by which the tax so paid falls short of the tax which is found to be payable, shall be payable by him from the date fixed by the Corporation for payment of tax up to the date the amount of such difference is paid.

221-B. Statement of carpet area and area.--(1) Every owner or occupier primarily liable for payment of tax in respect of any premises shall submit to the Corporation a statement in respect of the carpet area of the building, or in respect of the area of the land, as the case may be, in such form and at such times, as may be prescribed in this behalf.

(2) If the Corporation is, on an enquiry conducted in this behalf in such manner as may be prescribed, satisfied that the statement submitted under sub-section (1) is factually incorrect in as much as any part of the carpet area of building or any part of the area of the land, as the case may be, has been concealed, the Corporation may impose a penalty not exceeding one thousand rupees on the defaulter in such manner as may be prescribed in this behalf.]

222. Obligation to disclose liability.-- (1) The Corporation may by written communication call upon an inhabitant of the City to furnish such information as may be necessary in order to ascertain--

- (a) whether such inhabitant is liable to pay a tax imposed under this Act;
- (b) at what amount he should be assessed;
- (c) the annual value of the building or land which he occupied and the name and address of the owner.

(2) If an inhabitant so called upon to furnish information omits to furnish it or furnishes information which is untrue, he shall be liable upon conviction to a fine which may extend to five hundred rupees.

223. Powers of discovery.--The Municipal Commissioner or any other officer or servant of the Corporation authorised in this behalf may enter, inspect and measure a building for the purposes of valuation, or enter and inspect a stable, coach house or other place wherein, there is reason to believe that there is a vehicle or animal liable to taxation under this Act and the provisions of Sections 560, 562 and 563 shall apply to such inspections.

224. Savings.--No assessment list or other list, notice, bill or other such document specifying, or purporting to specify, with reference to any tax, charge, rent or fee, any person, property, thing or circumstances shall be invalid by reason only of the mistake in the name, residence, place of business or

occupation of the person, or in the description of the property, thing or circumstances, or by reason of any more clerical error or defect of form and it shall be sufficient that the person, property, thing or circumstance is described sufficiently for the purpose of identification, and it shall not be necessary to name the owner or occupier of any property liable in respect of a tax.

225. Any tax imposable under this Act may be increased or newly imposed by way of imposing supplementary taxation. --Whenever the Corporation determines to have recourse to supplementary taxation in any financial year, it shall do so by increasing, for the unexpired portion of the said year, the rates at which any tax imposable under this Act is being levied, subject to the limit and conditions for such tax prescribed in this Act or in the orders or sanction of the State Government or by levying, with due sanction, a tax imposable under this Act but not being levied at the time being.

226. Bar to jurisdiction of Civil and Criminal Courts in matters of taxation.-- No objection shall be taken to a valuation or assessment nor shall the liability of a person to be assessed or taxed be questioned in any other manner or before any other authority than is provided in this Act.

227. Power to make rules.--(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power such rules may provide for -

(a) matters referred to in Section 219;

(b) maintenance and inspection of register regarding taxes on vehicle, boat and animal;

(c) [* * *]⁴⁵

(d) [* * *]⁴⁶

(e) advance payment of taxes;

(f) summary disposal of objections to distress and attachment;

(g) the conditions on which exemptions and refunds of taxes shall be allowed.

8. The U.P. Municipal Corporation Property Tax Rules, 2000 provides for the procedural part of the imposition, calculation and realisation of the property tax by the Municipal Corporation.

9. The property tax in the city of Allahabad were last revised in the year 2003 and have been paid by the citizens of Allahabad, who own properties, without any protest and subject to objections on individual assessments and appeal provided in Section 472 of the Act of 1959.

10. In the 2001 census out of total 1027 million people living in India

approximately 28% or 285 million people were reported to be living in urban area. As a result of liberalisation policy adopted by the Government of India, the share of the urban population was projected to increase to about 40% of the total population by the year 2021. By the year 2011 urban areas were projected to contribute about 65% of the Gross Domestic Product (GDP). It was felt by Government of India that this higher productivity is contingent upon the availability and quality of infrastructure services. Urban economic activities are depending upon the infrastructure such as power, telecom, roads, water supply, and mass transportation coupled with civil infrastructure such as sanitation and solid waste management.

11. The 74th Constitutional Amendment Act envisages the model municipal law with potential for further reform oriented steps in order to meet the development objectives, the need for National-Level Reform-Link Investments the need for sustainable infrastructure development and the need for efficiency enhancement, which includes the need to take measures to enhance efficiency in urban service deliveries. The Jawahar Lai Nehru National Urban Renewal Mission (JNNURM) imposes to encourage reforms and was conceived for a National Common Minimum Programme of the Government of India giving higher priority to the development and expansion of physical infrastructure, comprehensive programme of Urban Renewal and expansion of social housing in town and cities paying attention to the needs of slum dwellers, continue to achieving the millennium development rules and the need for a mission led initiative. The objectives, scope, strategy, duration, and expected outcomes of the JNNURM are summarised in the overview of the mission document as follows :

II. Jawaharlal Nehru National Urban

Renewal Mission

1. The Mission

Mission Statement: The aim is to encourage reforms and fast track planned development of identified cities. Focus is to be on efficiency in urban infrastructure and service delivery mechanisms, community participation, and accountability of ULBs/ Parastatal agencies towards citizens.

2. Objectives of the Mission

(1) The objectives of the JNNURM are to ensure that the following are achieved in the urban sector;.

(a) Focussed attention to integrated development of infrastructure services in cities covered under the Mission;.

(b) Establishment of linkages between asset-creation and asset-management through a slew of reforms for long-term project sustainability;.

(c) Ensuring adequate funds to meet the deficiencies in urban infrastructural services;.

- (d) Planned development of identified cities including peri-urban areas, outgrowths and urban corridors leading to dispersed urbanisation;.
- (e) Scale-up delivery of civic amenities and provision of utilities with emphasis on universal access to the urban poor;.
- (f) Special focus on urban renewal programme for the old city areas to reduce congestion; and
- (g) Provision of basic services to the urban poor including security of tenure at affordable prices, improved housing, water supply and sanitation, and ensuring delivery of other existing universal services of the Government for education, health and social security.

3. Scope of the Mission

The Mission shall comprise two Sub- Missions, namely:

- (1) Sub-Mission for Urban Infrastructure and Governance: This will be administered by the Ministry of Urban Development through the Sub-Mission Directorate for Urban Infrastructure and Governance. The main thrust of the Sub-Mission will be on infrastructure projects relating to water supply and sanitation, sewerage, solid waste management, road network, urban transport and redevelopment of old city areas with a view to upgrading infrastructure therein, shifting industrial and commercial establishments to conforming areas, etc.
- (2) Sub-Mission for Basic Services to the Urban Poor: This will be administered by the Ministry of Urban Employment and Poverty Alleviation through the Sub-Mission Directorate for Basic Services to the Urban Poor. The main thrust of the Sub-Mission will be on integrated development of slums through projects for providing shelter, basic services and other related civic amenities with a view to providing utilities to the urban poor.

4. Strategy of the Mission

The objectives of the Mission shall be met through the adoption of the following strategy:

- (1) Preparing City Development Plan: Every city will be expected to formulate a City Development Plan (CDP)

indicating policies, programmes and strategies, and financing plans.

- (2) Preparing Projects: The CDP would facilitate identification of projects. The Urban Local Bodies (ULBs) / parastatal agencies will be required to prepare Detailed Project Reports (DPRs) for undertaking projects in the identified spheres. It is essential that projects are planned in a manner that optimises the life-cycle cost of projects. The life-cycle cost of a project would cover the capital outlays and the attendant O&M costs to ensure that assets are in good working condition. A revolving fund would be created to meet the O&M requirements of assets created, over the planning horizon. In order to seek JNNURM assistance,

projects would need to be developed in a manner that would ensure and demonstrate optimisation of the life-cycle costs over the planning horizon of the project.

(3) Release and Leveraging of Funds: It is expected that the JNNURM assistance would serve to catalyse the flow of investment into the urban infrastructure sector across the country. Funds from the Central and State Government will flow directly to the nodal agency designated by the State, as grants-in-aid. The funds for identified projects across cities would be disbursed to the ULB/Parastatal agency through the designated State Level Nodal Agency (SLNA) as soft loan or grant-cum-loan or grant. The SLNA / ULBs in turn would leverage additional resources from other sources.

(4) Incorporating Private Sector Efficiencies: In order to optimise the life-cycle costs over the planning horizon, private sector efficiencies can be inducted in development, management, implementation and financing of projects, through Public Private Partnership (PPP) arrangements.

5. Duration of the Mission

The duration of the Mission would be seven years beginning from the year 2005-06. Evaluation of the experience of implementation of the Mission would be undertaken before the commencement of Eleventh Five Year Plan and if necessary, the program calibrated suitably.

6. Expected Outcomes of the JNNURM

On completion of the Mission period, it is expected that ULBs and parastatal agencies will have achieved the following:

- (1) Modern and transparent budgeting, accounting, financial management systems, designed and adopted for all urban service and governance functions
- (2) City-wide framework for planning and governance will be established and become operational
- (3) All urban residents will be able to obtain access to a basic level of urban services
- (4) Financially self-sustaining agencies for urban governance and service delivery will be established, through reforms to major revenue instruments
- (5) Local services and governance will be conducted in a manner that is transparent and accountable to citizens
- (6) E-governance applications will be introduced in core functions of ULBs/ Parastatal resulting in reduced cost and time of service delivery processes.

12. The city of Allahabad is an eligible city for receiving assistance under JNNURM as its population is of more than 4 million people as per 2001 census. The sectors and projects eligible for assistance under the Sub-Mission Directorate

for Urban Infrastructure and Governance, as provided in the overview is as follows :

The sectors and projects eligible for JNNURM assistance would be as follows:

(1) Urban renewal, that is, redevelopment of inner (old) city areas [including widening of narrow streets, shifting of industrial and commercial establishments from non-conforming (inner city) areas to conforming (outer city) areas to reduce congestion, replacement of old and worn out pipes by new and higher capacity ones, renewal of the sewerage, drainage, and solid waste disposal system etc.];

(2) Water supply (including desalination plants) and sanitation.

(3) Sewerage and solid waste management.

(4) Construction and improvement of drains and storm water drains.

(5) Urban transportation including roads, highways, expressways, MRTS, and metro projects.

(6) Parking lots and spaces on PPP basis.

(7) Development of heritage areas

(8) Prevention and rehabilitation of soil erosion and landslides only in cases of special category States where such problems are common; and

(9) Preservation of water bodies.

13. One of the main objectives of the Constitutional 74th Amendment is to make urban local bodies efficient units of self-governance. The amendments are provided to become autonomous and to determine more on their own resources. The overview of JNNURM projects property tax to be the single most important taxes are not source available to the urban local bodies and encourages to show stock increase to achieve the objectives. It proposes reforms of property tax systems. The guidelines emphasised the need for proper mapping of properties using GIS system so that ULB is able to have full record of properties in the city and to bring them under the tax net; make the system capable of self-assessment, which is formula driven and where the property owner can calculate the tax due and for improving collections to achieve at least 85% of demand. The objective of the reform as provided in the Overview of JNNURM Mission is to :

-Tap the full potential of property tax as a source of own revenue of the ULB.

- Bring all properties into the tax net.

- Introduce system improvements to increase efficiency in tax administration focusing on the entire value chain - coverage, billing, collection and enforcement.

- Make the system of assessment transparent and simple so as to be easily understood and interpreted by all property owners.

- Eliminate/reduce subjectivity and discretion in assessment particularly at the field level.
- Remove existing inequities in tax burden on similarly placed or similarly used properties.
- Enable property owners/occupiers to calculate tax liability on their own, file self assessment forms and pay tax on that basis, putting the onus upon the assesses to pay tax on time.
- Build in buoyancy and elasticity in the tax base to achieve revenue growth.
- Reward honest tax payers and penalize defaulters.
- Have a proper information system for monitoring to ensure full coverage in assessment and full collection of tax dues.
- Make the systems of assessment, collection and information citizen friendly.
- Introduce efficient mechanisms for speedy grievance redressal and dispute settlement.

14. The rationale for the reform, to strengthen the financial autonomy of the local body is provided in the overview as follows:

1. Rationale for the reform

In most states the weaknesses and deficiencies in the current system of property taxation does not allow for full exploitation of the revenue potential of this tax. Property tax is one of the most under exploited tax instruments. To strengthen the financial autonomy of the local body a holistic reform of the property tax system is essential. The present deficiencies occur on account of the present assessment systems as also poor administrative and information systems currently in place.

Rental Value Basis: The system of property taxation followed in most Municipal Acts is a rent-based rateable valuation system where the annual value or the annual rental value (ARV) of the property shall be deemed to be "the gross annual rent at which the land or buildings might, at the time of assessment, be reasonably expected to be let from year to year...

Capital Value Basis: In many Municipal Acts there is an alternative provision for assessment of properties (particularly those self occupied) on a capital value basis. The annual value is arrived at on the basis of estimated market value of land and cost of construction at the time of construction or acquisition.

ARV restricted by Judicial Pronouncements: Over the last few decades a series of judgments of the Supreme Court have given a severe set-back to the revenue aspirations of municipal bodies, since they are required to assess annual value for the levy of property tax on the basis of fair rent" as determined under the relevant Rent Control Act, irrespective of the actual rent received, or whether a

fair rent has been determined by a Rent Control Court or not. Even in the cases where the municipal law provided for a non-obstante clause, the Court ruled that the municipal authorities should not consider the actual rent as the only yardstick. It has been held that reasonable determination of rent by the municipal authorities needs application of mind, keeping in mind all relevant factors and circumstances. This immediately leads to a scope for subjective assessment and discretion at the level of the assessing officer, as well as subjective interpretation by the appellate authority.

Other problems with the Rental based system: Besides the major issue above there are other problems with the ARV system:

- Rent deeds often suppress actual rent paid - with rent being collected in other forms like interest free deposits, partnership fees, charges for amenities and services.
- Difficulty in arriving at hypothetical "rent" in the case of self-occupied properties, particularly residential properties which have never been rented out.
- Problems of assessing properties like educational and medical institutions, clubs and entertainment places, hotels and guest houses.

Problems with a Capital Value based system: The system of assessment based on Capital Value has its own share of problems:

- In the absence of a free open market in land and property transactions, the purchase value of the property, particularly in metros, does not reflect the true "use" value of the property, but is more a speculative price.
- Hence there is a tendency to under report transaction prices, to escape stamp duty and registration.
- There is limited availability of a computerized data base of property transactions against which an objective assessment can be made.
- Assessing staff are not professionally trained valuers to make scientific assessments.
- Since the capital value is determined with reference to the date of acquisition or construction, the tax base gets frozen, and there is no buoyancy in the tax.
- This also leads to wide disparities and inequity in similarly placed properties assessed at different points of time.
- There is uncertainty in what category of assets in the property should be assessed (eg central air-conditioning systems, captive power generation systems).

Administrative deficiencies: Partly on account of the inbuilt deficiencies in the assessment systems noted above, and partly due to poor administrative systems in place, the present property tax systems have the following problems/

drawbacks:

- Scope for subjective assessments in a corruption-prone environment.
- Scope for excessive use of discretionary powers leading to possible collusion between the assessor and assessee.
- Non-transparency in the assessment process.
- Self-assessment is not possible, and the onus of annual assessment is on the local body which is required to issue notice of demand every year.
- Higher social costs due to litigation, and consequent delayed recovery of taxes.
- Lack of a systematic computerized database - resulting in a large proportion of the properties being outside the tax net.
- Lack of efficient mechanisms for detecting and follow up on defaulters.

Benefits from reforms: If the reforms are carried out in a comprehensive manner the benefits expected are:

- Increased revenue for the urban local body, and buoyancy in revenues to keep pace with inflation and increased costs.
- Simple to understand, transparent citizen-friendly systems and processes.
- System capable of self assessment and ease of payment by the property owners.
- Lower (possibly almost nil) litigation and associated costs, decrease in revenues locked up for years in litigation.
- Cleaner administration, increasing the faith and trust of citizens in the ULB and councilors.
- Good database and information systems to enable better tax planning and policy making by the ULB.

15. It is further provided in the overview document that the reforms in the property tax system should cover (a) Rate and Base Structure; (b) Valuation and Assessment Systems; (c) Tax Administration and (d) Citizen Interface Mechanisms. The rate and base structure for various properties are unrealistic, low and static, which are increased from year to year reaching a very high level and which result into residence on the part of citizens. Generally one month's rent as provided tax is proposed to be treated as reasonable with lower and higher limits for the rates of tax from 5% to 20% and with freedom to adjust the rate without Government intervention, so that the yield is sufficient to cover the cost of providing the basic urban services. The overview document proposed a flat rate and alternatively progressive sliding scale for property having higher annual value bearing a higher rate of tax with clear distinction between the user category namely residential, institutional and commercial and rationale

exemptions for places of worship, agricultural land and charitable institutions. Even when the properties are exempt from tax, the service user charge may be levied to cover the cost of certain basic services such as street cleaning, solid waste management, parking etc. The valuation and assessment provided in the overview document is as follows :

Valuation and Assessment:

As has been spelt out in Section II, the present system of assessment is not transparent and not capable of self-assessment. It rewards the unscrupulous and penalizes the honest tax payer. It is in this context that the Government of India had recommended adoption of a system which is formula based and capable of self-assessment. Different cities have tried out alternative approaches to introduce a self-assessment system. These may be a capital value based system, a rental value based system or a unit area system based on multiple factors. Each state/ULB should decide which system is most suitable for it, given its local circumstances. (It must be mentioned that JNNURM does not mandate that there should be a change in the system of assessment since this may take a couple of years to finalise and implement. The first priority should be for achieving full coverage of assessments within the existing system and full recovery of taxes.)

Whatever be the basis decided upon the system of assessment should a) be objective based on clearly enunciated parameters; b) be formula based so that it is capable of self- assessment; c) eliminate or at least minimize discretion at the field level; and d) be citizen-friendly. The unit area system is enunciated in more detail below.

- The unit area system: The unit area system is a simple arithmetical system of calculation of property tax based on covered area of the building and the unit area value or unit area tax for the category (of locality or amenity, etc.) in which the premises is located through which it is possible for any citizen to self-assess his property tax and file his return form. (This could also be applied to vacant land).

- Grouping of localities: In the unit area value system the entire city has to be grouped into somewhat homogenous categories for specifying a unit area value. Such groupings could be done taking into consideration factors like average rental value, average capital value of land, quality of physical infrastructure, availability of social and market infrastructure, type of development, economic classes of occupants, etc. The factor(s) that should be considered should be decided by the ULB taking into consideration local requirements and availability of information.

- In Patna, the city is classified into three grades based on street size.

- In Ahmedabad, the wards have been grouped into 4 broad categories mainly on land value basis.

- In Delhi 2000 and odd colonies/ localities have been classified into 7 categories

taking into account ten different factors.

- In Hyderabad, the average rental value for each locality, for each type of use has been prescribed.

- Karnataka has been working on a capital value based system.

- Municipal Valuation Committee: Whatever be the factors that are chosen for the classification, these must be clearly specified in the statute. Further, the process adopted should be objective, transparent and provide for a reasonable opportunity for the tax payers to file objections and be heard. To ensure this it is desirable that a Municipal Valuation Committee be appointed consisting of experts and persons experienced in urban administration, taxation, and representatives from the local body. The manner of constitution of this Committee, its functions, and the processes that will be adopted to ensure fair consultation with the citizens should be clearly laid down in the statute. Since this process would take time the State may consider, at the first stage, to incorporate some guidelines in the Rules to ensure greater objectivity in assessment and minimize discretion at the field level.

- Other factors for grouping of properties : Different multiplicative factors can be prescribed to adjust the location group-wise unit area value to individual premises level. These factors should also be clearly defined in the statutory frame work eliminating any scope for subjectivity. The factors that could be considered are:

Structure: Pucca, semi-pucca, katcha

Use: Residential, educational, medical, public purpose, industrial, office, commercial, recreational, hotels

Age: On the basis of the year of construction

Occupancy: Rented or self-occupied

Street: On the basis of the category or width of the street on which the property is located

- Unit Tax or Unit Annual Value: In a unit area system, one could either fix the tax per unit area for each group, as in the case of Ahmedabad and Patna. In this case: $\text{Tax} = \text{Unit Rate of Tax} \times \text{Area}$.

Alternatively, one can prescribe the annual value per unit area as in case of the Municipal Corporation of Delhi. In this case: $\text{Tax} = \text{URV} \times \text{Rate of Tax} \times \text{Area}$.

The former has the advantage of being simple to understand and easy to apply.

In the latter there is greater flexibility for raising and lowering the tax burden by simply adjusting the tax rate without altering the annual value. Another advantage is the scope for bringing in equity considerations into the tax structure by having a graduated rate of tax or different rates of tax for different types of

properties. Owners with more built-up area or higher annual value can be taxed at a higher rate, or some lower cut-off covered area or annual value can be prescribed for levy of tax to give relief to poorer people. The annual value could also become the base for levying other taxes or user charges.

- Self-Assessment: In this system individual owners or any other person liable to pay property tax can easily determine their tax liability by calculating the tax as follows:

Step 1 Note the base unit area value (per sqft or sq mtr) for the respective category of locality in which the property is.

Step 2 Annual Value (AV) = Base unit area value (UAV) x Multiplicative factors (f1, f2, f3) etc) x Covered Area (A)

Step 3 In case the multiplicative factors for the different portions of the property are different then:

Total AV = (AV of portion 1) + (AV of portion 2) + (AV of portion 3) +....

Step 4 Tax = (AV x Rate of Tax) minus (rebate/concession applicable)

- Advantages of Unit Area System: The above system is objective, transparent, comprehensive and yet simple and equitable. It is capable of self-assessment. The parameters entering the assessment being clear and measurable there is minimum scope for discretion, and hence chances of litigation are reduced.

16. The JNNURM overview document also provides for improvement in discovery and determination of property ownership, property identification code, GIS, tax mapping and computerisation, onus for assessment, suppression of information or filling of wrong information, payment of tax, indexation, agency for administration of tax, monitoring and enforcement. The topics of GIS, tax mapping and computerisation and onus for assessment relevant for the purposes of these writ petitions are quoted as below :

GIS, Tax Mapping and Computerisation : In the larger municipalities the database so created should be linked to a GIS system and digitized urban maps. The initial mapping exercise should be outsourced and carried out by a professional firm having adequate experience in this field. But in the long term it is recommended that the municipality set up a fully equipped urban mapping division utilizing modern GIS technologies and be manned by the trained staff. This would serve not only the Revenue Department but also other departments of municipality. This entire database should be computerized so that linkages can be established with other data in the corporation such as building sanctions, trade licenses, as well as with the self-assessment and revenue collection data.

Onus for Assessment: Under a self-assessment system the onus for filing property returns on a regular basis and paying the tax within a prescribed time schedule on the basis of the self-assessment should be on the owner. Failure to file the self-assessment should attract a penalty. Every owner shall be required to

give information in regard to the change of status of his property by way of completion of structure /addition to the building, change of occupancy or use status or any other such event which shall have an effect of changing the property tax liability.

17. The tax mapping is to be covered by GIS mapping and field survey, targettable, achieve, year to year and the cumulative in the reform period, providing for the number of properties, covered area, ward wise and user category wise.

18. In Municipal Committee, Patiala v. Model Town Residents Association and others (Civil Appeals No. 684 of 2003) decided on 1.8.2007 the Supreme Court considered the Punjab Amending Act 11 of 1994, substituting the definitions of "annual value" u/s 3 (1) (b) and "market value" u/s 3 (8-aa) in the Punjab Municipal Act, 1911, which were held by the Punjab & Haryana High Court to be discriminatory and unconstitutional. The discussion on the concept of municipal taxation relevant for the purpose of this case in paragraphs-9, 10 and 11 of the judgment is quoted as below :

9. Before examining the question of constitutional validity, we need to take note of certain concepts under municipal taxation. Value is the function of price. Value is the function of the economy. Valuation is subjective exercise. Valuation involves an element of guess work. Valuation does not involve straight-jacket formula. Broadly, the following methods merit attention in the determination of Fair Market Value ("FMV") they are: (a) net asset method; (b) multiple based method; and (c) discounted cash-flow method. The word "rate" has acquired a special meaning. It means a tax for local purposes imposed by local authorities. The basis of the tax is the annual value of the land or building on which it is imposed. The annual value is arrived at by three ways, namely, (i) actual rent fetched by the land or building where it is actually let; (ii) where it is not let, rent based on hypothetical tenancy, particularly in the case of buildings; and (iii) where either of these two methods is not available, by valuation based on capital value from which annual value has to be derived by applying a suitable percentage which may not be the same for lands and buildings.

10. In Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad, , the Constitutional Bench of this Court took the view that there was no authority for the proposition that the word "rate" indicated a levy on the basis only of annual value of property. In our country, the words "tax" and "rates" have been used by the Legislatures to indicate the impost and in some cases the Legislature has permitted a local authority to levy "property tax" at a percentage of its (land and building) capital value. In the said judgment, the Constitutional Bench of this Court has held that there were three methods for arriving at rateable value. Where the land or building was actually let, the valuation based on the rent actually charged is the proponent. Where land or building is not let, then there were two methods for finding out the rateable value. The first was to assume a hypothetical tenancy and to find out the rent at which the premises would be let.

The second was based on capital value of the premises. However, in the second case the tax is not levied on the capital value itself, the capital value of the house to be assessed by contractors method, in addition to the market value of the land. This second method has been accepted as constitutionally valid in the above decision of this Court in the case of Patel Gordhandas (*supra*). It is this second method which has been introduced in the Punjab Municipal Act, 1911 by insertion of Punjab Amending Act 11 of 1994. Therefore, the word "rate" has always been construed to mean a tax on the annual value or rateable value of lands or buildings and it is this annual value or rateable value which is arrived at by one of the modes indicated above.

11. Applying the above tests to the present case, we find that prior to the Amending Act of 1994, annual value was defined to mean the gross annual rent at which the house or building could be let from year to year subject to statutory deductions [see unamended Section 3(1)(b)]. Therefore, under the unamended section the tenanted as well as self-occupied premises stood equated in the matter of determination of the gross annual rent. However, even under the unamended Act, vide Section 3(1)(c) it was stipulated that if in a given case it was not possible for the municipality to determine the gross annual rent, then, 5% of the total sum obtained by adding the estimated present cost of construction, less such amount as the Committee may deem fit to be deducted on account of depreciation to the estimated market value of the land (site). Therefore, even under the unamended section, in marginal cases, it was open to the municipality to fix the annual value at 5% of the sum obtained by adding the cost of construction to the market value of the land. It appears that on account of increase in the market price of the land in question that the State Legislature amended Section 3(1) by Punjab Amending Act 11 of 1994 by which it had been stipulated vide Section 3(1)(b) that in cases where land or building is self occupied, the annual value shall be 5% of the sum obtained by adding the present market value of the land and the estimated cost of construction less 10% deduction on account of depreciation. By the said amendment it had been laid down u/s 3(8aa) that the word "market value" of the land or building shall be determined in accordance with the principles in Section 23 of the Land Acquisition Act, 1894 or in accordance with the provisions of the Registration Act, 1908.

19. The word "rate" means a tax for local purposes imposed by local authorities. The basis of the tax is the annual value of the land, and building on which it is imposed. The annual value is arrived at by three ways, namely, (i) actual rent fetched by the land or building where it is actually let; (ii) where it is not let, rent based on hypothetical tenancy, particularly in the case of buildings; and (iii) where either of these two methods is not available, by valuation based on capital value from which annual value has to be derived by applying a suitable percentage, which may not be the same for lands and buildings.

20. In the Act of 1959, with which we are concerned, the property tax is imposed

as a corporation tax u/s 172 (a) after following the procedure laid down from Sections 199 to 223, namely of framing of preliminary proposals, consideration of objections, sanction of the proposals by the State Government, resolution of the corporation directing imposition of taxes and the imposition thereof. There is no dispute on the levy of property tax. The petitioners have confined their arguments to the method, and manner of imposition of property tax.

21. Section 173 of the Act provides for levy of property taxes subject to limitations and conditions to be levied on buildings and lands in the city and these include (a) a general tax on a graduated scale; (b) a water tax where water is supplied by the Corporation; (c) drainage tax in areas provided with sewer system by the Corporation and (d) a conservancy tax in which the Corporation undertakes the collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cesspools. Under sub-section (2) it is provided that these taxes shall be levied on the annual value of buildings or land as the case may be. The proviso to sub-section (2) provides that aggregate of the property taxes shall not be less than 22 per cent and shall not be more than 32 per cent of the annual value of the building or land or both assessed to such taxes, so however, that the general tax shall not be less than 10 per cent and not more than 15 per cent, the water tax shall not be less than 7.5 per cent and not more than 12.5 per cent, and the drainage tax to be not less than 2.5 per cent and not more than 5 per cent and the conservancy tax shall not be more than 2 per cent of the annual value.

22. The annual value is defined u/s 174 of the Act separately for railway stations, colleges, schools, hostels, factories, commercial buildings, in clause (a) to be not below 5 per cent to be fixed by rule of the sum obtained by adding the estimated present cost of erecting the building less depreciation at a rate to be fixed by rules, to the estimated value of the land appurtenant thereof. In the second category, in clause (b) in case of a building or land which do not fall in clause (a), twelve times the value arrived at on multiplying the carpet area of the building, or the area of the land, by the applicable minimum monthly rate of rent per square foot of the carpet area in the case of building or the applicable minimum monthly rate of rent per square foot of the area in the case of land, as the case may be and for this purpose the minimum monthly rate of rent per square foot is provided to be such as may be fixed once in every two years by the Municipal Commissioner on the basis of the location of the building or the land, nature of the construction of the building, the circle rate fixed by the Collector for the purposes of the Indian Stamp Act, 1899 and the current minimum rate of rent in the area for such building or land and such other factors, and in such manner, as may be prescribed.

23. Explanation-1 to Section 174 (1), provides that for the purpose of calculation of annual value, the carpet area shall be calculated for full measurement of internal dimension of rooms and covered verandah, 50 per cent measurement of internal dimension of balcony, corridor, kitchen and store and one-fourth

measurement of internal dimension of garage. Clause (v) of Explanation-I excludes the area covered by bathroom, latrines, portico and staircase to form part of the carpet area. Explanation-II provides that the standard rent, or the agreed rent or the reasonable annual rent of a building for the purposes of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, shall not be taken into account while calculating the annual value of that building. Sub-section (2) of Section 174 defining annual value provides that where the Corporation so resolves, (this depends upon the resolution passed by the Corporation), the annual value for the purposes of assessment of property taxes shall in the case of land and owner-occupied residential building in clause (a) which is not more than ten years old, be deemed to be 25 per cent less and if it is more than ten years but not more than twenty years old, be deemed to be 32.5 per cent less, and if it is more than twenty years old, be deemed to be 40 per cent less than the annual value determined under clause (b) of sub-section (1); and in clause (b).in case of residential building let on rent, which is not more than ten years old be deemed to be 25 per cent more, and if it is more then ten years but not more than twenty years old, be deemed to be 12.5 per cent more than the annual value determined under clause (b) of sub-section (1), and if it is more than twenty years old, be deemed to be equal to the annual value determined under clause (b) of sub-section (1).

24. The Act of 1959 expressly excludes the actual rent method, whether it is standard rent, agreed rent or reasonable rent and also excludes the rent based on hypothetical tenancy. It has adopted the valuation based on capital value from which the annual value is to be derived in case of railway stations, colleges, schools etc in Section 174 (1) (a) to be fixed by sum obtained by adding the estimated present cost of erecting the building less depreciation by rules to the estimated value of the land appurtenant thereto. In the case of all other buildings including residential buildings, the valuation based on capital value is adopted for arriving at the annual value, which is twelve times the value arrived at on multiplying the carpet area of the building or the area of the land by the applicable minimum monthly rate of rent per square foot of the carpet area in the case of building or the minimum monthly rate of rent per square foot of the area in case of land. The minimum monthly rate of rent is to be fixed by the Municipal Commissioner every two years on the basis of location of the building and the nature of construction and other factors.

25. The U.P. Municipal Corporation (Property Taxes) Rules, 2000, made under Sections 174, 207-A and 221B of the Act of 1959 and published in the notification dated 16.6.1999 provides for definitions, in Section 2, of group of buildings, group of land, kachcha building, property to mean a building or land or both as the case may be; pakka building, statement of self-assessment to be filed by the owner or occupier in Form "A" appended to the Rules; carpet area, covered area, annual value, monthly rate and residential building. Rules 3, 4, 4A, 4B, 4C, 5, 5A and 7 relevant for the purpose of this case are quoted as below:

3. Statement of carpet and other area of a building or the plot of the land.--(1) The Municipal Commissioner shall publish in the newspaper a notice requiring the owners or occupiers primarily liable for payment of property taxes, to furnish every four years a statement, in Form "B" appended to these rules, in respect of the carpet and other area of a residential building, or the plot of the land, as the case may be, by the date fixed in the said notice for the purpose of tax assessment.

(2) Municipal Commissioner may, for the convenience of the owner or occupier of the property, fix different places for different wards of the city for the submission of statement in Form

(3) Whenever owner occupied or vacant building is given on rent or vice versa, then within sixty days of it, it shall be mandatory for the owner to submit a fresh statement in Form "B".

(4) Whenever due to construction or reconstruction or any addition is done 25 per cent or more in the covered area of building or area of the and or both then within, sixty days of completion of occupation, it shall be mandatory for the owner or occupier, as the case may be to submit a fresh statement in Form "B"

4. Classification of Property.--(1) Municipal Commissioner shall classify the location of property not falling within the provisions of Clause (a) of Sub-section (1) of Section 174 of the Act, wardwise and thereafter within each ward, it shall be classified basing on the situation of property on three different types of roads, namely-

(a) roads having a width of more than 24 metres,

(b) roads having width of 12 metres to 24 metres,

(c) roads having width less than 12 metres.

(2) Municipal Commissioner shall classify the nature of construction of buildings not falling within the provisions of Clause (a) of Sub-section (1) of Section 174 of the Act, on the following basis-(a) pakka building with R.C.C roof or R.B roof;

(b) any other pakka building; or

(c) kachcha building that is all other buildings not covered in Clauses (a) and (b)

(3) Municipal Commissioner shall accordingly arrange all buildings in a ward in maximum number of nine different groups and in case of all vacant plots of land, in maximum number of three different groups as shown below:

(a) in case of building, the nine groups shall be as follows-

(i) pakka building with R.C.C roof situated on a road having a width of more than 24 metres,

(ii) pakka building with R.C.C roof situated on a road having width of 12 metres

to 24 metres

(iii) pakka building with R.C.C roof situated on a road having width less than 12 metres,

(iv) other pakka building situated on a road having a width of more than 24 metres,

(v) other pakka building situated on a road having a width of 12 metres to 24 metres,

(vi) other pakka building situated on a road having width less than 12 metres,

(vii) kachcha building situated on a road having a width of more than 24 metres,

(viii) kachcha building situated on a road having a width of 12 metres to 24 metres,

(ix) kachcha building situated on a road having width less than 12 metres.

(b) In case of land, the three groups will be as follows.

(i) Land situated on a road having a width of more than 24 metres;

(ii) Land situated on a road having a width of 12 metres to 24 meters;

(iii) Land situated on a road having less than 12 metres.

4.A Fixation of minimum monthly rate of rent.--The Municipal Commissioner shall once in every two years fix the minimum monthly rate of rent per unit area (square foot) of the carpet area for every group of building within a ward or the applicable minimum monthly rate, or rent per unit area (square foot) of the area for every group of land as the case may be having regard to-

(a) the circle rate fixed by the Collector for purposes of the Indian Stamp Act, 1899; and

(b) the current minimum rate of rent in the area for such building or land:

Provided that before fixing such monthly rate of rent, the Municipal Commissioner shall notify such proposed rates in two daily newspapers having circulation in such city and thereafter providing a minimum fifteen days time for filing objections by interested persons. All such objections shall be heard wardwise after grouping the objections received in maximum number of 12 different bunches. Each bunch shall contain the objections received for one group of buildings or one group of land, as the case may be. All objections shall be disposed of by the Municipal Commissioner himself or an officer authorised by Municipal Commissioner in this behalf after giving the opportunity of being heard to at least ten per cent of the total number of objectors. It shall not be necessary to hear personally all the objectors or the interested persons. The objections may be decided in bunches.

Explanation.--Keeping in view of difficulties in fixation of carpet area, the rates on the basis of covered area would be 80% of carpet area based rates for purposes of self-assessment.

4-B Publication of the rates of minimum monthly rent.--The objections when decided under Rule 4-A, the Municipal Commissioner shall notify in two daily newspapers having circulation in such city, the minimum monthly rate of rent per square foot of the carpet area for every group of building within a ward, or the applicable minimum monthly rate of rent per square foot of the area for every group of land, as the case may be, and thereafter it shall become final.

4-C Tax Assessment.--The assessment of tax shall be made on the basis mentioned hereunder-

(1) Calculation of Annual Value.--Annual Value-Carpet area x fixed per unit area monthly rate of rent x 12.

or Covered area x fixed per unit area monthly rate of rent x 12 x 80%

(2) Payable tax.--Taxes would be payable in accordance with the rates fixed u/s 148 of the Act on the basis of annual value.

(3) Rebates.--Rebates shall be admissible in annual value and payable taxes in accordance with the provisions prescribed in the Act.

(4) Self-Assessment.--The person who holds the primary liability of paying the property tax of residential building or other liable person shall deposit the tax fixing in accordance with the provisions of Rule 4 and Rule 4-C and giving the details of the property in Form A of the rules in place of returns required in Rule 3 in the Banks prescribed by Municipal Commissioner upto the date fixed under Rule 3 (1) with Form A and challan.

(5) Special provisions in Self-Assessment. --The pay liability of property taxes by self-assessment upto the fixed date under Sub-rule (4) shall not be more than previous year to the extent as may be prescribed by the Government from time to time.

5. Assessment list.--(1) The assessment list in respect of all the buildings or the plots or both shall be prepared after calculating the tax on the basis of-

(a) details submitted in Form A and Form B by the owners or occupiers of the buildings and the lands; or

(b) information collected by the Municipal Commissioner or an officer authorised by him in this behalf where informations in Form A or Form B are not submitted within the fixed time;

(c) the assessment list shall contain-

(i) name of road and mohallah in which property situates

(ii) designation of the property by name, by number or by any other specification sufficient for identification

(iii) name of the owner; whether it is owner-occupied or on rent. If on rent, the name of the tenant

(iv) the carpet area base and covered area base the minimum monthly rate of rent per square foot for the group of the building or land.

(v) carpet area or covered area of the building or the area of the land or both.

(vi) year of construction of building.

(vii) nature of construction of the building.

(2) List regarding self-assessment-- The residential buildings for which self assessed taxes with Form A have been submitted within prescribed period shall be entered in assessment list prepared in Sub-rule (1) but the provisions of Rule 5-A shall not be applicable on such buildings:

Provided that on the basis of any complaint or enquiry, if any detail is found incorrect, the details entered in the list and tax assessment therein shall be revised and penalty shall be imposed after show-cause notice.

5-A Publication of list and receipt of objections.--(1) When assessment list of whole city or part thereof is completed the Municipal Commissioner shall publish in two daily newspapers having circulation in such city about the place and time when the inspection of such list may be made.

(2) Objections regarding carpet area or covered area of a building, calculation, area of land or other entries and rebates may be sent in writing addressed to the Municipal Commissioner within the period of one month after the publication of public notice. No objection, shall be considered about the fixation of the monthly rates of rent.

(3) The Municipal Commissioner or the officer authorised by him in this behalf shall dispose of the objections after giving the objectors the opportunity of being heard.

6. Payment of Taxes.--The Municipal Commissioner or an officer authorised by him in this behalf shall send a bill to the owner or occupier for the payment of property tax assessed under Rules, 4, 4-C and 5 in which a date shall be indicated till which it would be deposited in the banks noticed by the Municipal Commissioner or in office of the Municipal Corporation. If the entire amount of tax is not deposited upto the date fixed, the interest shall be payable in accordance with Section 221-A of the Act:

Provided that if the self-assessment has been done, the amount of tax shall be paid upto the date fixed by the public notice.

7. Self-Assessment of tax.--The owner or occupier primarily liable to payment of

tax in respect of a residential building may, himself determine the property tax in accordance with the provisions of the Act and deposit the property tax so assessed by him in the notified bank together with a statement of self-assessment.

26. It is significant to notice that the Act of 1959 underwent exhaustive amendments by U.P. Act 16 of 2004 w.e.f. 21.11.2002. Since the last assessments were made in the year 2003, the amendments made by U.P. Act 16 of 2004 are relevant for the current increase in the assessments, which was due on every two years but has been delayed and has been made after seven years in the year 2010-11. Prior to these amendments the Act of 1959 also underwent amendments by U.P. Act 17 of 1999 by which a proviso was added to sub-section (2) to Section 173 providing for aggregate of the property taxes. Sub-section (2) of Section 174, providing for general rates of depreciation in respect of owner occupied building let on rent, was provided and an exception was added in clause (g) of Section 177 to exclude owner-occupied residential building constructed on a plot of land measuring thirty square meters, or having a carpet area up to fifteen square metres provided that the owner thereof does not own any other building in the city. The amendments by U.P. Act 16 of 2004 w.e.f. 21.11.2002 gave powers of fixing minimum monthly rate of rent to the Municipal Commissioner u/s 174 (1) (b), exempted owner-occupied residential building, which has been included in the limit of Corporation within five years of the facilities of roads, drinking water and street light in clause (h) of Section 177, powers of remission to Municipal Commissioner by reason of non-occupation u/s 178 and more importantly by amending Section 207 and adding Sections 207A, 207B, 208 and amending Section 218. These provisions give powers to the Municipal Commissioner to prepare the assessment list providing for area-wise rental rates in accordance with the manner prescribed in the Rules u/s 207 and above; liability of submission of the details of the houses or land for assessment of tax for the purpose of annual rental value and for that purpose submission of property return u/s 207-B and the option to deposit self-assessment property tax u/s 207A. The obligation has also been caused on owner and occupier of any building, which is constructed or re-constructed or addition is made by adding more than 25% to submit information to the Municipal Commissioner u/s 214 within 60 days of the date of completion or date of occupation, whichever is earlier, in the prescribed form and the fine of Rs. 500/- per day for not supplying such information.

27. The Municipal Commissioner, with the help of the provisions of the Act of 1959 as amended by U.P. Act 17 of 1999 and U.P. Act 16 of 2004, has to provide for a comprehensive property tax structure, in which he is obliged to fix the monthly rate of rent every two years for determination of annual value and thereafter requires the owner or occupier of the property to submit tax returns on Form A appended to the Rules of the Year 2000, and to deposit of property tax. The owners and occupiers of the new buildings or the building in which more than 25 per cent of the area is added to submit information to the Municipal

Commissioner within 60 days. The Municipal Commissioner prepares area-wise rental rates and assessment list in the city or part thereof in accordance with the Rules of 2000 inviting objections after publication of the lists in two daily newspapers and thereafter carrying out tax assessments and the publication of assessment lists inviting objections to be published in two daily newspapers under Rule 5A.. The objections are to be disposed of under Sub-rule (3) of Rule 5A after which the bills are sent to the owners or occupiers for payment of property tax assessment under Rules 4, 4C and 5 in which the date is indicated till which the property tax is to be deposited in the banks notified by the Municipal Commissioner or the office of the Municipal Corporation. The failure of self-assessment and the delay in payment of tax invites penalties. The assessment is subject to appeal u/s 472 of the Act in District Court and it is ordinarily entertained by the District Judge, who transfers the same to any Additional Judge or the Court of Small Cause or Civil Judge. The appeal is heard on the deposit of the amount by the appellant with the Municipal Commissioner. A second appeal is provided to District Judge u/s 476, on a question of law, where the annual value is fixed u/s 472, to be more than twelve thousand rupees. The Act also provides for arbitration on agreement of all the parties u/s 474 of the Act.

28. The Revised Income and Expenditure (Budget) of the Financial Year 2010-2011 of Nagar Nigam, Allahabad produced by Shri S.D. Kautilya, appearing for Nagar Nigam, Allahabad shows a dismal picture of the collection of taxes by the Nagar Nigam. In the estimated total income of Rs. 433.97 crores, the share of the property tax is only Rs. 10.19 crores in the previous year, which is sought to be raised by imposition of the property taxes (under challenge) to Rs. 25 crores. The other incomes of the Nagar Nigam include taxes on animal estimated to Rs. 50, 000/-; tax on passengers estimated to Rs. 20 lacs; tax on dogs estimated to Rs. 50, 000/-; tax on advertisement estimated to Rs. 7 crores; tax on theatres estimated to Rs. 5 lacs and stamp duty at 2% on the estimated transfer of properties to Rs. 10 crores. The estimate of collection from taxes and stamp duty at 2% is Rs. 42 crores, and the income from properties and Tah bazari estimated to Rs. 6.94 crores. The Nagar Nigam has estimated the receipt of grants from the State Finance Commission at Rs. 50 crores, special grant for arrears of salary of the employees at Rs. 23.61 crores; contingency grants of Rs. 10 lacs and for computerization at Rs. 55 lacs. The Nagar Nigam expects receipts of Rs. 226.31 crores from JNNURM; Rs. 3 crores from the grants of 12th Finance Commission. With other misc. items the expected income of Rs. 453 crores includes increase of property tax from Rs. 10.19 crores to Rs. 25 crores. It is this increase in the assessment and collection of the property tax, which is under challenge in this writ petition.

29. Shri Umesh Narain Sharma, Senior Advocate assisted by Shri Chandan Sharma submits that by the 74th Amendment to the Constitution of India, the urban local bodies were provided to be efficient units of self-governance. They were conceived to become autonomous by depending on their own revenue. With

this objective one of the mandatory reform was introduced under JNNURM scheme by implementing the property tax reforms, by mapping through Geographical Information System. The basic objective is to tap the full potential of property tax; bring all properties into the tax net; introduce system improvements to increase efficiency in tax administration focusing on the entire value chain coverage, billing, collection and enforcement; make the system of assessment transparent and simple; eliminate/reduce subjectivity and discretion in assessment; remove existing inequities; enable property owners/ occupiers to calculate tax liability on their own, file self assessment forms putting the onus upon the assessee to pay tax on time. The scheme also provides for building in buoyancy and elasticity in the tax base to achieve revenue growth; proper information system for monitoring to ensure full coverage in assessment and full collection of tax dues; make the systems of assessment, collection and information citizen friendly and introduce efficient mechanism for speedy grievance redressal and dispute settlement. With these objectives the Nagar Nigam started the work under GIS system. While implementing the property tax reforms various illegalities, anomalies and irregularities have been committed by the Nagar Nigam, Allahabad, which has resulted into arbitrary and unreasonable increase in general tax.

30. It is submitted by Shri Sharma, that the Satellite mapping as required under GIS, has not been completed by the Nagar Nigam. The entire exercise has been conducted in an illegal and arbitrary manner. Under the GIS system, the Nagar Nigam was required to impose tax only on those units which were discovered through GIS mapping and accordingly individual assessments u/s 213 of the Act should have been done in the discovered units under GIS mapping. Instead, the Nagar Nigam has proceeded to assess all the units of the city making arbitrary increase of the property tax. The Nagar Nigam has mixed up both the nature of assessment, namely assessment u/s 207 to 210 as well as assessment u/s 213. Shri Sharma submits that even assuming that the Nagar Nigam has carried out general assessment u/s 207 to 210, then too the Nagar Nigam was required to follow the provisions of Section 207 to 210. This illegal exercise was opposed by the Corporators in the house of the Nagar Nigam and accordingly resolution Nos. 340 and 342 were passed, whereby the entire exercise was turned down. The State Government by the impugned order dated 21.9.2011 has prohibited further execution of these resolutions. Shri Anugrah Narain Singh has preferred a Writ Tax No. 1455 of 2011 against the order of the State Government dated 21.9.2011.

31. Shri Sharma further submits that the records annexed with the counter-affidavit clearly indicate that the Nagar Nigam has not created a file in respect of each unit; the ward-wise mapping has not been done; urban development survey form annexed to the supplementary counter-affidavit clearly reveals that the details of each of the unit are incomplete, inasmuch as no internal dimensions of any of the units including the areas such as the area of each room, kitchen, bath room, open space, terrace, stairs etc. has been given. The Urban Development

Survey Forms have not been signed by persons, who are employees of the Nagar Nigam. The data is not authenticated by any officer of the Nagar Nigam. The Revenue Inspectors have been totally ignored from conducting the exercise of assessment. The RTI replies given by various Zonal Officers reveal that the exercise has not at all been completed and that the Nagar Nigam has in a very haste manner proceeded to revise the assessments.

32. It is further submitted by Shri Sharma, that the increase in house tax is without any rationale or reason. The Nagar Nigam was divided into 40 wards in the year 1989. Subsequently these wards were increased to 70 in the year 1995-96, and thereafter 80 in the year 2005-2006. The increase in the number of wards was only for the purposes of election. The taxing was to be done on the basis of old 40 wards. The entire procedure adopted is misleading.

33. Shri Sharma also submits that the Corporators are aggrieved by the inaction of the Nagar Nigam, in failing to increase the income from advertisement tax. In Allahabad the income from advertisement tax is only Rs. 5.13 lacs in 2009-10 as compared to Rs. 340.67 lacs in Lucknow; Rs. 207.20 lacs in Agra and Rs. 119.35 lacs in Varanasi. The entire tax is sought to be collected from the properties and not by tapping by other sources.

34. Shri K.N. Tripathi, Senior Advocate appearing in Writ Petition No. 44856 of 2011 (Kamlesh Singh and others v. State of U.P. and others) submits that the monthly rate of rent u/s 174 (1) (b) includes the carpet area of the constructions and the nature of constructions. Every individual building has different class of constructions. The minimum monthly rate of rent per square foot of the area may be increased every two years by the Municipal Commissioner. Section 174 (b) with its explanation postulates individual survey of every house. The Nagar Nigam has not carried out individual survey through its "officers. The incomplete surveys, which have been made the basis of assessment of property tax, are not prepared by the authorized officers. The Urban Development Survey Forms are not complete and do not give the measurements of the carpet areas of the building and the measurements of the land under the building and appurtenant land. The inspection of all the houses was not carried out. The diaries were not maintained nor any supervision was made of the surveys. In fact no spot inspection was carried out at all.

35. In the counter-affidavit of Shri P.K. Mishra, Chief Tax Assessment Officer, Municipal Corporation, Allahabad, it is stated that the petitioners have no locus standi to challenge the order dated 8.7.2012. Their contention, that the fixation of house tax is based only on GIS Survey, is incorrect inasmuch as reports made available from GIS survey were made the basis of spot inspections, which have also been taken into account for calculation of the property tax. Shri Anugrah Narain Singh-a Member of Legislative Assembly has raised this question in the assembly to which a reply was given and through which he was informed by the Nagar Nigam, Allahabad that the New Country Programme (2003 to 2007), for increasing the capacity of the decentralised city administration carried out with

the aid of UNDP, had selected Allahabad for a detailed survey by the letter of the Central Government dated 26.10.2006. The programme included the improvement in the property tax through GIS survey. Under this scheme vide letters received from the State Government dated 27.10.2006 and the Regional City and Environment Study Centre, Lucknow dated 6.1.2007 M/s C.E. Info-Systems Private Limited, 44B, Shivalik, Malviya Nagar, New Delhi was selected for GIS survey for Nagar Nigam, Allahabad. Under JNRRUM scheme the property tax schemes are to be implemented from the 5th year, utilising GIS survey.

36. M/s C.E. Infosystems Private Limited carried out GIS survey in the year 2008-09 in which the total number of buildings in the tax net were found to be 1, 70, 953, whereas in the same period the number of properties covered by Allahabad Nagar Nigam was 1, 66, 718. The proceedings for assessment of the property taxes on this left out 4235 buildings was made under the Rules of 2000 after issuing notices to the owners of the house and deciding their objections and consequently the Nagar Nigam has increased its income to Rs. 219/lacs.

37. In the reply the Municipal Commissioner further stated that the property tax assessment of all the residential buildings within the area of Nagar Nigam is being made by GIS survey and spot surveys for reassessment of the entire 1, 76, 156 buildings after which the current demand of the house tax will increase from Rs. 10 crores to Rs. 30 crores. In paragraphs 12, 14 and 17 of the counter-affidavit Shri P.K. Mishra, Chief Tax Assessment Officer has stated as follows :

12. That the contents of paragraph No. 44 of the writ petition are absolutely wrong and misconceived, hence denied. In reply thereto it is submitted that as stated above, the GIS system is being adopted under the agreement with the Government of India and Government of Uttar Pradesh under the JNNURM Scheme, for which the Nagar Nigam Allahabad has already accorded its consent through resolution No. 02 dated 27.12.2006. However, it is further submitted that the Nagar Nigam, Allahabad vide resolution No. 02 dated 27.12.2006 accepted all the terms and condition of the JNNURM Scheme, which includes the survey report through GIS system for collecting the property tax and accorded its permission to sign the memorandum of agreement.

14. That the contents of paragraph No. 46 of the writ petition are absolutely wrong and incorrect as stated, hence denied. In view of the facts stated in earlier paragraphs, the further action by way of repetition it is stated that the GIS scheme has been introduced under the Scheme of JNNURM of the Government of India. It is very strange to note that the petitioners pick the huge amount in crore and crore from the Government of India under the said agreement and opposing one of the condition of the Government of India for introducing the GIS System reasons best known to them.

17. That the averment made in paragraph No. 31 of the writ petition, so far as rejecting the decision to deply the GIS system is absolutely lalse and contrary to the resolution No. 02 dated 27.12.2006. Once the Corporation has entered into

an agreement with the Government of India and State Government in pursuance of their own resolution and they cannot be permitted to back from that. In case the Corporation resist over its resolution dated 6.7.2011, they have to return all the amounts given to them by the Government of India as well as State Government under the agreement. However, in Annexure Nos. 3 and 4 to the writ petition the answering respondents in no way find fit the rejection of the GIS system in the resolution. Rather there is clear cut averment that the house be assessed through GIS System.

38. A supplementary counter-affidavit of the same officer was filed on 17.10.2011, in which apart from giving the details of the house of Shri Shiv Sewak Singh and Shri Anugrah Narain Singh in paragraph-16A and 16-B, which are not relevant for the purposes of deciding this case, it is stated in paragraphs 26, 27 and 28 as follows :

26. That in compliance with the aforesaid direction of this Hon"ble Court, the answering respondent is respectfully submitting that the rate for increase of rates of rent is not under challenge in all the writ petitions. So far as enhancement of the assessment is concerned, the same was calculated, on the prevailing rates on the basis of the carpet area brought available to the Nagar Nigam after GIS survey as well as manual survey. Since it is duty of the building owners to provide the statement about any in the constructed area or otherwise, as per provisions of the Rule 3 of the U.P. Municipal Corporation (Property Taxes) Rules, 2000. Further, it is also duty of the house owners to give the details in Form A and B about their buildings and lands as per provisions of Rule 5-A of the U.P. Municipal Corporation (Property Taxes) Rules, 2000.

27. That apart from the above, it is duty of the citizens to give the statement about any increase in constructed area or otherwise to the Nagar Nigam for its better functioning. Some time there are complaints from the citizens that the GIS survey for the purposes of assessment were not being carried out actually and in order to redress the grievances of the citizens, the State Government by U.P. Act No. 17 of 1999 has introduced the Section 207-A, by which the option is given to the owner or occupier to submit the details about their property by self assessment. The provisions of Section 207-A of the Act is quoted as below :

207-A Option to deposit self-assessment property tax.--Notwithstanding any other provisions of this act, the owner or occupier primarily liable for payment of tax in respect of a residential building may himself assess every year his liability regarding the amount of property tax payable by him and in doing so he may himself determine the annual value of the building in accordance with the provisions of Clause (b) of Section 174, and deposit the property tax so assessed by him in such manner, together with a statement of such self-assessment in such form, as may be prescribed.

28. That even during the pendency of the writ petition, the answering respondent notified through newspaper that the persons having grievance about the

assessment list may approach through objection or by self-assessment, so that their grievance may be redressed.

39. Shri Ravi Kant, learned counsel appearing for the Nagar Nigam submits that the GIS survey was carried out in terms of the requirements of the improvement of property tax structure as recommended by JNNURM to increase the net of the property tax and to include those areas, which have been developed in and around the city. Under the instructions of the Central Government and the State Government, the agency was nominated for the purpose of locating the buildings. The GIS survey was not carried out for causing assessments of the houses. The report of the GIS survey was made the basis of including the houses, which were found constructed and were not within the tax net. The survey may not be accurate, but that it indicated those houses, which were left out and in respect of which no self-assessment forms were received.

40. It is submitted by Shri Ravi Kant that the petitioners have not shown any cause of action to challenge the assessment of house tax to be carried out by annually. The Municipal Commissioner is required to fix the monthly rent of rate for calculation of annual value of residential buildings on per square foot of carpet area and per square foot in case of land on the basis of the location of the buildings or land, nature of construction and the circle rate fixed by the Collector. The monthly rate of rent is thereafter treated as the basis of calculation of annual value and the assessment of the house tax provided in the Rules of 2000. He submits that in the present case notices were published after receiving the GIS survey in which large number of areas were discovered, which were not assessed. He relies upon the averments and the documents annexed to the supplementary counter-affidavit of Shri P.K. Mishra in which it is stated in paragraph-7 that the GIS survey as well as manual survey were undertaken by the Nagar Nigam in the year 2007-08 and in which number of meetings took place to review the progress. The officers namely Shri Subhash Pandey and Shri Sumit Kumar, who appear to have given in writing that they are not maintaining diaries and the details of the spot inspections, participated in the meetings and in the review meetings in connection with the survey of houses. These meetings were held on 16.6.2008, 16.7.2008, 22.8.2008, 17.12.2008, 1.7.2008, 1.8.2008, 17.1.2009, 2.1.2009, 3.10.2009 and 4.7.2011. They have submitted wrong information for not maintaining the records, whereas they were actively involved in carrying out GIS/manual surveys.

41. Shri Ravi Kant has relied upon the GIS survey report and the manual survey reports on the basis of which the property details were collected. He submits that 86 employees of the Nagar Nigam including 38 Tax Collectors, 14 Revenue Inspectors, 09 Tax Supervisors and 25 Clerks, and further 45 persons, who were outsourced, were involved in the work of manual survey. He submits that the rates were notified. The monthly rate of rent were notified on 18.6.2010 on the basis of the circle rates worked out on the width of the road, which were to be made effective from 1.4.2011. The lists were notified in the newspapers and

were made available in each wards. Objections were invited in July, 2011. About 1100 objections were filed which are in the process of being decided. On the basis of these GIS/manual surveys the tax was assessed and the bills have been sent. The Corporators including the petitioners were fully aware of the entire proceedings. They were, however, trying to confuse the issue of the GIS survey / manual survey with the notification of the monthly rate of rent. The petitioners tried to mislead the house of the Nagar Nigam and the general public in alleging that the GIS survey was made the basis of increasing the property taxes, whereas the object of GIS survey was not for assessment but to include the left out properties and the developments, which are taken place in and around the city. All these properties were subjected to manual survey and that the rates notified, which had become effective from 1.4.2011 were made the basis of assessment.

42. Shri Ravi Kant submits that in the case of Shri Shiv Sewak Singh, a detailed form was prepared calculating the house tax on the basis of monthly rate of rent of carpet area fixed by the Municipal Commissioner. His old ARV was Rs. 1152/- effective from 1.4.2003. With the plot area of 1500 square meters, residential carpet area of 525 square meters and commercial carpet area of 1200 square meters with construction type Pucca with RCC and road width 12-24 meters, the GIS ARV was worked out at Rs. 43,875/- w.e.f 1.4.2011. The old house tax of Rs. 126.72 was increased to Rs. 4826.25. He had paid Rs. 741.72 and was given rebate of Rs. 12.67. The ARV was worked out on the basis of monthly rate of rent of Rs. 1.25 per square meters for residential carpet area of 525.00 square meters and Rs. 2.50 for commercial carpet area of 1200 square meters. He submits that no objections have been filed to the assessment and thus he cannot have any grievance of the increase in the assessment of the house tax. The Nagar Nigam, however, is still open to consider the objections filed under the Rules of 2000 in accordance with the law.

43. Shri Ravi Kant has relied upon Municipal Committee, Patiala Vs. Model Town Residents Asson. and Others, ; India Automobiles (1960) Ltd. Vs. Calcutta Municipal Corporation and Another, ; G.P.S. Nayar v. Corporation of Trivandrum and another, (2003) 9 SCC 249 ; Municipal Board, Saharanpur v. Shahdara (Delhi) Saharanpur, decided on 24.11.1998 & Pradeep Oil Corporation v. Municipal Corporation of Delhi, Civil Appeal No. 6546-6552 of 2003 decided on 6.4.2011 in support of his submissions, that the inclusion of left out areas through the help of GIS survey, the determination of monthly rate of rent for carpet area and land by the Municipal Commissioner, taking into consideration the circle rates and the constructions, was strictly in accordance with the provisions of the Act of 1959 read with Rules of 2000.

44. We summoned the records and examined the GIS survey maps and the manual surveys carried out by the team of officers of Nagar Nigam and the persons, who were engaged by the Nagar Nigam by outsourcing. We are not satisfied with the quality of GIS survey carried out for identifying new areas and

the extent of development, which has taken place within the boundaries of Nagar Nigam. The agency engaged by the Nagar Nigam, Allahabad appears to be inexperienced and has carried out a very shoddy work. We could only make out bright (white spots) and dark areas, which according to the petitioners, depicted the developed and undeveloped areas.

45. In T.N. Godavarman Thirumulpad Vs. Union of India (UOI) and Others, , the Supreme Court approved the surveys made by Geographical Information System and observed in paragraphs 34 to 45 as follows :

34. In the order to decide the above contentions, it is necessary to understand the following concepts:

(i) GIS (GEOGRAPHICAL INFORMATION SYSTEM)

35. GIS is an organized collection of computer hardware, software, geographic data designed to capture all forms of geographically referenced information (See Volusia.org.). In short, it is a computer system capable of holding and using data describing places on the earth's surface. ERDAS IMAGINE 8.6 is a computer tool under GIS. It is referred to in the report of Forest Survey of India (FSI) dated 14.4.2005 annexed to the third report of C.E.C.

36. ERDAS IMAGINE 8.6 is an advanced software product used for image processing, to uncover features like boundary and area of a given plot of land (face). Once uncovered the geographical information is integrated with attributes (spatial and non- spatial) and stored in an information system to be used for analysis.

37. Images can be taken from satellites or from planes flying over an area of interest (AOI). Under ERDAS IMAGINE 8.6 the images are comprised of pixels (picture elements) which are contained in the image. These pixels are scanned by the computer which gives the boundary and the area. It also scans the colours. Different surfaces reflect light differently. Colour images are used to identify various ground objects like forests, man-made surfaces, roads etc. For example, healthy crops contain infrared light whereas forests reflect different colours of the spectrum, making the spectrum information an important component of geographical information analysis. This advancement of technology is due to combination of telecommunication and computer engineering (See: webopedia.com)

38. The above discussion is important because Deepak Agarwal has relied upon photo printing analysis done by him with the help of CAD (Computer Aided Designing).

39. The issue which is required to be considered is whether ERDAS IMAGINE 8.6 used by NRSA is better than CAD which is a programme used by Deepak Agarwal. We have indicated broadly the advanced features of the software, viz., ERDAS IMAGINE 8.6. On the other hand, CAD, is also a software used by engineers to view a design from an angle with the push of a button and to zoom

in and zoom out for close-ups and long distance views. It helps the computer to tract designs. CAD software generally examines the boundaries and that too in a design. In the present case, we are concerned with the area covered by the forests. Therefore, the technology adopted by NRSA based on ERDAS IMAGINE 8.6 is more reliable than CAD.

40. Therefore, GIS links spatial data with geographical information about a particular feature on the map (See: Volusia.org).

(ii) GPS (Global Positioning System)

41. GPS is a satellite based positioning system operated by USA. It consists of satellites. It is a data collection tool for GIS. Basically, the signals from the satellites in GPS are received by GPS receivers on the earth. Therefore, different stations are earmarked on the earth covering a particular area. It is the matching of the satellite with the receiver which plays an important role. Certain discrepancies in the matching are got over by differential GPS (See: esri.com)

(iii) IRS-LISS III

42. It stands for Linear Imaging Self Scanning Sensor which is a multi-spectral camera. LISS-III products comprise of path/row products, georeferenced products etc. (See: earth.esa.int). It helps to track areas and boundaries. Combination of LISS III with ERDAS-imagine is more reliable than photo print analysis by CAD. It is better to depend on interpretation of IRS LISS III Digital Data by EDRAS Imagine than by CAD.

43. As stated above, the main challenge to the NRSA report is that proper parameters have not been taken into account and although better technology was available the same was not deliberately resorted to. The contention is that CEC should have opted for the latest technology.

44. We do not find merit in this argument. The technology of 2001, 2002 and 2003 is not to be discarded. The later technology gives more spatial information but that does not mean that the information given by the earlier technology is inaccurate. The latest technology under GIS can locate even a pin on the earth. However, we are not concerned with such a tiny object in this case. Be that as it may, we may also point out that even in the State of Forest Report 2003, FSI has based its figures of forest cover by using Digital Image Processing (DIP) by using the scale of interpretation of 1:50000. Further, in that report, FSI has relied upon the introduction of a new methodology based on remote sensing to estimate the trees covered below. 1 hectare which cannot be discerned by using LISS-III data. Under the new method, a canopy of all forests that can be delineated from satellite data (Sensor LISS-III) was termed as forest cover. Even under this new technology adopted by FSI the spatial resolution of 23.5 mtr. of LISS-III has been taken into account and by using DIP technique, forest cover was mapped even in 2003 at a scale of 1:50000. Therefore, consistently, FSI has taken the above parameters into account. Hence, there is no merit in the contentions

raised by Deepak Agarwal saying that CEC has been randomly selecting queries and data.

45. In short, NRSA's report submitted through FSI is reliable and we see no reason to reject it. On the basis of the said report, it can be said that AOI (area of interest) does not qualify so as to be included in the category of Deemed Forest i.e. a compact block of 10 hectares having 200 trees per hectare.

46. The technology has advanced rapidly. The image processing to uncover features like boundaries and area of a given plot of land integrated with the attributes (spatial and non-spatial) and stored in an information system to analyze, can provide accurate imagery to identify the developed areas. The Google maps available on internet provide much better and sharp images of the development than the geographical information provided through GIS by the agency adopted by Nagar Nigam, Allahabad. Initially we were keen to accept the argument that such images cannot form the basis of municipal assessment of property taxes. Shri Ravi Kant, however, explained that the GIS survey is not the basis of property tax assessment. The reports were used only to find out the new areas which have developed in and around Allahabad to increase the tax net. We thus accept the argument that the GIS survey was made the basis of manual survey of the areas, which have been developed in and around the municipal limits of Allahabad which were later on inspected manually by the team of officers and the outsourced staff, to prepare the data for assessment of property tax. It appears that for these reasons the Municipal Commissioner was not willing to share the data with the Municipal Corporators and which caused communication gap resulting into hue and cry which initiated the resolutions passed by the house, to be later on suspended by the State Government.

47. We are confident that the Nagar Nigam will engage a competent agency in future, which will provide better reports to be relied upon for bringing in buildings and the areas, which have been developed, in the next exercise to be carried out for assessment of property tax and the Municipal Commissioner will place such GIS survey report and maps in the house to usher more transparency and accountability in the process.

48. By resolution No. 340 dated 25.6.2011, it was resolved by the Nagar Nigam that the Municipal Commissioner has not placed the proposal for increasing the house tax in the year 2011-2012 in the House and has arbitrarily increased the rates. After deprecating the conduct of the Municipal Commissioner the House decided to reject the proposal of Housing Commissioner for increasing the house tax and proposed that the resolution No. 239 to increase the permissible taxes be implemented. By a subsequent resolution No. 342 dated 6.7.2011 the house of Nagar Nigam passed a resolution that its earlier resolution No. 340 dated 25.6.2011 be implemented and that taking into consideration Article 285 of the Constitution of India as well as Sections 172, 173 of the Act of 1959 and the House Tax Rules of 2000 as well as the judgment of the High Court regarding advertisement tax, resolved that the house tax be increased from 11% to 13%.

The House observed that the GIS survey report has not been placed on the panel of the House, which has been the basis of increasing the house tax of all the properties. The house resolved to improve the financial condition of the Nagar Nigam by reducing the wasteful expenditure and to bring in the advertisement, pheri licence, parking fees and revenue from cycle stands within the tax net.

49. The State Government, in exercise of its powers u/s 537 of the Act, by Office Memorandum dated 21.9.2011 suspended the execution of the resolutions No. 340 and 342. We do not find substance in the arguments raised by learned counsels appearing for the petitioners that the State Government has not given sufficient reasons to exercise its powers u/s 537 of the Act or that the State Government has not discussed or has referred to any contravention of or in excess of the powers conferred by the Act or made in abuse of any such power or is likely to lead to a breach of peace or to cause obstruction, injury or annoyance to the public or any class or body of persons, nor it has referred to any prejudice to be caused in public interest to pass such order.

50. We find that the resolutions No. 340 and 342 were patently against public interest. The Corporators, without appreciating and understanding their powers, which are confined only to the levy of property tax and its rates under proviso to sub-section (2) of Section 173, encroached upon the powers of the Municipal Commissioner to fix the minimum monthly rate of rent, u/s 174 (1) (b). They completely misunderstood the statutory exercise made by the Municipal Commissioner, Allahabad on the guidelines given for improvement of the collection of property taxes under the JNNURM. The GIS survey is a method adopted to bring in the developments, which cannot be easily found by manual surveys. The GIS survey was not the basis of assessment and increase of the property taxes. The resolution Nos. 340 and 342, in so far as they directed the Municipal Commissioner not to implement the increased monthly rate of rent of the house tax, and in rejecting the GIS survey to be the basis of the increase in the house tax, were in complete disregard to the provisions of the Act of 1959. The resolutions to that effect were also against the public interest and were rightly suspended by the State Government.

51. We have considered the submissions and find that the petitioners have not only misunderstood the provisions of the Act and the Rules, but have in their anxiety to please their constituency, misled the people of Allahabad in raising frivolous issues in the House of the Nagar Nigam. They have shown their concern for increasing the income of Nagar Nigam for carrying out the statutory duties and the developments of the city, but they have not understood their role and responsibility in carrying out such functions. The Nagar Nigam, Allahabad had carried out the exercise of determining the monthly rate of rent of carpet area and the assessments eight years" ago in the year 2003. Since thereafter the city has grown both vertically and horizontally. New buildings have come up in and around the cities within the municipal areas. In the reply given by the Municipal Commissioner in the Legislative Assembly he had reported that with the aid of

GIS survey, a total number of 4235 buildings were found to have been constructed recently, which were not assessed to property tax. The Municipal Commissioner had also carried out the exercise of determining the monthly rate of rent for determining the annual value of the carpet area to be carried out by him by annually. For about two years the exercise of carrying out the manual surveys was going on in the city of Allahabad under the supervision of the Municipal Commissioner and the Chief Tax Superintendent and in which almost the entire staff of Nagar Nigam was included. It is difficult to believe that the Corporators were not aware of this exercise. They kept on raising the bogey of alleging that the GIS survey has been made the basis of increasing the house tax, whereas the GIS survey was not the basis of assessment and increase of property taxes. The GIS survey was carried out under JNNURM scheme to identify the properties, which were either constructed after the last assessments or to which substantial portions were added, to bring within the net of the property taxes. In fact the increase of the house tax was a result of the increase in the minimum rate of rent per square ft. of the carpet area in respect of building, and minimum monthly rate of rent per square ft. of the area in case of land. The circle rates fixed by the Collector under the Stamp Act 1899 have increased substantially and that the rate of constructions per square ft. has also increased. The monthly rate of rent per square ft. of carpet area was thus worked out for residential and commercial buildings separately and the portions used for commercial purposes in respect of buildings and were notified by the Municipal Commissioner in exercise of his statutory duties published in daily newspapers on 18.6.2010 to be effective from 1.4.2011. The lists were also published inviting objections. We are informed that no objections were received and thus the lists were finalised and that the assessments were made accordingly calculating the house tax on the annual value u/s 174 of the Act, 1959.

52. We asked Shri Ravi Kant, assisted by Shri S.D. Kautilya several times and confirmed from, them that not a single Form "A" of the Rules of 2000 of self assessment u/s 207-B inserted by U.P. Act 16 of 2004 w.e.f. 21.11.2002 and the option to deposit self-assessment property tax u/s 207-A also added by the same amendment w.e.f. 21.11.2002, was received in the office of the Nagar Nigam. We express our deep sense of concern that the enlightened citizens of Allahabad, known for complaining about the inefficiency of the Nagar Nigam in carrying out its statutory duties, have not shown the same sense of responsibility in submission of the details of their houses and lands for assessment of property tax. The legislature has added special provisions of submission of details of houses or lands for assessment of tax and the option to deposit self-assessment for tax by inserting Section 207-B or Section 207B and the penalty for failure to supply the information u/s 221-B(2) not exceeding Rs. 1000/-. The owners and occupiers of the properties in the Municipal limit of the Allahabad, therefore, have a statutory obligation to furnish returns and make disclosures on Form "A" and B" of the U.P. Nagar Nigam (Property Tax) Rules 2000, and thereafter if they

find the individual assessments to be incorrect, file objections under Rule 5A (2), for correcting any error in assessment.

53. The object of providing submission of the details of the houses or lands for assessment of tax, and the option to deposit self-assessment property tax u/s 207-B and 207A added by U.P. Act 16 of 2004 w.e.f. 21.12.2002, is to assist the Municipal Corporation, to carry out its duties for the benefit of citizens. It is not possible for any Municipal Corporation to carry out an accurate manual survey, with its limited staff, of all the properties in the Municipal limits. This responsibility has to be shared by the citizens, who own properties by submitting property returns for assessment of tax.

54. We do not find that the petitioners as Corporators under a duty to educate the citizens of their wards sufficiently to fill up the tax returns and to deposit self-assessed property tax, have carried out their responsibilities. They have also not filed any objections to the proposed rates and lists, which were notified and which are deemed to be conclusive after a prescribed period u/s 212 of the Act of 1959. Instead of filing objections to the notified minimum monthly rate of rent per square meter ft. of the carpet area and of land, the Corporators paradoxically resolved to increase the property tax from 11% to 13%. The resolution was in fact against the very purpose for which the Corporators have filed these writ petitions. They are totally confused, with the increase of the minimum monthly rate of rent for calculating the annual value notified by the Commissioner, and the increase in the tax under the proviso to Section 173 (2). In fact they proposed to increase the house tax and consequently the amount of house tax to be worked out on the revised rates of assessment of the annual value. We find that the petitioners have in complete disregard to the provisions of the Act, proposed to add a further burden on the owners and occupiers of the properties in the municipal limits of Nagar Nigam, Allahabad.

55. We do not propose to go into the questions of the individual assessments, as there is no challenge nor any prayer has been made to quash the lists of the minimum monthly rate of rent per square ft. per carpet area fixed and notified by the Municipal Commissioner or individual assessments. No objections were filed to these lists and thus the entries in the lists will be treated to be conclusive u/s 212 of the Act of 1959 unless the lists are amended, or altered by the Municipal Commissioner u/s 213 of the Act of 1959.

56. We, however, find that all the persons, who have been served with the bills of the increased house tax calculated on the notified minimum monthly rate of rent, have a right to file objections regarding the carpet area or the covered area of the building, area of land or other entries and rebates to be given in writing to the Municipal Commissioner within one month from the publication of the notice under sub-rule (2) of Rule 5A and which the Municipal Commissioner or any officer authorised by him is required to dispose of under sub-rule (3) after giving the objectors the opportunity of being heard.

57. We are informed by Shri Ravi Kant, assisted by Shri S.D. Kautilya, that about 1100 objections have been filed to individual assessments. We have no doubt that these objections will be considered and decided by the Municipal Commissioner or any officer authorised by him in accordance with the law.

58. In the supplementary rejoinder affidavit of Shri Shiv Sewak Singh dated 14.11.2011, he has annexed a report of the Indian Audit and Accounts Department dated 25.2.2010, reporting the loss of Rs. 141.54 lacs in reducing the assessment of some of the big properties in the Nagar Nigam at Allahabad. In case of Shri Tirath Ram Kohli (Cold Storage), 88A/108, Mira Patti, Allahabad, the annual value of the properties effective from 1.4.2003 has been brought down from Rs. 16.19 lacs to Rs. 3.87 lacs. Similarly the annual value of the properties of Smt. Prabha Bhargava (M/s Amitdeep) 20/26, Sulem Sarai, Allahabad has been reduced from Rs. 27.38 lacs to Rs. 3.73 lacs; Shri Kamta Prasad Musan, 93/57, Jhulelal Nagar, Allahabad from Rs. 8.58 lacs to Rs. 18,360/-; M/s K.L. Sons Pvt. Limited, 11/11, Jhulelal Nagar, Allahabad from Rs. 19.11 lacs to Rs. 46,912/-; Shri Sita Ram Agrawal, 433A/ 284A/ 1A, Bairahana, Allahabad from Rs. 25.74 lacs to Rs. 6693/-; President Kayastha Pathshala, 12/12, Kamla Nehru Road, Allahabad from Rs. 59.51 lacs to Rs. 8.70 lacs; M/s Atlantis Multiplex, 170A/ 38, Mahatma Gandhi Marg, Allahabad from Rs. 64.65 lacs to Rs. 34.43 lacs; Moh. Shakeel Ahmad, 142/6, Buxi Kala, Allahabad from Rs. 81,685/- to Rs. 15,180/-; Shri Sanjai Singh (Girls Hostel), 9/12, Band Road, Allahabad from Rs. 1.20 lacs to Rs. 64,800/-; Rama Baikunth Nath Trust Registered Office (Bangar Trust) 10/302, Madhvapur, Allahabad from Rs. 8.13 lacs to Rs. 46,746/-; Shri Amar Nath and others 3A/4C, Shuturkhana, Allahabad from Rs. 4.17 lacs to Rs. 55,650/-; and Shri Rudra Narain Shukla, 141A/3B/ 1A, Chandpur, Salori, Allahabad from Rs. 1.54 lacs to Rs. 1558/-. In reply in the counter-affidavit filed by the Nagar Nigam, documents have been annexed to show that most of these valuations were brought down on the reports of the Committees presided over by the Corporators. For example the valuation of M/s Atlantis Multiplex has been brought down on a report of the Committee of which Shri Shiv Sewak Singh-one of the petitioner as a corporator was the Chairman of the Sub-Committee to recommend exemption from house tax.

59. We find it highly objectionable to reduce the valuation on the basis of occupancy of these properties. Section 178 provides that when a building or land has remained vacant and unproductive of rent for ninety or more consecutive days during any year, the Municipal Commissioner shall remit or refund so much of each of the property taxes of that year as may be proportionate to the number of days that the building or land has remained vacant or unproductive of rent. The non-occupancy of certain portion of the building or the malls cannot be a ground to reduce the valuation of the property. At best a remission may be granted for the period the property or any portion thereof has remained vacant for ninety or more consecutive days. The Committee recommended to reduce the valuation on the ground of non-occupancy. The report and the orders for reducing the property taxes are, therefore, grossly violative of the provisions of

the Act of 1959, and must be reviewed by the Nagar Nigam, Allahabad to rationalise the property taxes.

60. In this case we had passed an interim order in Writ Tax Nos. 1129 of 2011 and 1455 of 2011 staying the effect and operation of the Government Order dated 21.9.2011, and the notice dated 8.7.2011. We had also stayed the realisation of the increased house tax making it open to the house owners having properties in the limits of Municipal Corporation, Allahabad to continue to deposit the house tax at the rate on which they were assessed and were depositing the house tax prior to 1.4.2011. The Nagar Nigam, Allahabad has filed SLP (C) No. 31101-31102/2011 in the Supreme Court against the interim order dated 28.9.2011 in Writ Petition No. 1129 of 2011. The Supreme Court by its order dated 6.2.2012 passed an order that it was not inclined to interfere with the impugned order as it was in the nature of an interim order. The Special Leave Petitions were dismissed, with directions that having regard to the nature of the issue involved, the main writ petitions be disposed of as expeditiously as possible, and preferably within six weeks.

61. Since there was an interim order operating in the matter from 28.9.2011, we find it appropriate to pass final orders as follows:

- (i) The interim order dated 28.9.2011 is hereby vacated.
- (ii) The petitioners are not held entitled to the reliefs claimed in the writ petitions for quashing the order dated 8.7.2011 passed by the Municipal Commissioner, Nagar Nigam, Allahabad as well as the order dated 21.9.2011 passed by the Principal Secretary, Urban Development, Lucknow prohibiting the execution of the resolutions No. 340 and 342.
- (iii) It is clarified that the GIS survey was not made by the Nagar Nigam as a method or manner for calculating the property tax. The GIS survey was made in accordance with the mandate of the JNNURM to bring in those properties in the tax net, which were not identified and assessed earlier or the additional constructions made on such properties, which were not notified by the owners or occupiers of such properties.
- (iv) The minimum monthly rate of rent notified by the Municipal Commissioner, Nagar Nigam, Allahabad on 18.6.2010 to be effective w.e.f. 1.4.2011 are held to be valid. The entries in the notified assessment lists shall be treated to be final and conclusive u/s 212 of the Act of 1959.
- (v) The Nagar Nigam shall publish and offer for sale, on nominal charges, the booklets in English and in Hindi (as in the case of Nagar Nigam, Lucknow), for self-assessment of property tax including the U.P. Nagar Nigam (Property Tax) Rules, 2000 as amended from time to time; the relevant Government Orders; the ward-wise determination of monthly rate of rent by the Municipal Commissioner, Allahabad; the method of calculation of property tax; Form "A" for self-assessment of property tax; Form IB for giving information of the carpet

area or land to the Nagar Nigam; forms & details of the challan forms as well as list of banks in which such forms with property tax can be deposited. The copies of the booklet shall be made available for sale in sufficient numbers from each zone to be purchased and used by the owners and occupiers of the properties.

(vi) As the interim order was operative from 28.9.2011, we direct that all those owners of the properties in the Municipal limits of Allahabad, who are liable to pay the property taxes, shall be entitled to file objections to the individual assessments made of their properties by the Nagar Nigam under sub-rule (2) of Rule 5A of the Rules of 2000, regarding carpet area, or covered area of a building, calculation, area of land or other entries or rebates in writing to the Municipal Commissioner, within one month, from the date of publication of a fresh public notice by the Municipal Commissioner. The objections will be confined to the individual assessments regarding calculation of the area as provided in the Rules of 2000.

(vii) The Municipal Commissioner or the officer authorised by him in that behalf under sub-rule (3) of Rule 5A of the Rules of 2000 will dispose of the objections after giving objectors an opportunity of being heard, with reasoned orders. All the objections, which are pending, shall also be decided in the same manner.

(viii) After the decision on the objections, the owners and occupiers of the properties may exercise their rights of filing appeal and second appeal under Sections 472 and 476 of the Act of 1959, subject to depositing the amount claimed from them with the Municipal Commissioner u/s 472 (2) (e), and subject to the limitation of filing the appeal.

(ix) The Municipal Corporation shall take steps to impose and collect advertisement tax and other permissible statutory taxes, for which steps will be taken in accordance with law without any delay.

(x) The Municipal Corporation will review the exemptions granted to the large residential and commercial properties by allowing permissible exemptions strictly in accordance with Section 178 of the Act of 1959.

The writ petitions are accordingly disposed of.