**(2010) 07 BOM CK 0101**

**In the Bombay High Court**

**Case No :** Writ Petition No. 2787 of 2001

Small Scale Entrepreneurs Association, Late Shri Sharad Kelkar Common Facility Centre, Mahape Industries Welfare Association, Mr. D. Narsiah, Managing Partner, National Engineering Corporation and Mr. Sanjay Mehta, Managing Director, Protolab Electrotechnologies Pvt. Ltd. — APPELLANT

Vs

State of Maharashtra and Others — RESPONDENT

**Date of Decision :** 08-07-2010

**Acts Referred:**

- Bombay Provincial Municipal Corporations Act, 1949 — Section 127, 128, 129, 132, 132(2)
- Bombay Village Panchayats Act, 1958 — Section 157, 159, 256(2), 4(2)
- Census Act, 1948 — Section 15
- Constitution of India, 1950 — Article 226, 243, 243(Q), 243Q(2), 243X
- General Development Control Regulations for Navi Mumbai, 1975 — Regulation 16, 16.3(1a)C
- Maharashtra Industrial Development Act, 1961 — Section 14, 15, 16, 17, 2
- Maharashtra Land Revenue Code, 1966 — Section 4(1)
- Maharashtra Municipal Corporation and Municipal Councils (Amendment) Act, 1994 — Section 341F
- Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965 — Section 341F
- Maharashtra Regional and Town Planning Act, 1966 — Section 124, 124F, 154, 2(15), 37
- Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 254(1), 255, 256(1), 256(2), 5

**Citation :** (2010) 6 BomCR 442

**Hon'ble Judges :** R.G. Ketkar, J;P.B. Majmudar, J

**Bench :** Division Bench

**Advocate :** Rajani Ayer, Firoz Palkhiwala, Mili V. Thakkar, S.V. Thakkar, Vijay P. Salunkhe and Hemang Engineer, for the Appellant; S.S. Bhende, Learned AGP for Respondent Nos. 1 to 4, R.S. Apte, A.A. Garge, NMMC, Deepa Chavan, Kiran Gandhi and Ravindra R. Chile for Respondent Nos. 5 and 7 MIDC and its Area Manager, for the Respondent

**Final Decision :** Dismissed

# Judgement

R.G. Ketkar, J.—By this petition under Article 226 of the Constitution of India, the petitioners interalia challenge the action of Respondent No. 6, Municipal Corporation of the City of Navi Mumbai (for short NMMC) to levy and collect the property taxes, rates and cess; seek declaration that the Thane Trans Creek (for short TTC) area admeasuring 24.690 Sq.Kilometers within the jurisdiction of Respondent No. 5Maharashtra Industrial Development Corporation (for short MIDC) does not fall within the municipal limits of NMMC as per the Notification bearing No. NBC 1091/140/CR14/ 91/UD20 dated December 17, 1991 and consequently, the NMMC has no power to levy and collect any taxes including the property taxes and cess from the petitioners. The petitioners have also sought appropriate writ directing 1st Respondent State of Maharashtra to constitute the TTC and Thane Belapur Industrial Area (for short TBIA) into Industrial Township by issuing Notification as per Section 341F of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short ''Act of 1965''). The petitioners also challenge the demand notices issued by the NMMC as also the Memorandum of Understanding (for short MOU) dated December 1, 2005 entered into between the MIDC and the NMMC.

2. The petitioner No. 1 is a Small Scale Entrepreneurs Association having Registration No. SMAH/2505/THN & F3418 THN. The Petitioner No. 2 is Mahape Industries Welfare Association having Registration No. Mah/37/2001/Thane. The Petitioner Nos. 3 & 4 are the Managing Directors of the units in Mahape. The petitioner Nos. 1 to 4 collectively, hereinafter, will be referred as the petitioners.

3. The core issues that arise in the present petition are as follows:

(1) Whether after the Constitution (74th) Amendment Act 1992 and Amendment to the ''Act of 1965'' which came into force on May 31, 1994 the Government of Maharashtra can indefinitely postpone the issue of notification for the formation of Industrial Townships?

(2) Whether it was the bonafide decision of the State Government, not to constitute TTC & TBIA known to be the oldest and the largest Industrial areas from constituting Industrial Townships while allowing several other Industrial areas in the State to become Industrial Townships under the ''Act of 1965''?

(3) Whether the Bombay Provincial Municipal Corporations Act, 1949 (for short BPMC Act) will prevail over the Maharashtra Industrial Development Act, 1961 (for short MID Act) in case of conflict between the two statutes?

(4) Whether the NMMC can levy property taxes in the Industrial area without rendering services of any type, civic or otherwise, particularly when it is the obligation of the MIDC to provide all the necessary infrastructure and services including water supply, sewerage, road, street lights etc.?

(5) Whether the NMMC can levy municipal taxes in an area which is within the municipal limits of NMMC where the NMMC does not render any services in that area?

 

(6) Whether the TTC area admeasuring 24.690 Sq. Kilometers within the jurisdiction of MIDC falls within the Municipal limits of NMMC?

4. Before dealing with the issues raised in this petition, it is necessary to make a brief reference to the circumstances leading to the filing of the present petition.

5. In the year 1961, MID Act was enacted interalia to make special provision for securing orderly establishment in industrial areas and industrial estates of industries in the State of Maharashtra, and to assist generally in the organization thereof, and for that purpose to establish an Industrial Development Corporation, and for purposes connected with the aforesaid matters. In furtherance thereof ,the private lands as well Government lands in 19 villages, list whereof is at Exh.''K'' at page No. 141, were acquired by the State Government and the MIDC was established in the year 1962. These lands came to be vested in the MIDC.

6. Under the Notification dated March 20, 1971 issued by the Urban Development, Public Health & Housing Department of the State of Maharashtra, an area comprised in 28 villages was designated as a site for new town to be known as ''New Bombay''. By another Notification dated March 20, 1971 issued by the Urban Development, Public Health & Housing Department of the State of Maharashtra, City and Industrial Development Corporation (for short CIDCO) was designated as a New Town Development Authority for the area covered under the earlier Notification dated March 20, 1971.

7. Under the Notification dated August 16, 1973 issued by the Urban Development, Public Health & Housing Department of the State of Maharashtra, additional area was included in the site designated for New Bombay in the final Plan for Bombay Metropolitan Region and consequently the Government felt that in the public interest, the said added area should be developed as an integral part of the site and accordingly, included this added area in the proposed New Town viz.New Bombay. By another Notification dated August 16, 1973 issued by the Urban Development, Public Health and Housing Department, the State Government designated CIDCO as New Town Development Authority for the additional area as well.

8. By a draft Notification dated August 27, 1991 issued by the Urban Development Department of the State of Maharashtra u/s 3(2) of the BPMC Act, proposed that the local areas of 30 villages to constitute NMMC. On December 12, 1991 an Addendum to the said Notification was issued by the Urban Development Department of the State of Maharashtra adding 14 villages constituting the NMMC. None of the petitioners or any member raised any objection to these notifications. After considering the objections and suggestions, the Urban Development Department of the State of Maharashtra issued final Notification on December 17, 1991 constituting the NMMC.

9. It is the case of the petitioners that by the letters dated March 8, 1994 and May 4, 1994 issued by the Chief Executive Officer of the MIDC to the Secretary,

 

Urban Development Department of the State of Maharashtra, submitted a proposal for declaration of New Industrial Municipal Township in respect of six locations, one of them being TTC. On September 7, 1994 in exercise of power conferred by Article 201(i) of the Memorandum of Association and Articles of Association of CIDCO, the State Government directed the CIDCO to transfer 50% amount of the development charges collected from the NMMC area so far to the NMMC immediately and further directed that the NMMC shall act as a Planning Authority for development of Nodes of Vashi, Sanpada, Nerul, Belapur CBD and Airoli as provided u/s 2(15)(a) of the Maharashtra Regional and Town Planning Act 1966 (for short M.R.& T.P.Act).

10. On December 16, 1994 the Urban Development Department of the Government of Maharashtra issued a directive u/s 154 of the M.R.& T.P.Act modifying the earlier order dated September 7, 1994. The said directive is at Exhibit S, pages 152, 153 of the petition.

11. On November 20, 1996 the additional Chief Secretary, Urban Development Department, Government of Maharashtra, issued directions to the MIDC, the Mumbai Municipal Corporation and others interalia setting out therein that the development/building permission within the MIDC area shall be given by the MIDC as per the Development Control Regulations for that area regardless of its inclusion within or outside jurisdiction of the local authority. However, it is obligatory on the part of MIDC to obtain ''No Dues certificate'' from the local authority before granting such permissions. The MIDC Shall ask for such a certificate from local authority and in case no communication is received within period 60 days it will be presumed that there are no dues. In cases where such areas included within the jurisdiction of the local authority i.e. Municipal Corporation or Municipal Council, development charges required to be levied shall be recovered by by the MIDC and handed over to the respective local authority. The capital works providing infrastructures, within the MIDC area shall be carried out by the MIDC and the same shall be handed over to the local authority, free of cost, for maintenance. Till then the present system of providing water supply, fire fighting arrangements etc. be continued to be provided by the local authority. The Property Tax, Octroi etc. shall be collected by the local authority. Similarly, licenses required under the local authority shall be issued by the concerned local authority. On September 28, 2000, CIDCO issued notice u/s 37 of the M.R.& T.P.Act proposing the modifications to Regulation 16.3(1a)C of General Development Control Regulations for Navi Mumbai.

12. It is the case of the petitioners that on the assumption that the MIDC area is included within its jurisdiction on August 23, 2001 final notice was issued by NMMC giving 48 hours time to the members of the petitioners for depositing the arrears of property tax. It is at this stage, the above petition was filed on June 11, 2001.

13. The petition, as was originally filed, claimed for declaration that the levy and collection of the property taxes by the NMMC from the petitioners is not for the

purposes of the BPMC Act and hence without the authority of law and bad in law; to declare that Clause 7(1) of the first schedule of the M.R.& T.P.Act prohibits the levy and collection of ''taxes including the property taxes'' from the petitioners. The petitioners also claimed refund of all the amounts collected in the name of the property tax and or such other or any other levies to the petitioners. The petitioners further prayed for direction to the State Government to act as per Section 341F of the Maharashtra Municipal Corporation and Municipal Councils (Amendment) Act, 1994 to constitute the TTC & TBIA into the Industrial Township by issuing the Notification in the official gazette. As and by way of of interim reliefs, the petitioners prayed for stay of 48 hours notice issued by the NMMC.

14. By order dated June 12, 2001 the Court issued notices to the Respondent Nos. 5 to 7 as the Respondent Nos. 1 to 4 were represented through the Counsel, and the notices were made returnable in four weeks. In the meantime, the ad interim relief in terms of prayer Clause 9(a) of the petition was granted. By that order the Court granted stay of all the 48 hours notices issued by NMMC to the petitioners threatening attachment of the property and belongings of the petitioners and the sale thereof by way of an action.

15. The matter was heard before this Court for admission and on September 14, 2001 the Court issued rule and the rule was made returnable after six weeks. The Court refused interim relief. The petitioners took out Civil Application No. 115 of 2002 for review of the order dated September 14, 2001. After hearing both sides, the Court dismissed the Civil Application on January 21, 2002. The petitioners carried the matter before the Apex Court by filing the SLP against the said decision. The Apex Court dismissed the SLP preferred by the petitioners on October 4, 2002. In the meantime, the petitioners took out Civil Application No. 807 of 2002 praying for interim order, which was also rejected by this Court on April 19, 2002.

16. The petitioners thereafter took out the Civil Application No. 1057 of 2005 for amendment of the writ petition on March 18, 2005 interalia contending that certain documents were required to be brought on record for deciding the controversy in the petition. These documents were searched out by the petitioners recently. Apart from the prayer for amendment in the petition, the petitioners prayed for injunction restraining the NMMC from in any manner demanding, levying, collecting and or recovering any rates or taxes including the property tax and sales tax from the petitioners. By an order dated August 19, 2005, the Court allowed the Civil Application only in so far prayer of amendment concerned. Pursuant to the said order, the petitioners carried out amendment in the original petition and added paragraph Nos. 5A to 5N after paragraph No. 5. The added paragraphs refer to the Exhibits K to X. The petitioners added words ''rates and cess'' after the words ''property taxes'' in prayer Clauses (A) and (C).

17. The MIDC and the NMMC entered into MOU on December 1, 2005 for handing over the maintenance of infrastructure facilities within the TTC area to the

NMMC. On January 24, 2006 this Court dismissed the petition on the ground that the petitioners have an equally efficacious alternate remedy of appeal u/s 406 of the BPMC Act. The petitioners carried the matter to the Apex Court and by an order dated May 8, 2006 the Apex Court set aside the order of this Court dated January 24, 2006 and remanded the matter to this Court for disposal on merits. All the contentions of both the parties, except the question of an alternate remedy, were kept open.

18. On April 2, 2007 the petitioners took out the Civil Application No. 1788 of 2007 and Civil Application No. 1789 of 2007 for amendment of the writ petition. By an order dated July 12, 2007 both the applications were allowed by this Court. Pursuant to the order of this Court in Civil Application No. 1788 of 2007 the petitioners added:

(1) Paragraph 5K1 after Paragraph No. 5K.

(2) Paragraph 5L1 after Paragraph No. 5L.

(3) Paragraph 4c1 to 4c4 after Paragraph No. 4c.

(4) Ground A1 to A8 after Ground A.

(5) Prayer (D1) (i) to (iii), (D2) (i) to (iii), (D3) (i) to (ii) after prayer D.

(6) Prayer Clause (a1) (i) & (ii) after prayer (a) in Paragraph No. 16.

The added paragraphs refer to Exhibits Y, Z, B1 to B9.

19. Pursuant to the order passed in the Civil Application No. 1789 of 2007, the petitioners added:

(1) paragraph 4c5 and 4c6 after paragraph No. 4c4 These added paragraphs refer to Exhibits B10 to B22.

(2) sub paragraph before the submissions in Ground A1

(3) prayer (iv) in prayer (D1)

(4) prayer (iv) in prayer (D2)

(5) Interim prayers (iii) and (iv) in prayer (a1) in paragraph 16.

20. In the meantime, by Notification dated June 8, 2007 issued by the Urban Development Department, Government of Maharashtra u/s 3(3) (a) of the BPMC Act, 14 villages as more particularly set out in Schedule 1 appended thereto were excluded from the limits of the NMMC and the revised boundaries of the NMMC were specified in Schedule II appended thereto.

21. The Petition was heard before this Court on September 4, 2007, October 4, 2007 and October 18, 2007 when, according to the petitioners, this Court declined orally to grant the interim reliefs. The petitioners therefore preferred SLP against these orders before the Apex Court and the same was dismissed on

January 4, 2008.

22. On June 17, 2008 Civil Application No. 1048 of 2008 taken out by the petitioners for amendment was allowed. Pursuant to this order, the petitioners added:

(1) paragraph 5AB1 to 5AB7 after paragraph No. 5A and before grounds 5A1 to 5A8. These paragraphs refer to Exhibits M1 to M9.

(2) sub paragraphs before submissions in ground A1 of the petition.

23. On September 8, 2008 the petitioners took out Civil Application No. 2115 of 2008 for amendment of the writ petition. The said application was allowed on September 29, 2008. Pursuant to that order, the petitioners added:

(1) paragraph (A3)

(2) prayer (A1) after prayer (A) and before prayer (B) in paragraph No. 8 of the petition.

24. The Petitioners have come out with the case that the MIDC area does not fall within the territorial jurisdiction of the NMMC and consequently the NMMC has no power to levy and recover taxes and cess in the MIDC area. The petitioners rely upon Notification dated December 17, 1991 and the draft Notifications dated August 27, 1991 and the Addendum dated December 2, 1991. Comparing the language employed in the draft notifications and the final notification dated December 17, 1991, it is submitted that the MIDC area does not form part of the municipal limits of the NMMC. The petitioners also rely upon the directives dated September 7, 1994 and December 16, 1994 issued by the State Government in support of the submissions. The petitioners rely upon various maps produced by the parties to this petition, the boundaries described in these maps as compared to the boundaries set out in the final Notification dated December 17, 1991 to contend that the MIDC area does not form part of the municipal limits of the NMMC. The petitioners have also brought on record the area calculations to substantiate their claim that the MIDC area does not form part of the municipal limits.

25. Without prejudice to their basic contention that the MIDC area does not form part of the municipal limits of NMMC, the petitioners submit that in view of Clause 7 of the First Schedule of the M.R.& T.P.Act, they are not liable to pay the property taxes and the other taxes levied by the NMMC as they are the lessees of MIDC. The petitioners rely upon the Division Bench Judgment of this Court in the case of Jalgaon Municipal Corporation in Writ Petition No. 1012 of 2003 dated 9th October, 2006 for contending that it is the statutory obligation of MIDC to provide services in the area falling under the MIDC and consequently, the NMMC cannot provide any services in the said area. The petitioners have brought on record the levies of MIDC and NMMC. They submit that none of the duties as prescribed under Sections 63 and 66 of the BPMC Act are discharged by the NMMC in so far as the MIDC area is concerned and consequently, the NMMC cannot levy and

 

recover any taxes from the MIDC area. The petitioners have also assailed the MOU dated December 1, 2005 entered into between the MIDC and the NMMC, whereunder, the MIDC has handed over the maintenance of roads, drains etc. to the NMMC. It is the contention of the petitioners that the MIDC cannot contract out of its statutory functions. By entering into MOU dated December 1, 2005 the MIDC has abdicated its statutory duties.

26. On April 11, 2002 the NMMC filed first affidavit of Mr. Prakash Kulkarni, Deputy Assessor and Collector (Property Tax), interalia contending that none of the petitioners or any other organization or association of Industries had objected to inclusion of Industrial area within the municipal limits of the NMMC at the time of its formation. As per Section 127 of the BPMC Act, the NMMC is authorised to impose property taxes among other taxes within its area. The mode and manner of recovering the municipal taxes is laid down u/s 128 of the BPMC Act. After following the procedure laid down under the BPMC Act, the NMMC has levied the property tax on all the buildings and lands within its area including the TTC Industrial area of the MIDC.

27. In so far as the prayer of the petitioners to constitute TTC area into the Industrial Township, it was contended that as per Article 243Q of the Constitution of India, it is left to the discretion of the State Government and consequently the petitioners cannot pray for writ of mandamus. It was denied that the NMMC levied the property taxes with retrospective effect. On these among other grounds, it was contended that the petition is liable to be dismissed.

28. The MIDC filed its first reply dated July 29, 2002 through Mr. Sanjay D. Patil, Chief Planner, interalia contending that the correspondence was exchanged between the authorities of the MIDC and the State Government for establishment of the Industrial Township. The subject of formation of the Industrial Township is, however, within the domain of the State Government.

29. On behalf of the NMMC, Mr. Prakash Kulkarni, Joint Commissioner (Property Tax), made 2nd affidavit, interalia contending that pursuant to the Government Notification dated December 17, 1991 the NMMC was constituted w.e.f. January 1, 1992, which includes TTC Industrial area. By Notification dated December 16, 1994 issued by the Urban Development Department of the Government of Maharashtra, the NMMC was designated as a Planning Authority and was empowered to exercise powers of the Planning Authority as more particularly set out in the Schedule appended to the said Notification. As per the Section 40(1A) of the M.R.& T.P.Act, the MIDC is designated as a special Planning Authority for the notified area of the TTC Industrial area. The functions as enumerated by the M.R.& T.P.Act are different from those enumerated under the BPMC Act. The Notification dated December 16, 1994 makes functional differentiation between the MIDC and the NMMC in respect of the town planning only. Under the BMPC Act there are provisions for formation of the wards and pursuant to these provisions, the NMMC is divided in 88 wards, out of which 15 wards fall within the area of MIDC. It is further averred that in the matter of taxation, there is no

 

quid pro quo. It is not a fee or service charge for reimbursement of expenses incurred for rendering the services. The authorities like MIDC or CIDCO are basically developmental agencies who ensure planned and scientific development of the land within the designated area. Once the substantial development of the infrastructural facilities is over, such facilities are handed over to the municipal bodies for maintenance and upgradation. The tax is an compulsory exaction of money by public authority for public purposes enforceable by law and is not a payment for services rendered. It is further averred in the affidavit the NMMC incurred expenses for developmental work of infrastructural facilities in the TTC area. The NMMC runs four Primary Health Centers in the MIDC and the services therein are availed of by the workforce employed in the Industrial Establishment. The affidavit also highlights the attempts made by the petitioners for obtaining interim reliefs and all those attempts were unsuccessful.

30. The petitioners filed affidavit in rejoinder dated August 14, 2007 to the reply filed by the NMMC. The petitioners reiterated their contentions as regards the authority of NMMC to levy and recover taxes, cess and charges. The petitioners filed additional affidavit dated September 3, 2007 setting out therein coercive action of the NMMC for recovery of its dues.

31. On behalf of NMMC third affidavit was made by Mr. Prakash B. Kulkarni, Deputy Assessor and Collector on July 8, 2008 wherein, the Notification dated December 17, 1991 and the Map showing limits of NMMC & the Notification dated June 8, 2007 were enclosed. It was further brought on record that the NMMC declared its intention u/s 38 of the M.R.& T.P.Act to revise the development plan and to that effect Notification dated September 26, 2007 was published.

32. The petitioners filed their affidavit in rejoinder to the affidavit of NMMC on July 15, 2008 contending that the area of MIDC does not form part of the municipal limits of the NMMC. The petitioners extracted table, which according to them establishes that the area admeasuring 24.690 sq.kilometers of the MIDC does not form part of the NMMC and that the authorities of NMMC have manipulated the area calculations.

33. On behalf of the State Government, Ms. Ujwala Dandekar, Desk Officer, Urban Development Department, made an affidavit on November 5, 2008 setting out therein that the area of NMMC is 109.59 Sq.Kilometers comprising 30 erstwhile revenue villages in Thane District. To this affidavit, Notifications dated December 17, 1991 issued under sections (i) 3(2) of the BPMC Act, (ii) 4(1) read with Section 254(1) (a) of the Maharashtra Zilla Parishad and Panchayat Samities Act, 1961 (for short ''the Act of 1961''), (iii) 256 (1) (b) read with Section 5 of ''the Act of 1961'', and (iv) 4(2) (b) of the Bombay Village Panchayats Act, 1958 (for short ''the Act of 1958'') were enclosed. So also the Notifications dated 8th June, 2007 issued under sections (i) 3(3) (a) of the BPMC Act, (ii) 4(1) read with Section 254(1)(a) of ''the Act of 1961'', (iii) 5 read with Section 256(1)(a) of ''the Act of 1961'' and (iv) 4 read with Section 256(2)(a) of ''the Act of 1958'' read with Clause (g) of Article 243 of the Constitution of India were enclosed.

 

34. The petitioners made an affidavit in rejoinder on November 24, 2008 to the affidavit in reply dated November 5, 2008 made on behalf of the State Government. It is contended that the stand of the NMMC is contradictory as would be evident from the perusal of the maps, environmental status report, replies under the RTI and the affidavits made on its behalf. The petitioners also contended that the draft Notifications issued on August 27, 1991 and the Addendum dated December 2, 1992 used the expression ''entire 44 villages'' whereas the final Notification dated December 17, 1991 used the expression ''local area of 44 villages''. The petitioners therefore reiterated that the TTC Industrial area does not form part of the municipal limits of the NMMC.

35. On behalf of the NMMC, Mr. Prakash B. Kulkarni, Deputy Assessor & Collector made further affidavit on January 19, 2009 wherein, it is contended that the total area of the NMMC after exclusion of 14 villages from the jurisdiction of the NMMC under Notification dated June 8, 2007 is 109.59 sq.kilometers comprising 30 erstwhile villages in Thane District. Additional affidavit was filed on behalf of NMMC reiterating its contention that the TTC Industrial area falls within the city limits of the NMMC. The petitioners made affidavit on November 26, 2009 enclosing therewith the bills issued by the MIDC in respect of the water charges, drainage charges, fire charges, services charges and the D.P.Charges as also the NMMC levying taxes which amounts to double taxation. The MIDC made affidavit in rejoinder on December 14, 2009 denying the allegations made in the affidavit of the petitioners dated November 26, 2009.

36. We have heard Ms. Rajani Ayer, learned Senior Counsel with Mr. Firoz Palkhiwala, Ms. Mili V. Thakkar, Ms. S.V. Thakkar, Mr. Vijay P. Salunkhe and Mr. Hemant Engineer on behalf of the petitioners, Ms. S.S. Bhende, learned AGP on behalf of Respondent Nos. 1 to 4 being the State of Maharashtra and its authorities, Mr. R.S. Apte, learned Senior Counsel with Mr. A.A. Garge for Respondent No. 6NMMC, Ms. Deepa Chavan, learned Counsel with Mr. Kiran Gandhi and Mr. Ravindra Chilay on behalf of Respondent Nos. 5 and 7 being the MIDC and its Area Manager. Learned Counsel for the parties invited our attention to the various Notifications, Maps and other material on record. We have also gone through the written submissions filed by the parties. With the assistance of the learned Counsel, we have carefully gone through the material on record and have examined minutely the case made out by the respective parties.

37. Writ petition was placed for directions on June 22, 2010 in view of the precipe dated June 18, 2010 filed on behalf of the petitioners. During the course of hearing, learned Counsel for the NMMC stated that he may be permitted to delete the points regarding Section 15 of the Census Act, as also the notice dated 26th September, 2007 from the written statement submissions filed on behalf of the NMMC on June 7, 2010. We have recorded the said statement in our order dated June, 22, 2010.

38. In support of this petition, Ms. Rajani Ayer raised the following contentions:

 

Territorial jurisdiction:

(i) On behalf of the petitioners it was submitted that the MIDC does not fall within the territorial jurisdiction of the NMMC. It was submitted that in the draft Notification dated August 27, 1991, the schedule appended thereto used the expression ''entire area'' within the limits of revenue villages (1) to (30). The schedule also set out the boundaries, and the note below the Notification mentioned that the plan showing the area proposed to be declared as NMMC was kept open for public inspection during office hours in the office of the Collector, Thane and the Tahasildar, Thane. The State Government issued Addendum on December 2, 1991 and in addition to 30 villages, it was decided to add 14 villages and the boundaries were also set out in the said Notification. However, in the final Notification dated December 17, 1991 the expression ''local areas'' of the revenue villages (1) to (44) from Thane Zilla Parishad was used. Thus, there is striking contrast in the draft Notification dated August 27, 1991 and the final Notification dated December 17, 1991. The draft Notification uses the expression ''entire area'' whereas the final Notification uses the expression ''local area''. These expressions, on the face of it are different terms and denote different dimensions, one larger than the other. The expression ''local area'' of the revenue villages is deliberately used to connote those areas of the villages not falling within the areas notified and declared to be Industrial areas, which are acquired for the purposes of MIDC and which Industrial areas exclusively fall within the jurisdiction and under the control of the MIDC. Since no Notification u/s 4(1) of the Maharashtra Land Revenue Code, 1966 (for short ''the Code'') is issued, the expressions ''entire area'' and the ''local area'' are to be given their ordinary/common meaning and the use of these two different expressions clearly reflects the intention of the State Government to specify two different areas. It was submitted that this interpretation is substantiated by the order dated September 7, 1994 and the directive dated December 16, 1994 issued by the State Government. Under the order dated September 7, 1994 the State Government directed that 50% of the development charges collected from the area of NMMC by CIDCO shall be transferred by CIDCO to the NMMC and the NMMC was appointed as the Planning Authority for some of the nodes developed by CIDCO and handed over to NMMC. However, it was not mentioned that the NMMC is also to act as a Planning Authority in any of the areas of the MIDC. Thus, the NMMC has no local authority in the MIDC area.

(ii) In so far as a directive dated December 16, 1994 issued by the State Government u/s 154 of the MR & TP Act is concerned, it provided transfer of certain areas by CIDCO to NMMC that are overlapping between CIDCO and NMMC to enable the NMMC to act as a sole Planning Authority in the areas falling within its jurisdiction. The intention in issuing this directive was obviously to avoid dual Planning Authority operating in respect of the same area. The petitioners also relied upon the Notification dated September 28, 2000 issued by CIDCO u/s 37 of the M.R.& T.P.Act for modification of the regulation, which also reinforces the fact that the MIDC area does not fall within the NMMC. While excluding 14 villages from the NMMC under the Notification dated June 8, 2007, the expression ''whole area'' was used. None of the 14 villages which were sought to be excluded from the municipal limits of the NMMC had any area within the MIDC or overlapped with MIDC.

(iii) Elaborating these submissions, it was contended that the boundary of NMMC area as notified under the Notification dated December 17, 1991 does not meet. Any area can only be constituted by contiguous boundary. The result of the said Notification is that the said Notification did not provide for the entire periphery of NMMC area. To highlight this contention it was submitted that if the boundary set out in the Notification is compared with the Map as set out at page 144R, it jumps from the eastern boundary of Adavali Bhutavli directly to the western boundary of Turbhe. The MIDC area falls neatly within this jump in the boundary and the boundary does not encompass any MIDC area. The boundary is not contiguous and therefore, does not encompass an area at all. The petitioners placed reliance upon the judgments of the Apex Court in the case of Collector of Central Excise, Bombay-I and Another Vs. Parle Exports (P) Ltd., and the Orient Traders v. Commercial Tax Officer 2009 (273) ELT 447 (SC) to contend that all the Notifications are to be construed strictly as per the wording used therein. It was further submitted that there is also discrepancy in respect of the total area covered under the NMMC. As per the census of 1981 the area of 30 villages forming the NMMC was 127.676 sq.kilometers. During the 1991 census the area of NMMC was shown as 104.13 sq.kilometers. From the area point of view also it is clear that the MIDC area was not included when the NMMC was constituted under the Notification dated December 17, 1991. The NMMC had made false statements and contradicted its stand at various places.

39. II Without prejudice to the aforesaid contentions and in the alternate to the submissions that the MIDC does not fall within the NMMC, even otherwise the petitioners are not liable to pay the property taxes and other taxes and cess in view of Clause 7 of Schedule 1 of the M.R.& T.P.Act.

The language employed in Clause 7 is mandatory and prohibits the NMMC from levying and recovering the taxes where the MIDC provides all or any of the amenities. In the instant case, admittedly there is no agreement entered into between the NMMC and the MIDC with the prior sanction of the State Government in respect of payment of any lump sum contribution. The MIDC has been providing all the services upto the year 2005 and thereafter also some of the services in the MIDC area are provided by the MIDC, the NMMC has no power to levy and recover taxes from the petitioners.

40. III Quid Pro Quo and the Local Authority

Even assuming for the sake of arguments while denying that MIDC falls within the municipal limits of NMMC, in the light of the Division Bench Judgment of this Court in the case of Jalgaon Municipal Corporation in Writ Petition No. 1012 of 2003, the NMMC is barred from providing any services in the MIDC area. It is statutory obligation of the MIDC to provide the services. It is therefore not open to the NMMC to contend that the principal of quid pro quo is not applicable to the taxes levied and collected by the NMMC. It was also submitted that Section 63 of the BPMC Act provides obligatory duties and Section 66 provides discretionary duties. None of the duties specified either in Section 63 or Section 66 of the BPMC Act are discharged by the NMMC in so far as MIDC area is concerned. Even otherwise the NMMC cannot levy and recovery any taxes from the petitioners.

41. IVNMMC cannot contract out of its statutory functions:

Under the MOU dated December 1, 2005, MIDC handed over maintenance of roads, drains, street lights etc.to NMMC . Having regard to the provisions of the MID Act, the MIDC cannot abdicate its statutory duties and functions. The said MOU is therefore in the teeth of the provisions of the MID Act and is therefore illegal, void abinitio and liable to be quashed and set aside.

42. Mr. Apte, learned Senior Counsel on behalf of Respondent No. 6, NMMC submitted that the MIDC area/TTC Industrial area squarely falls within the municipal limits of the NMMC. The draft Notification was issued by the State Government u/s 3(2) of the BPMC Act, constituting the local areas of 30 villages in the NMMC. By Addendum dated December 12, 1991 issued to the earlier Notification dated August 27, 1991 14 villages were added constituting the NMMC. None of the petitioners or any member raised any objections pursuant to these Notifications. Ultimately, the State Government issued final Notification constituting the local areas of 44 villages in the NMMC. He further submitted that the boundary of NMMC is contiguous and after the exclusion of 14 villages pursuant to Notification dated June 8, 2007, the area of NMMC is 109.59 sq.kilometers comprising 30 erstwhile villages in Thane District. He has invited our attention to the relevant maps on record and submitted that the NMMC has neither manipulated figures nor furnished any false information as alleged by the petitioners. On the other hand he submitted that the questions whether the MIDC area/TTC Industrial area falls within the municipal limits of the NMMC can be considered on the basis of the final Notification dated December 17, 1991 read with subsequent Notification dated June 8, 2007. He submitted that the NMMC was constituted u/s 3 of the BPMC Act which is the legislative process. It is therefore not open to the petitioners to contend that the MIDC area/TTC Industrial area does not form part of the NMMC.

43. Mr. Apte further submitted that once the MIDC area/TTC Industrial area forms part of the NMMC, the NMMC is empowered to impose taxes under the provisions of the BPMC Act. He has invited our attention to the various provisions of the BMPC Act in support of the submissions. Whereas under the MID Act, the MIDC can levy and recover fees and service charges, it has no power to levy and collect taxes. The said power is conferred upon the NMMC under the provisions of the BPMC Act. He further submitted that, the contention raised by the petitioners based upon Clause 7 of the Schedule I of the M.R.& T.P.Act, has no substance. In support of this submissions, he invited our attention to the provisions of the

 

BPMC Act as also the MID Act and the M.R.& T.P.Act. Countering the contention raised by the petitioners that the NMMC is not rendering any services, he submitted that the concept of tax means compulsory exaction of money by the public authority for the public purposes enforceable by law and is not the payment for the services rendered. The essence of taxation is compulsion and it is imposed under the statutory power. The other characteristic of tax is that it is an imposition made for public purposes, without reference to any special benefits to be conferred on the payer of the tax. The levy of the tax is for the purpose of general revenue, which when collected forms part of the public revenues of the State. As the object of the tax is not to confer any special benefit upon any particular individual, there is no element of quid pro quo between the tax payer and the public authority. In support of this submissions, he relied upon the judgments of the Apex Court in the case of The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., and Delhi Golf Club and Anr. v. NDMC (2001) 2 SCC 633.

44. Mr. Apte further submitted that the scope and ambit of BPMC Act and that of MID Act is different. Both are enacted under two different legislative fields and there is no interse conflict between the two. In support of this submission he relied upon the judgment of the Apex Court in the case of Solapur Midc Industries Association and Others Vs. State of Maharashtra and Others, . He invited our attention to the affidavits made by the NMMC and the amenities provided by the NMMC in the MIDC area / TTC Industrial area.

45. Ms. Deepa Chavan, learned Counsel appearing on behalf of Respondent Nos. 5 and 7 invited our attention to the provisions of the MID Act and in particular Section 2(a), Section 14(d), Section 15(c) (j) (k), Section 17 and Section 43(3) in particular. In so far as the contentions raised about the validity of the MOU dated December 1, 2005 entered into between the MIDC and the NMMC is concerned, she submitted that the MIDC has not abdicated any statutory functions conferred upon it under the provisions of the MID Act. Pursuant to the said MOU the MIDC handed over certain roads and the incidental facilities like street lights, water, drainage and nallas to NMMC. The NMMC is required to undertake maintenance of the said roads and is further required to take all approvals and permissions in respect thereof from the MIDC. After execution of the said MOU, the MIDC has not levied any service charges in respect of the facilities that were handed over to the NMMC. She therefore submitted that there is no question of double taxation as contended by the petitioners. She has also distinguished the judgment of this Court in the case of Jalgaon Municipal Corporation''s case in Writ Petition No. 1012 of 2003. She also countered the submissions of the petitioners on the construction of Clause 7 of Schedule I of the M.R.& T.P.Act and prayed for dismissal of the petition.

46. Ms. S.S. Bhende, learned AGP adopted the submissions raised on behalf of the Respondent No. 6 - NMMC and the Respondent Nos. 5 & 7. She invited our attention to the affidavit of Ms. Ujwala Dandekar, Desk Officer, Urban

 

Development Department, dated November 5, 2008 and submitted that the MIDC area/ TTC area is part of the municipal limits of the NMMC.

47. We will deal with the contentions raised by the petitioners serially as under:

I Territorial Jurisdiction:

(i) It was contended on behalf of the petitioners that in the schedule appended to the draft Notification dated August 27, 1991, the expression ''entire area'' within the limits of the revenue villages as mentioned in (1) to (30) were constituted in the municipal limits of the NMMC. By Addendum dated December 2, 1991 in addition to 30 villages, it was decided to add 14 villages thereby meaning that in all 44 revenue villages constituted the municipal limits of the NMMC. However, in the final Notification dated December 17, 1991 the expression ''local areas'' of the revenue villages (1) to (44) constituting the municipal limits of the NMMC was used. It was therefore submitted that since the draft Notification uses the expression ''entire area'' and the final Notification uses the expression ''local area'' on the face of it, these terms are different and denote different dimensions. The expression ''local area'' of the revenue villages is deliberately used to connote those areas of the villages not falling within the areas notified and declared to be Industrial areas The expressions ''entire area'' and the ''local area'' are to be given there ordinary/common meaning and the use of these two different expressions clearly reflects the intention of the State Government to specify two different areas.

(ii) Before we consider this submission, it would be material to note the wordings employed in the draft Notification dated August 27, 1991. The relevant portion of the said Notification is reproduced below for ready reference:

DRAFT NOTIFICATION

''No.NBC,1091/140/CR14/ 91/UD20 - In exercise of the powers conferred by Sub-section (2) of Section 3 of the Bombay Provincial Municipal corporation Act, 1949 (Bom.LIX of 1949), the Government of Maharashtra, after previous publication as required by Sub-section (4) of the said Section 3 hereby constitutes the local areas specified in Schedule hereto, to be ''the city of New Bombay'' for the purposes of that Act with effect from the date of publication of the notification in the Official Gazette.

SCHEDULE

Entire area within the limits of revenue villages as mentioned below:

(1)Airoli, (2) Belapur (Shahabaj), (3) Bonsari (4) Borivali, (5) Chinchavalai, (6) Dighe, (7) Dive, (8) Dharave, (9)Ghansoli (Urban), (10) Gothivli, (11)Ilthan, (12) Ju, (13)Karave, (14) Khairane, (15) KoparKhairane, (16) Kukshet, (17) Mohape, (18) Nerul, (19) Pawane, (20) Rabale, (21) Sanpada, (22) Sarasole, (23) Savali, (24) Shirawane, (25) Sonkhar, (26) Talwadi, (27) Tatavali, (28) Turbhe, (29) Vashi, (30) AdivliBhutali.

 

North- Along northern boundary of village Dighe;

East- Along the Eastern boundary of village Dighe and Ilthan and then along part of the Southern boundary of village Ilthan and then from the village boundary junction of village Chinchvali and Rabale and then along Northern Eastern boundary of village Rabale and thereafter along the Northern boundary of village Mohape and then along the Northern and Eastern boundary of village AdivaliBhutali and then along the Eastern boundaries of village Borivali, Pavane, Turbhe, Bonsari and Kukshet thereafter along part of the Eastern boundary of village Shiravane and then along the Eastern boundary of village Shahabaj (Belapur).

South - Along part of the Eastern and Southern boundary of village Shahabaj ((Belapur) and then along the Southern boundary of village Karave;

West - Along the Western boundaries of villages Karave, Nerul and Sarsole and then along part of the Northern boundary of village Sarsole and then along part of the Southern boundary of village Sonkhar and then along the Western boundary and part of Northern boundary of village Sonkhar and then along the part of the Western boundary of village Turbhe and then along the Southern Western and Northern boundary of village Ju and thereafter along Southern, Western and Northern boundary of village KoparKhairane and then along the Southern and Western boundary of village Ghansoli and thereafter along the Western boundary of village Tetavali and along part of the Western boundary of village Gothivali and then along the Southern and Western boundary of village Airoli upto the boundary junction of village Dighe.

(iii) Addendum to the draft Notification dated August 27, 1991 was issued on December 2, 1991 and the relevant portion of the said Addendum is reproduced for ready reference:

Addendum

In the Schedule to the draft notifications contained in the Government Notification, Urban Development Department, No. NBC 1091/140/CR14/ 91/UD2, dated the 27th August, 1991 published in the Maharashtra Government Gazette, Extraordinary, PartIA, Central SubDivision, dated the 27th August, 1991 at pages 2829 ;

(a) after the brackets, figures and words ''(30) AdvaliBhutali'' the following villages shall be added:

(31) Dahisar, (32) Mokashi, (33) Walivali, (34) Pimpri, (35) Nighu, (36) Navali, (37) Waklan, (38)Babhali, (39) Narivali, (40)Bale, (41)Nagaon, (42) Bhandavli, (43) Uttar Shiv, (44) Goteghar.

(b) for the portions beginning with the word ''North'' and ending with the words ''upto the boundary of village Dighe'', the following portions shall be substituted:

North- Along northern boundary of village Dighe, East- Along the Eastern boundary of village Dighe and Ilthan and then from the village boundary junction of village Chinchavli and Rabale and then along Northern Eastern boundary of village Rabale and thereafter along the Northern boundary of village Mohape and then along the Northern Eastern boundary of village Adivali Bhutali Ghateghar, Uttar Shiv, Vadavli then Eastern boundary of village Bale, Vaklan and South boundary of village Vaklan, Nighu, AdivliBhutali, then along Western boundary at Turbhe, Bhonsari and Kukshet thereafter part of Eastern boundary of Shirawane and then along the Easter boundary of village Shahabaj.

South - Along part of the Eastern and Southern boundary of village Shahabaj ((Belapur) and then along the Southern boundary of village Karave; extending upto Panvel Creek.

West - Along Western boundary of villages extending upto Thane Creek, namely, Karave, Nerul, Sarsole, Sonkhar, Vashi, Ju, Koparkhairane, Ghansoli, Tatavli, Gothivli, Dive, Airoli and Dighe.

(iv) In so far as area covered by MIDC/TTC Industrial area where the units of the petitioners are located, was comprising the private lands as well as the Government lands from 19 villages list whereof is as under:

1. Kalva, 2. Dighe, 3. Ilthan, 4. Chinchavali, 5. Airoli, 6. Rabale, 7. Tatavali, 8.Tetavali, 9.Ghansoli, 10.Savali, 11. Mahape, 12. Kukshet, 13.Koparkhairane, 14. Khairane, 15. Borivali, 16. Pavane, 17. Bonsari, 18. Turbhe, 19. Shirvane.

(v) Comparison of villages covered by MIDC/TTC Industrial area and the final Notification dated December 17, 1991 clearly shows that the villages that constitute MIDC/TTC Industrial area, are forming part of the NMMC. The question is whether the expression ''entire area'' and the expression ''local area'' connote different areas as contended by the petitioners or they represent one and the same areas. Now it is not in dispute that the daft Notification dated August 27, 1991 uses the expression ''entire area'' and the final Notification dated December 17, 1991 uses the expression ''local area''. In view thereof, we have to consider what the expression ''local area'' means. The expression ''local area'' is used in various statutes viz.

(1) Act of 1958 and in particular Sections 4(2)(a), (b), Section 157, Section 159,

(2) Section 4(1)(v) of the Code,

(3) Act of 1961 and in particular Sections 4, 5, 254(1) (a),(b), 255, 256(1) (b), 256(2) thereof,

(4) Constitution of India and in particular Article 277 and Entry No. 52 of List IIState List of Schedule 7.

(vi) On behalf of the petitioners, by placing reliance upon the judgment of the Apex Court in the cases of Collector, Central Excise (supra) and Orient Traders (supra), it was submitted that all these Notifications are to be construed strictly as per the wording thereof and the different words specifically used in Notifications have different meanings, the intention being different

(vii) We do not find any merit in this submission. The expression ''local area'' used in Article 277 and Entry No. 52 of List IIState List clearly indicates the constitutional intention was to understand the ''local area'' in the sense of any area which is administered by the local body, might be Corporation, Municipal Board, District Board etc., as held by the Apex Court in the following cases:

(1) Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another, .

(2) Bhopal Sugar Industries Ltd. Vs. State of Madhya Pradesh and Others, .

(3) Shaktikumar M. Sancheti and Another Vs. State of Maharashtra and Others, .

(viii) It has been held by the Apex Court in the aforesaid judgment that in the context of State legislative powers under Entry No. 52 of List IIState List of Schedule 7, the expression ''local area'' means the area administered by the local body like the Municipality, District Board, Local Board, Panchayat or like.

48. The local/State statutes referred herein above do not define the expression ''local area''. Considering the context in which the expression ''local area'' has been used in the aforesaid statutes the expression ''local area'' is to be understood in the sense of any area which is administered by the local body, such as Corporation, Municipal Board, District Board, Panchayat etc. We are therefore of the opinion that the expression ''entire area'' and the expression ''local area denote and convey one and the same meaning viz. the entire area of the revenue villages administered by the respective village panchayats. It is also relevant to note at this stage that the petitioners have not objected to the draft Notification dated August 27, 1991 and the Addendum dated December 2, 1991. As held by the Apex Court in the case of Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, it must be noted that the function of the Government in establishing the Corporation under the BPMC Act is neither executive nor administrative and it is a legislative process. In the present case, Government published the proposal by draft Notification and after considering the objections and suggestions, final Notification was issued u/s 3(2) of the Act. The final Notification clearly includes entire revenue villages (1) to (44)set out in the schedule appended thereto. It is not in dispute that the villages 1 to 19 by which the MIDC area is constituted are included in the final Notification dated December 17, 1991. We are therefore of the opinion that the MIDC area is part of the municipal limits of the NMMC.

49. The petitioners relied upon the Government order dated September 7, 1994 and the directive dated December 16, 1994 issued u/s 154 of the M.R.& T.P.Act and the Notification dated September 28, 2000 issued by CIDCO u/s 37 of the M.R.& T.P.Act proposing modifications to Regulation 16.3(1)(a)C of the General Development Control Regulations for Navi Mumbai. In our opinion, the reliance

 

placed on these Notifications/order is wholly misconceived. The Government Order dated September 7, 1994 was issued by the State Government in exercise of power conferred by Article 201(i) of the Memorandum of Association and the Articles of Association of CIDCO directing the CIDCO to transfer 50% of the amount of development charges collected from the NMMC are so far, to the NMMC immediately and further directed that the NMMC shall act as a Planning Authority for development of nodes of Vashi, Sanpada, Nerul, BelapurCBD and Airoli as provided u/s 2(15)(a) of the M.R.& T.P.Act. By subsequent directive dated December 16, 1994 issued by the State Government u/s 154 of the M.R.& T.P.Act, the State Government has modified the earlier order dated September 7, 1994. The Notification dated September 28, 2000 issued by the CIDCO proposed modification of the Regulation No. 16. Thus these Notifications/directives do not advance the case of the petitioners any further and the reliance placed by the petitioners on these notifications/directives is wholly misconceived.

50. The petitioners further contended that the boundary of the NMMC area as notified in the final Notification dated December 17, 1991 does not meet and therefore it amounts to no boundary at all. As a result thereof, the said Notification did not provide for entire periphery of the NMMC area. Since any area can only to be constituted by a contiguous boundary, the boundary provided by the said Notifications did not enclose any area. In support of the submission, the petitioners relied upon the map at page No. 144R and submitted that if the boundary as set out in the final Notification dated December er 17, 1991 is followed on the said map, it jumps from eastern boundary of AdavliBhutwali directly to the western boundary of Turbhe. The MIDC area falls neatly within this jump in the boundary and the boundary does not encompass an area at all. We have carefully considered the map at Page 144R and the eastern boundary set out in the final Notification dated December 17, 1991 and compared this with the map at Page 144R. Now the eastern boundary in the final Notification dated December 17, 1991 is reproduced below for ready reference:

East-Along the Eastern boundary of village Dighe and Ilthan and then from the village boundary junction of village Chinchavli and Rabale and then along Northern Eastern boundary of village Rabale and thereafter along the Northern boundary of village Mohape and then along Northern Eastern boundary of village Adivali Bhutali Goteghar, Uttar Shiv, Vadavli then Eastern boundary of village Bale, Vaklan and South boundary of village Vaklan, Nighu, AdivaliBhutali, then along Western boundary at Turbhe, Bonsari and Kukshet thereafter part of Eastern boundary of Shirawane and then along the Eastern boundary of village Shahabaj.

51. If the eastern boundary of final notification dated December 17, 1991 is followed on the map in the light of boundaries of revenue villages of eastern boundary, it is abundantly clear that there is no discrepancy whatsoever. The petitioners have not properly appreciated the following description in the eastern boundary:''

 

then along Western boundary at Turbhe, Bonsari and Kukshet thereafter part of Eastern boundary of Shirawane and then along the Eastern boundary of village Shahabaj.

52. The contentions raised by the petitioners that the boundary jumps from eastern boundary of AdavliBhutali directly to the western boundary of Turbhe is not correct and on the other hand it clearly includes the MIDC area if we take into consideration boundaries set out in the final Notification dated December 17, 1991. We are also satisfied that the boundary of the NMMC area as notified in the final Notification dated December 17, 1991 is contiguous and it encompasses all the 30 villages set out therein. We therefore do not find any discrepancy in respect of the boundary set out in the final Notification dated December 17, 1991.

53. The petitioners have also contended that the area admeasuring 24.690 sq.kilometers that of MIDC area, even otherwise does not form part of the NMMC area. In support of this submission, the petitioners have relied upon the District Census held in the years 1981, 1991 as also the maps and yearly diaries published by the NMMC. On the other hand in the affidavit made by the NMMC as also the State Government they have specifically come out with the case that the area of NMMC is 109.59 sq.kilometers. As indicated earlier, the villages forming MIDC area are part of the municipal limits of the NMMC. We are therefore satisfied that the contentions raised by the petitioners on the basis of area are devoid of any substance.

54. II Clause 7 of Schedule I of the M.R.& T.P.Act:

(i) Based upon these provisions the petitioners contended that the language employed in Clause 7 is mandatory and prohibits NMMC from levying and recovering taxes where the MIDC provides all or any of the amenities. In the instant case, admittedly there is no agreement entered into between the NMMC and the MIDC with the prior sanction of State Government in respect of any lump sum contribution, the NMMC has no power to levy and recover the taxes from the petitioners. In order to appreciate this submission, it is necessary to reproduce Clause 7 of Schedule I of the M.R.& T.P.Act which reads as under:

7.(1) Subject to rules, if any, that may be made under this Act, and regard being had to the fact that the relevant authority itself provides in the area within the jurisdiction of the local authority all or any of the amenities which the local authority provides, the relevant authority shall not be liable to pay the taxes including the property taxes, if any, but it shall be lawful to the local authority to arrive at an agreement with the relevant authority with the prior sanction of the State Government to receive a lumpsum contribution from the relevant authority in lieu of all or any of the taxes levied or services rendered by the local authority,

(2) Where no such agreement, as is referred to in Sub-section (1) can be reached or there is any dispute regarding any matter referred to in the aforesaid Sub-section (1), the matter may be referred to the State Government in such manner as the State Government may determine, and the State Government

may after giving to the local authority or the relevant authority or both a reasonable opportunity of being heard, decide the amount of such contribution. The decision of the State Government, shall be binding on the local authority and the relevant authority.

(ii) On the other hand Mr. Apte, submitted that Clause 7 provides that whenever the relevant authority (in the present case MIDC) itself provides in the area within the jurisdiction of the local authority (in the present case the NMMC) all or any of the amenities which the local authority provides, the relevant authority shall not be liable to pay the taxes including the property taxes, if any, but it shall be lawful to the local authority to arrive at the agreement with the relevant authority with the prior sanction of the State Government to receive lump sum contribution from the relevant authority in lieu of all or any of the taxes levied or services rendered by the local authority. He submitted that Clause 7 provides exemption to the relevant authority (in the present case the MIDC) if the relevant authority itself provides all or any of the amenities. It however does not exempt the unit holders in the MIDC area from payment of taxes including the property taxes. He further submitted that Clause 7 of the First Schedule is enabling provision, which enables the local authority and the relevant authority to enter into the agreement with prior sanction of the State Government to receive a lump sum contribution from the relevant authority in lieu of all or any of the taxes levied or services rendered by the local authority. In order to appreciate the contentions put forth by the learned Counsel, it will be useful to make reference to some of the provisions of the BPMC Act, MID Act and the M.R.& T.P.Act.

(iii) Section 2(38) of the BPMC Act defines the term ''municipal tax'' as any impost levied under the provisions of the said Act. Chapter XI deals with the Municipal taxes. Section 127 thereof empowers the Corporation to impose the taxes set out therein for the purposes of the said Act. Section 128 lays down the manner of recovering the municipal taxes. Section 129 thereof provides for the composition of property taxes and at what rate the said taxes are to be levied. Section 132 provides for levy of general tax in respect of all buildings and lands in the city. The buildings and lands or portions thereof solely occupied and used for the public worship or for public charitable purpose as also buildings and lands vesting in the Government used solely for the public purposes and not used or intended to be used for the purposes of trade or profit or vesting in the Corporation are exempt from levy of general tax subject to provisions of Section 132(2) thereof. Section 143 provides for exemption from payment of tax on vehicles, boats, and animals. Section 148 provides for exemption from payment of theater tax. Thus, perusal of Chapter XI pertaining to the Municipal Taxes, does not give exemption to the authorities like MIDC from payment of any taxes, which they are liable to pay.

(iv) Section 17 of the MID Act empowers the MIDC to levy fees or service charges to cover its expenses of maintenance of roads, drainage, water supply and such other services and amenities as may be provided by it including the provision of street lighting at such rates as may be prescribed from time to time. Such fees or charges may be levied on the plot holders or other persons receiving the benefit of the services or the amenities. Section 20(1) (b) of the MID Act lays down that the Corporation shall have and maintain its own fund, to which shall be credited all fees, costs and charges received by the Corporation under the said Act. Section 2(a) of the MID Act defines the term ''amenity'' as under:

Section 2 In this Act, unless otherwise requires

(a) ''amenity'' includes road, supply of water or electricity, street lighting, drainage, sewerage, conservancy and such other convenience as the State Government may, by notification in the Official Gazette specify to be an amenity for the purposes of this Act.''

(v) As noted earlier, under the provisions of the MID Act, what can be levied and recovered is the fees or service charges. However, there is no provision empowering the MIDC to levy and recover the taxes. Now, coming to Clause 7 of the First Schedule under the M.R.& T.P.Act, it lays down that whenever the relevant authority (MIDC in the present case) itself provides in the area within the jurisdiction of the local authority (NMMC in the present case) all or any of the amenities, which the local authority provides, the relevant authority shall not be liable to pay taxes including the property taxes, if any, but it shall be lawful to the local authority to arrive at an agreement with the relevant authority with the prior sanction of the State Government to receive the lumpsum contribution from the relevant authority in lieu of all or any of the taxes levied or services rendered by the local authority. In view of the provisions of Clause 7 of First Schedule, it is the relevant authority who is exempt from payment of taxes including the property taxes. The contention of the petitioners that even the plot holders in the MIDC area are exempt and are not liable to pay the taxes, is wholly misconceived. As noted earlier, even under the BPMC Act, there is no provision for granting exemption from payment of taxes, save and except referred to herein above. Clause 7 of the First Schedule exempts the relevant authority from payment of taxes and not the plot holders in the jurisdiction of the relevant authority. But for Clause 7 of the First Schedule, even the MIDC would have been liable to pay taxes including property taxes to NMMC. We have noted that under the BPMC Act, the NMMC is empowered to levy various taxes for the purposes of the said Act within its area of operation. Even under the MID Act, the MIDC is empowered to levy fees and service charges on the plot holders as per Section 17 thereof. In the case of Solapur MIDC (supra) the Apex Court held that the scope and ambit of the BPMC and that of MID Act is different. This aspect has also been considered by the Apex Court in the case of Saij Gram Panchayat Vs. The State of Gujarat and Others, . In that case it has been held that the Municipal Corporation Act and the Industrial Development Act have distinct fields of operation and there is no interse conflict between the two. In paragraph No.

 

20 of the said judgment, the Apex Court observed as under:

Explaining the purpose behind Section 16, the High Court has rightly held that having regard to the power conferred upon the Gujarat Industrial Development Corporation in the matter of provision of amenities and common facilities in industrial estates and industrial areas, on levy of certain charges upon those who set up industries therein, an industrial area would ordinarily be a self sufficient township in itself which provides its own amenities and recovers charges therefor. A local authority having jurisdiction over such area will have to perform very few of its statutory or discretionary duties in respect of such area. Yet it may levy and collect taxes from those who set up industries in the area....

Thus, even in respect of the area covered under the MIDC, the local authority having jurisdiction over such area can levy and collect taxes from those who set up industries in the area. In our opinion, to avoid this virtual dual control and administration which might impede the growth and development of Industries that provision of Clause 7 of Schedule I of the M.R. & T.P. Act is made, which provides that the NMMC and the MIDC may arrive at an agreement with prior sanction of the State Government to receive all or any of the taxes levied or services rendered by the NMMC. This is clearly an enabling provision, which however, cannot be interpreted to mean that the plot holders in the jurisdiction of the MIDC are not liable to pay taxes.

(vi) The provisions of the BPMC Act, MID Act and the M.R.& T.P.Act are required to be construed harmoniously. In view thereof, we do not find any substance in the contentions raised by the petitioners that the petitioners are not liable to pay the taxes. Since we have already held that the MIDC area is part of the municipal limits of the NMMC, the NMMC undoubtedly has power to levy and recover taxes from the petitioners.

55. III Quid Pro Quo:

(i) The petitioners contend that even assuming that the MIDC forms part of the municipal limits of NMMC, in the light of the Division Bench judgment of this Court in the case of Jalgaon Municipal Corporation in Writ Petition No. 1012 of 2003 dated 9th October, 2006 the NMMC is barred from providing any services in their area. It is statutory obligation of the MIDC to provide the services. It is not open to the NMMC to contend that the principle of Quid Pro Quo is not applicable to the taxes levied and collected by the NMMC. The NMMC does not discharge obligatory duties u/s 63 or discretionary duties specified u/s 66 of the BPMC Act in so far as MIDC area is concerned.

(ii) Comparison of the provisions of the BPMC Act and the MID Act shows that u/s 17 of the MID Act, the MIDC is empowered to levy fees or service charges to cover its expenses of maintenance of roads, drainage, water supply and such other services and amenities as may be provided by it including the provision of street lighting on the plot holders or other persons receiving the benefit of the services or amenities. In so far as BPMC Act is concerned, it empowers the

 

Municipal Corporation to levy and recover taxes in accordance with the provisions incorporated therein. Under the provisions of the BPMC Act, the Municipal Corporation is authorised to impose taxes. Mr. Apte invited our attention to Articles 243Q(2), 243X of the Constitution of India, as also Section 139 of the BPMC Act.

(iii) After hearing learned Counsel for the parties, we find that the contention raised by the petitioners is devoid of substance. The concept of a tax is that it is a compulsory exaction of money by public authority for the public purposes enforceable by law and is not payment of services rendered. The other characteristic of tax is it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of tax. In other words, levy of tax is for the purpose of general revenue, which, when collected form the part of the public revenues of the State. As the object of the tax is not to confer any special benefit upon any particular individual there is no element of Quid Pro Quo between the tax payer and the public authority as held by the Apex Court in the case of the Commissioner, Hindu Religious Endowment (supra) as also in the case of Delhi Golf Club Limited (supra).

(iv) The petitioners relied upon the Division Bench judgment of this Court in the case of Jalgaon Municipal Corporation v. State of Maharashtra and Ors. in Writ Petition No. 1012 of 2003 decided on 9th October, 2006. In that case it was contended on behalf of the petitioners that neither the Municipal Corporation nor the MIDC are performing the functions of maintaining the infrastructural amenities. On behalf of the Corporation, affidavit was made contending that the MIDC is special development authority constituted u/s 3 of the MID Act. It was also contended that the MIDC is the special planning authority under the M.R.& T.P.Act and has to discharge its functions as a planning authority and provide necessary infrastructural amenities. The MIDC made an affidavit and accepted that it is functioning as a planning, development and management agency for the industrial area. It has provided basic infrastructural amenities like roads, street lights, water etc. The Court held that under the provisions of Section 40(1A) of the M.R.& T.P.Act, the MIDC is a special planning authority and is under obligation to carry out the functions of providing infrastructural amenities within the area of its operation.

(v) It is not in dispute that subsequently the review petition No. 11024 of 2006 was filed in Writ Petition No. 1012 of 2003. That was disposed of on 7th March, 2007 wherein, in paragraph 5, it was observed thus:

That, so far as the authority or the powers in respect of collection of taxes or fees is concerned, the said issue was not canvassed during the course of hearing of the Writ Petition and as such was not dealt with. However, the said issue has been raised in the review application. The answer to this problem can be found in the provisions of Section 124 a TO 124F contained in Chapter VIA of the Maharashtra Regional and Town Planning Act, 1966 and the provisions of Section 17 of the Industrial Development Act, 1961 and Rule 29 of Rules of 1982.

 

However, the said issues raised in the review application did not fall for consideration in the writ petition and therefore was not specifically dealt with. The issue raised in the application falls outside the consideration for the purpose of determination of the controversy involved in the petition.

(vi) We are clearly of the opinion that the reliance placed by the petitioners on the judgment in Jalgaon Municipal Corporation is wholly misplaced. In the first place, there was no dispute in that case that the MIDC area was within the municipal limits of Jalgaon Municipal Corporation. Secondly, the petitioners in that case did not come with the case that the MIDC by handing over the amenities to Jalgaon Municipal Corporation, abdicated its statutory functions. Thirdly, the authority or power of Jalgaon Municipal Corporation in respect of the collection of taxes or fees was not canvassed during the course of hearing of the said petition. In paragraph No. 5 extracted hereinabove, it was categorically observed that the said issues raised in the Review Petition did not fall for consideration in the Writ Petition and therefore, were not specifically dealt with. The issue raised in the review application fell outside the consideration for the purpose of determination of controversy involved in the petition. In view of this, the judgment in Jalgaon Municipal Corporation''s case does not advance the case of the petitioners any further.

56. IV The NMMC cannot contract out of its Statutory

Functions:

(i) The petitioners have challenged the validity of the MOU dated December 1, 2005 entered into between the NMMC and the MIDC. Under this MOU, the MIDC handed over the maintenance of roads, drains, street lights etc. Having regard to the provisions of the MID Act, the MIDC cannot abdicate its statutory duties and functions and since the MIDC handed over the maintenance of these amenities the said MOU is illegal and void ab initio and consequently, is liable to be set aside.

(ii) Ms. Deepa Chavan, learned Counsel for the MIDC invited our attention to the provisions of the MID Act and submitted that the MIDC has not abdicated its statutory duties. The MOU dated December 1, 2005 is not contrary to the provisions of the MID Act and in fact it is in consonance with the express provisions, which permit the MIDC to enter into such type of agreements. She invited our attention to the provisions of Section 14(ii) (d), Section 15(c) (i) (k). In the light of these provisions the MIDC is well within its right, to cause to be provided the amenities in the MIDC area. It further enables the MIDC to enter into any agreement with the local authority, which does not breach and violate any law or statutory provisions. She further submitted that the perusal of the MOU dated December 1, 2005 indicates that the MIDC handed over certain roads and incidental facilities to the NMMC. The NMMC is required to undertake maintenance of the said roads and is further required to take approval and permissions in respect thereof from the MIDC. After December 1, 2005 the MIDC has not levied any service charges in respect of those facilities. The conjoint reading of the provisions of Section 15(c), (j) (k) read with Section 14 (ii) (d) of the MID Act clearly permits the MIDC to enter into such type of arrangement with the local authority. We therefore do not find any substance in the contention advanced on behalf of the petitioners.

57. A feeble attempt was made to contend that the Government ought to declare MIDC area/TTC Industrial area as Industrial Townships. The petitioners rely upon the provisions of the Maharashtra Municipal Corporations & Municipal Councils (Amendment) Act, 1994, which deemed to have come into force on May 31, 1994, after having received the assent of the Governor of Maharashtra. The said amendment is pursuant to the Constitution (74th) Amendment Act, 1992 read with Article 243Q of the Constitution. On the other hand it was submitted on behalf of the Respondents that the petitioners cannot claim writ of mandamus where discretion is given to the authority. Considering the language employed in the provisions of the Act of 1965 as also the Article 243Q, it is abundantly clear that the discretion is left to the Governor of the State having regard to several factors such as the size of the area and the municipal services being provided or proposed to be provided by the Industrial Establishment in that area, and after taking into account such other factors, he may deem fit to specify any area to be the Industrial Township by publishing Notification to that effect. Considering the language employed in Article 243Q read with the provisions of the Act of 1965, the Court cannot issue writ of mandamus directing the State Government to declare the MIDC area/TTC Industrial area as Industrial Township.

58. The petitioners further contended that the NMMC has levied the taxes retrospectively. This was seriously disputed by the learned Counsel appearing on behalf of the NMMC. Since there is serious dispute on the factual aspect, we reserve liberty to the petitioners to avail of alternate remedy by filing appeals u/s 406 of the BPMC Act within a period of eight weeks from today.

59. In the result, we are of the opinion that the petitioners have not made out any justifiable ground for invocation of extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The Petition fails.

60. In case the appeals u/s 406 of the BPMC Act are preferred by the petitioners within a period of eight weeks from today, the learned Judge shall decide the said appeals in accordance with law by taking into consideration the fact that the petitioners were bonafide prosecuting their remedies in the form of this petition in this Court.

61. Rule is accordingly discharged subject to the aforesaid liberty, with no order as to costs.