



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 7318 OF 2010

**SMALL SCALE ENTREPRENEURS
ASSOCIATION & ORS.**

...APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

...RESPONDENT(S)

with

CIVIL APPEAL NO. 7319 OF 2010

CIVIL APPEAL NO. _____ OF 2026 @ S.L.P. (C) NO.24366 OF 2025

CIVIL APPEAL NO.11024 OF 2013

and

CIVIL APPEAL NOS.10133-10137 OF 2016

J U D G M E N T

PANKAJ MITHAL, J.

1. Heard Shri Arvind Datar, Shri Gopal Sankaranarayanan, learned senior counsel and Shri Amol Chitale, learned counsel for the appellants and Shri C.U. Singh and Shri Vinay Navare, learned senior counsel for the respondents.

- 2.** These are a batch of eight Civil Appeals and one Special Leave Petition arising out of two judgments of the Bombay High Court dated 08.07.2010 and 29.07.2016 and one judgment of City Civil Judge dated 25.09.2012.
- 3.** Civil Appeal No. 7318/2010, Civil Appeal No. 7319/2010 and Special Leave Petition (C) No. 24366/2025 arise out of a common judgment and order dated 08.07.2010; whereas Civil Appeal No.11024/2013 arises out of judgment dated 25.09.2012 passed by Civil Judge and Civil Appeal Nos. 10133-10137/2016 arise out of judgment and order dated 29.07.2016 passed by the High Court.
- 4.** All the civil appeals and the special leave petition are based upon similar facts and circumstances and involve identical questions of law and as such were clubbed and were taken up together for consideration.
- 5.** Since in eight matters, leave was granted and they were converted into civil appeals, therefore, we consider it appropriate to grant leave in Special Leave Petition (C) No. 24366/2025 and to treat it as a civil appeal.

- 6.** We take Civil Appeal No. 7318/2010¹ as the leading case and proceed to decide all these appeals based upon the facts, as stated therein. The said leading appeal arises out of Writ Petition No. 2787/2001² decided by the High Court *vide* judgment and order dated 08.07.2010. All other orders impugned herein are based upon the aforesaid order.
- 7.** Before we narrate the facts and circumstances which gave rise to the above writ petition and other connected petitions leading to the passing of the impugned orders, we would first like to give a brief history about the enactment of the Maharashtra Industrial Development Act, 1961³, the Maharashtra Regional Town Planning Act, 1966⁴, followed by the establishment of the Navi Mumbai Municipal Corporation⁵ and the constitution of City and Industrial Development Corporation⁶.
- 8.** The State of Maharashtra in the year 1961 enacted MID Act with the purpose to create a corporation that would acquire land and develop industrial areas in the State. Under the

¹ Small Scale Entrepreneurs Association and Ors. v. State of Maharashtra and Ors.

² Small Scale Entrepreneurs Association and Ors. v. State of Maharashtra and Ors.

³ In short 'MID Act'

⁴ In short 'MRTP Act'

⁵ In short 'NMMC'

⁶ In short 'CIDCO'

aforesaid MID Act, Maharashtra Industrial Development Corporation⁷ was established in 1962. The State Government acquired land from 19 villages in district Thane and vested the said land with the MIDC, thus creating Trans Thane Creek⁸ Industrial Area.

- 9.** In 1966, the MRTP Act was enacted as a special legislation to provide legal framework for planned city development and regulated land use across the State with respect to “notified area”. The TTC Industrial Area and the MIDC were declared to be the “notified areas” under the aforesaid Act.
- 10.** Later in the year 1971, the Urban Development Public Health & Housing Department of the State Government proposed to create a new town with the name Navi Mumbai (New Bombay). The Government for that purpose, *vide* notification dated 20.03.1971, designated an area of 28 villages.
- 11.** A fully State Government company was incorporated and registered under the Indian Companies Act, 1956, with the name CIDCO for the purposes of planning and development of New Bombay. It was entrusted with the responsibility to

⁷ In short ‘MIDC’

⁸ In short ‘TTC’

provide civic amenities in the city till a municipality is constituted.

- 12.** The State Government on 17.12.1991 issued a notification constituting NMMC under the provisions of the Bombay Provincial Municipal Corporation Act, 1949⁹ (now commonly referred as Maharashtra Municipal Corporation Act, 1949)¹⁰ for the new city of Navi Mumbai. The said notification creating the NMMC specifically stated that the local areas of 44 villages would comprise and form part of the NMMC.
- 13.** The dispute giving rise to the present litigation started some time in the year 2001 when NMMC asserted rights to claim property tax from the industrial units allegedly falling within the industrial area of MIDC including TTC Industrial Area.
- 14.** Aggrieved by the aforesaid action of the NMMC, the appellant invoked the writ jurisdiction of the High Court under Article 226 of the Constitution of India *inter alia* alleging that its members or other industrial units are all part of the MIDC that has developed the area and is continuously providing all necessary amenities and infrastructure facilities such as road,

⁹ In short 'BPMC Act'

¹⁰ In short 'MMC Act'

electricity, sewage, water etc. Therefore, it is only the MIDC which is entitled to realize fee, charges or tax in respect thereof and that NMMC has no jurisdiction to levy or collect property tax, rates, cess and other such levies from the appellant. In fact, the TTC MIDC Industrial Area is not within the municipal limits of NMMC and, therefore, also it has no jurisdiction to levy and collect any property tax from the appellant and other industrial units situated within MIDC.

- 15.** On the basis of the aforesaid assertions, the appellant in the writ petition prayed that levy and collection of property tax, rates and cess by NMMC from the appellant is without the authority of law; that the TTC Industrial Area which is within the jurisdiction of MIDC be declared as not falling within the jurisdiction of NMMC as per the notification dated 17.12.1991 and that NMMC has no jurisdiction to levy and collect property tax etc., from the appellant; the levy and collection of taxes including property tax from the appellants is illegal otherwise also as under Clause 7 (1) of the First Schedule of the MRTP Act, there is a complete prohibition to pay such taxes to NMMC with regard to properties within the MIDC area; and to direct

the State Government to constitute TTC Industrial Area into an industrial township by issuing appropriate notification in the official gazette in terms of Section 341-F of the Maharashtra Municipal Corporations and Municipal Councils (Amendment Act) 1994.

- 16.** During the pendency of the above writ petition in order to realize property tax, distress warrants for attachment of bank accounts were issued against the members of the appellant. They were also threatened with the auction of their property so as to realize the property tax. Even criminal complaints were filed against some of the members of the appellant.
- 17.** Simultaneously on 01.12.2005, an MoU is said to have been arrived at, between MIDC and NMMC whereunder for certain parts of MIDC, the maintenance of basic infrastructure such as roads, street lights, drain etc., was handed over by the MIDC to the NMMC.
- 18.** The State Government on 08.06.2007 issued a notification excluding 14 villages from the municipal limits of the NMMC. Thus, reducing the area of the NMMC to only 30 villages. The NMMC on 08.07.2008 filed an affidavit in the pending writ

petition disclosing that its total area of jurisdiction now stands reduced from 132.863 sq. kms. to 108.638 sq. kms. This difference of approximately 24.23 sq. kms. allegedly matched with the total area of the MIDC. Thus, it was contended that the area within the jurisdiction of the MIDC was excluded from the jurisdiction of the NMMC.

- 19.** The High Court initially dismissed the writ petition on 24.01.2006 and relegated the appellant to avail its alternate remedy of appeal as provided under Section 406 of the MMC Act. This order of the High Court was challenged by the appellant through an SLP before the Supreme Court. The order of the High Court was set aside on 08.05.2006 and the matter was remanded to the High Court for fresh consideration on merits. It is, thereafter, that one of the impugned orders dated 08.07.2010 came to be passed by the High Court whereunder the Division Bench dismissed the writ petition holding that MIDC area falls within the jurisdiction of the NMMC; NMMC is legally empowered to impose tax upon the areas falling within its limits; and the appellants are not exempt from paying tax in any manner.

- 20.** One of the submissions from the side of the appellants is that in the draft notification which culminated into notification dated 17.12.1991 constituting NMMC, the expression “entire area” was used whereas in the final notification it was confined to “local area”. The two expressions used as above carry different meanings and the High Court erroneously held that there is no distinction between the “entire area” and the “local area”. The legislature in its wisdom has rightly used the words “entire area” and the “local area” in different context and attributing different meanings.
- 21.** The other submission is that area of 19 villages that were vested with the TTC MIDC Industrial Area constituted a self-contained industrial area and as such this area ceased to be a part of the aforesaid 19 villages. The notification dated 17.12.1991 constituting Navi Mumbai refers to the “local area” of 44 villages and does not specifically include therein the TTC MIDC area. Therefore, the area of the TTC MIDC was separate and was not within the area comprising NMMC.
- 22.** Thirdly, under the notification dated 16.12.1994 issued under Section 154 of the MRTP Act, the State Government simply

handed over the area under control of the CIDCO to the NMMC to avoid “dual authority”. However, the said notification specifically stated that the TTC MIDC Industrial Area will not be handed over to the NMMC, meaning thereby that the TTC MIDC area remained separate and was never the part of the NMMC. Even in the MoU dated 01.12.2005 between NMMC and MIDC, it was categorically mentioned that MIDC is not handing over any land within its authority to NMMC. Therefore, the conclusion of the High Court that NMMC has jurisdiction over TTC MIDC area merely for the reason that it falls within the overall geographical area of the NMMC, is without substance and is incorrect.

- 23.** The submission proceeds that in the policy document published by the MIDC in or around 1997, it was categorically mentioned that the MIDC areas will not be included within the limit of any Municipal Council or Corporation for at least 25 years. It is, therefore, clear that till 1997, TTC MIDC area was not within the municipal area or the limits of the NMMC and that it will not be brought under it for the next 25 years. The said public document (brochure) carries legal sanctity and

would prevail over the circular or notifications of the department, more so, as its contents are in no manner contrary to the notification dated 17.12.1991.

- 24.** In the above context, a further submission was advanced that “municipal area” as defined under Article 243-P (d) of the Constitution refers to the territorial area of the municipality as notified by the Governor. In the absence of the notification issued by the Governor notifying the municipal area of NMMC, it cannot be claimed that the area of the TTC MIDC falls within the municipal area of NMMC. It is pointed that the Governor has not issued any notification notifying the municipal area of the NMMC.
- 25.** Additionally it is contended that it is not obligatory upon the Governor to constitute municipalities in all urban areas especially where municipal services are being provided by an industrial corporation, rather may specify such area as an “industrial township”. Since MIDC had been providing essential municipal services to the TTC MIDC area for the last over 30 years in accordance with Section 17 of the MID Act, there was no necessity to constitute a municipality with regard

to the area within the jurisdiction of TTC MIDC and in fact the municipality so created excludes the above area.

- 26.** Apart from the submissions that the TTC MIDC area is not part of NMMC, it has been contended that even if the said area falls within the local area of NMMC, it does not have the power to levy taxes or impost on the appellant or its members as MIDC alone is the sole authority to levy tax/impost in its area. Both MIDC and NMMC cannot levy taxes or impost on industrial units located within the TTC MIDC area and if such an exercise is permitted, it would amount to double taxation which is not permissible in law, unless the governing statute explicitly allows.
- 27.** In line with the above argument, it is submitted that Section 67 of the MID Act provides for the overriding effect of the provisions of the said Act over the other enactments and the non-obstante clause in Section 17 of the MID Act ensures that MIDC has independent powers of taxation despite existence of the NMMC.
- 28.** A further argument was raised that the distinction between tax and fee has been lately blurred and, therefore, the imposition

of the service charge under Section 17 of the MID Act would amount to taxation under Article 366 (28) of the Constitution of India, thereby depriving the NMMC to impose any further taxation or impost in that regard.

- 29.** Lastly, it has been contended that MIDC was designated as a “Special Planning Authority” which is also a “relevant authority” for the purposes of First Schedule of MRTP Act. Thus, according to Clause 7 (1) of the First Schedule of MRTP Act, when MIDC is providing amenities within the area that vests in MIDC including buildings therein, the same shall not be the subject matter of taxation by any local authority such as NMMC.
- 30.** The High Court manifestly erred in law in interpreting Clause 7 (1) of the First Schedule of MRTP Act to mean that it exempts only the MIDC from payment of tax but not the industrial units situated within its limits. Such an interpretation renders the exemption *otiose* and leads to an absurd situation. This interpretation is against the rationale behind granting exemption under the aforesaid clause.

- 31.** Moreover, wherever there is a slightest ambiguity in relation to fiscal statute, the benefit of such an ambiguity always accrues in favour of the assessee and that the beneficial exemption wherever provided ought to be construed in a liberal manner.
- 32.** *Per contra*, the respondents submit that the final notification dated 17.12.1991 constituting NMMC, not only merely listed 44 revenue villages within its jurisdiction but also described the precise boundaries on the north, east, south and west of the area included in NMMC. The said boundaries cover the area of TTC MIDC and, therefore, it is incorrect to submit that the said area stands excluded and does not fall within the limits of NMMC. The TTC MIDC area falls within the municipal area of NMMC as defined under Article 243-P (d) of the Constitution of India.
- 33.** The submission seeking to make distinction between “entire area” and “local area” is *per se* misconceived. It is the final notification which has to be considered, that would prevail and not the draft notification. The final notification uses the expression “local area” and, therefore, the use of the words “entire area” in the draft notification is of no consequence. The

“local area” means the area of a local body, i.e., a village covering the whole of the area of the village(s).

- 34.** It has also been submitted that the power to levy taxes within the municipal limits is vested exclusively in the municipality as Article 243-W & Article 243-X of the Constitution of India empower the State legislature to endow sovereign functions such as taxation upon the municipalities.
- 35.** Sections 127 to 152-1A of the NMMC Act authorize the municipal corporation to levy property tax etc., on the properties within its limits whereas no such powers are vested in the MID Act. Once a Municipality/Municipal Corporation is established in exercise of legislative act, it alone has the power to levy and collect tax. The “Special Planning Authority” under the MRTP Act is not a “local authority” as defined under Section 326 of the Maharashtra General Clauses Act, 1904 and as such, has no power to levy any tax.
- 36.** Lastly, the submission is that the appellants or its members always accepted their liability to pay property tax to NMMC. Their lease deeds expressly provided that rates and taxes payable to the local authority would be borne by the lessees.

They had previously paid property tax to *Gram Panchayats* and many of them even to the NMMC. Therefore, in the overall facts and circumstances of the case, there is no flaw in the impugned order of the High Court holding that the NMMC cover the TTC MIDC Industrial Area and that NMMC is authorized to impose taxes upon all areas and buildings falling within its jurisdiction whereas no such power vest with the MIDC. Therefore, the appellants or its members cannot be exempted from payment of property tax.

- 37.** On behalf of the MIDC, it is contended that the appellants at no point of time disputed the competence of the MIDC to levy service charges rather on the contrary they asserted that MIDC alone is the Special Planning Authority for the area and is responsible for providing infrastructure facilities and other amenities. Thus, in view of the above, when the MIDC is providing the all facilities and amenities in the area, it is authorised under Section 17 of the MID Act to levy fee or charges in respect of such amenities on the land holders within its area. The MID Act nowhere empowers the MIDC to impose tax of any kind and to collect the same from the allottees of the

land. Each charge levied by MIDC is directly linked to a distinct amenity or service provided by it such as water charges, drainage charges etc. The fee and charges so levied by the MIDC have the essential characteristics of a tax. The MoU dated 01.12.2005 between the MIDC and NMMC provides for transfer of limited functions relating to maintenance of roads, drains, street lighting and other basic municipal services in the TTC MIDC area to the NMMC. The functions of the MIDC and Municipal Corporation can co-exist and merely for the reason that there is some overlapping of functions, it cannot mean that the two statutory frameworks are in conflict with each other. Even if it is held or assumed that NMMC has jurisdiction over TTC MIDC area, it would not invalidate the separate and independent existence of MIDC or statutory powers to levy fee/service charges under Section 17 of the MID Act.

- 38.** In the light of the submissions advanced by all the parties and keeping in mind the factual background pleaded, predominantly three basic points arise for our consideration. First, whether the area within the TTC MIDC falls within the jurisdiction of the NMMC; secondly, if the said area is within

the jurisdiction of NMMC, whether in view of the fact that MIDC is providing all facilities and amenities in the said area and is charging fee/service charges from all the unit/plot holders, the NMMC has any authority to levy any tax much less property tax upon the unit/plot holders in that area; and thirdly, whether the unit/plot holders within the industrial area of TTC MIDC are exempt from payment of property tax to NMMC.

- 39.** It would be profitable, before straightaway embarking upon the three points raised by either of the parties to first refer to certain relevant provisions of the various Statutes which are involved in the present case.
- 40.** First, we take up the MID Act. The aforesaid Act vide Section 2 (a) defines “amenity” to include 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. In the light of the above definition, the amenities would include the above referred facilities only as nothing has been brought on record that the State Government

has notified any other thing to be included within the amenities for the purposes of this Act.

- 41.** Section 15 of the MID Act provides for the general powers of the Corporations. It *inter alia vide* clause (c) empowers the Corporation to provide or to cause to be provided amenities and common facilities in industrial estate/areas and construct and maintain or cause to be maintained works and building therefor. In other words, one of the functions of the MIDC is to provide amenities and common facilities in industrial estates/areas which if read in conjunction with the definition of amenity, would mean that it has to provide for the roads, supply of water or electricity, street lighting, drainage, sewerage, conservancy only.
- 42.** The aforesaid MID Act vide Section 17 empowers it to levy fee or service charges to cover its expenses on maintenance of roads, drainage, water supply and such other services and amenities as may be provided by it and that such levy of fee or service charges may be levied on the plot holders or persons receiving benefit of those services or amenities. It means that

MIDC have the power to levy fee or service charges but not any tax.

43. The other relevant statute for our purposes is the MMC Act. The said Act *vide* Section 63 enumerates the matters to be provided for by the Corporation. It obliges the Corporation to make reasonable and adequate provisions *inter alia* for the following purposes:

- i) Urban forestry, protection of the environment and promotion of ecological aspects;
- ii) The collection, the removal, treatment and disposal of sewage, offensive matter and rubbish and, if so, required by the State Government, the preparation of compost manure from such sewage, offensive matter and rubbish;
- iii) Construction, maintenance and cleansing of drains and drainage work and of public latrines, water closets, urinals and similar conveniences;
- iv) The lighting of the public streets, municipal markets and public buildings vested in the corporation;

- v) Construction, maintenance, alteration and improvement of public streets, bridges, subways, culverts, causeways and the like;
- vi) Removal of obstructions and projections in or upon streets, bridges and other public places; and
- vii) Management and maintenance of all municipal water works and the construction or acquisition of new works necessary for sufficient supply of water for public or private purposes.

Apart from providing for the above measures, vide Section 66 of MMC Act, the Corporation at its discretion is vested with the power to provide for certain other matters such as slum improvement, urban poverty alleviation, cattle ponds, prevention of cruelty to animals, regulation of tanneries etc.

- 44.** The Corporation under Section 127 of the MMC Act is authorised to impose taxes *inter alia* property tax. The property tax under Section 128A of the MMC Act consist of property tax leviable on buildings and lands in the city and include water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess, street tax and betterment charges.

Such taxes are leviable on ratable value, as the case may be. In view of the provisions of Section 127 and 128A of the MMC Act, the corporation is vested with the power to impose property tax on buildings which include water tax, sewerage tax, general tax, education cess etc. In a way property tax leviable by the corporation covers all the taxes that are enumerated under Section 128A of the MMC Act.

- 45.** If we were to read the provisions of the MID Act and the MMC Act together, it would be crystal clear that MIDC is only empowered to levy fee or service charges for the purposes of maintenance of road, drainage, water supply and such other services and amenities as may be provided but it does not have any power to impose or collect tax. The power to impose tax, particularly the property tax, vests only and only with the Municipal Corporation under the provisions of Section 127 read with Section 128A of the MMC Act.
- 46.** Now we take up the MRTP Act. The said Act vide Section 40 empowers the State Government to constitute an authority for any undeveloped area specified in the notification to be referred as “the notified area”. The aforesaid provision further provides

that where in an area, MID Act is applicable or area comprising Government land is handed over to the MIDC, it shall be deemed to be a “notified area”. In such a situation, MIDC shall be the “Special Planning Authority” in respect of such notified area and shall be deemed to have been appointed as such for the purposes of the MRTP Act. In short, Government by a notification provides for the declaration of a notified area for any undeveloped area and that any area upon which MID Act is applicable or any area of the government which has been handed over to the MIDC shall also be deemed to be a notified area. Further, that in respect of such an area, MIDC shall be treated as “Special Planning Authority”.

- 47.** Section 115 of the MRTP Act further provides that the planning and control of “the notified area” shall be the responsibility of the “Special Planning Authority” i.e., MIDC, subject to the approval of the plans in this regard, by the State Government.
- 48.** In addition to the above, Section 159A of the MRTP Act provides that the provisions of the First Schedule of the Act shall apply in relation to a New Town Development Authority and a Special

Planning Authority referred to in Section 40 of the Act i.e., MIDC in the instant case.

49. Clause 7 (1) of the First Schedule of the Act which is most relevant and important for our purposes, reads as under:

“[FIRST SCHEDULE]

(See section 159A)

**Special provisions relating to New Town
Development Authority and Special Planning
Authority.**

“ ”

.....

7. Lump-sum contribution by relevant authority in lieu of taxes levied by local authorities.— (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 property tax, 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 lump-sum 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.

.....

..... ”

50. A simple reading of the aforesaid Clause 7 (1) of the First Schedule of the MRTP Act reveals that where any authority or 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 taxes including property tax, if any, to the local authority. However, it shall be lawful for the local authority to arrive at an agreement with the relevant authority with the 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 other words, Clause 7 (1) of First Schedule of the MRTP Act provides that where a relevant authority is providing all or any of the amenities which the local authority is supposed to provide, it shall not be liable to pay taxes including property tax to the local authority and that the relevant authority and the local authority may with the permission of the Government, enter into an agreement for contributing a lump-sum amount in lieu of the taxes.

- 51.** Now, we take up the three points which arise for our consideration, one by one.

Point I: Whether the TTC MIDC area fall within the territorial jurisdiction of the NMMC?

- 52.** In context with the above point, the appellants contend that under the draft notification dated 27.08.1991, the expression “entire area” of the 30 villages has been used whereas in the final notification dated 17.12.1991, the expression “local areas” of the 44 revenue villages have been used. There is a distinction between the two expression “local area” and the “entire area”. The expression “entire area” refers to the whole of the area of the villages whereas the expression “local areas” refers to part of the aforesaid revenue villages. The expression “local area” in the final notification has been deliberately used so as to exclude part of the land of the said villages which fall within the ambit of TTC MIDC.
- 53.** The High Court in context with the above held that the expression “local area” means an area which is administered by the local body i.e., a Corporation, Panchayat or a District Board. The expression local area of the revenue villages does not refer to part of the revenue villages so as to exclude any

area of the village which is being administered by the TTC MIDC. The High Court, thus, concluded that the expression entire area and local area convey one and the same meaning and can be used interchangeably. The final notification apart from referring to the 44 revenue villages, mentions the boundaries of the area falling within the limits of the NMMC. The said boundaries *per se* disclosed that the entire area of all the 44 villages have been declared to be within the jurisdiction of the NMMC. Thus, including the area of the TTC MIDC also within the fold of NMMC.

- 54.** It is trite to mention here that in the draft notification only 30 villages were proposed to be notified and by the *addendum* 14 more were proposed to be added. Accordingly, 44 villages were notified as part of NMMC under the final notification issued under Section 3 of MMC Act. Subsequently, the land of 14 villages was excluded from the NMMC *vide* notification dated 08.06.2007. The land of these 14 villages excluded was never part of the TTC MIDC and therefore, its exclusion has no impact insofar as the area within the ambit of TTC MIDC is concerned.

- 55.** Article 243-P (e) of the Indian Constitution defines “municipality” to mean an institution of self-government constituted under Article 243Q which *inter alia* refers to Nagar Panchayat in respect of area in transition from rural area to an urban area; a Municipal Council for a smaller urban area; and a Municipal Corporation for a larger urban area.
- 56.** Article 243-P (d) defines “municipal area” to mean the territorial area of a Municipality (which includes a Municipal Council as well as a Municipal Corporation) as is notified by the Governor. Therefore, a “municipal area” of any Municipality i.e., a Municipal Council or a Municipal Corporation has to be notified by the Governor concerned.
- 57.** The MMC Act provides for the constitution of Municipal Corporations for the larger urban areas. It *inter alia vide* sub-Section (2) of Section 3 of the Act empowers the State Government to specify by notification in the *official gazette*, any urban area with a population of not less than three lakhs as a larger urban area for the purposes of constituting a Municipal Corporation. Sub-Section (3) of Section 3 of the said Act also authorizes the State Government to alter the limits of any

larger urban area constituting a Municipal Corporation from time to time by publishing a notification in the *official gazette*.

- 58.** In connection with the constitution of the NMMC for the larger urban area of the city of New Mumbai, a draft notification and an *addendum* were issued on 27.08.1991 and 02.12.1991 respectively under which “the entire area” of 30 plus 14 i.e., 44 villages were notified to be part of the NMMC. The statute nowhere envisages for issuance of any such draft notification but in all fairness, the same was issued so that the public at large may object or make suggestions for inclusion or exclusion of certain areas from the municipal limits of the NMMC. The appellants herein or its members or any of the land holders within the area of TTC MIDC never raised any objections or made any suggestions in respect of the aforesaid draft notification. Accordingly, a final notification under Section 3 of the MRTP Act was issued notifying in the *official gazette* declaring the “local area” of the aforesaid 44 villages as constituting the Municipal Corporation i.e., NMMC. The said final notification not only describes the land included within the NMMC by mentioning the 44 villages but also by describing

the land so included by the boundaries. The boundaries described in the notification comprises of the land which falls within the jurisdiction of the TTC MIDC Industrial Area as well. Thus, the industrial area of TTC MIDC is also part of the 44 villages notified. Therefore, geographically the industrial area comprising of TTC MIDC was very much notified and declared to be the area forming part of NMMC.

- 59.** The distinction sought to be made between the expression “entire area” and the “local area” used in the draft notification and the final notification issued under Section 3 of the MRTP Act loses all significance once a final notification was issued covering “local area” of all the 44 villages. The expression “local area” used in the final notification refers to the whole of the area within the said revenue villages and it cannot be said that the “local area” of the said villages refers only to part of the area of the said villages excluding that which falls within the jurisdiction of TTC MIDC Industrial Area. No such distinction is spelled out either from the statute or from the notification itself. Moreover, the boundaries of the land of the 44 villages declared to be part of NMMC covers the whole of the land of 44

villages leaving no doubt that the whole of the land of 44 villages were put under the jurisdiction of the NMMC.

60. The argument that the area of the 19 villages which were initially vested with the TTC MIDC Industrial Area had ceased to be part of all those 44 revenue villages and as such when those revenue villages were put within jurisdiction of the NMMC, the area of those villages which had already been vested with the TTC MIDC Industrial Area stood excluded has no substance. Despite vesting of area or part of area of 19 villages with the TTC MIDC Industrial Area, the same does not exclude that area from the revenue jurisdiction of those villages. Since they continue to be part of the said villages and the said villages have been notified as the area within the jurisdiction of NMMC, the industrial area of TTC MIDC automatically goes to the jurisdiction of the NMMC.

61. The reliance placed upon the notification dated 16.12.1994 issued under Section 154 of the MRTP Act to the effect that TTC MIDC Industrial Area will not be handed over to the NMMC appears to be little misconceived. We have gone through the aforesaid notification and find that it only issued certain

directions in exercise of powers under Section 154 of the MRTPA Act. One of the observations made therein is that to ensure that there is no dual authority over a particular piece of land. However, it does not contain any direction or stipulation that the area of the villages entrusted to the TTC MIDC has been excluded or has not been entrusted to the NMMC. Therefore, the appellants derive no benefit out of the aforesaid notification and the conclusion of the High Court that NMMC has jurisdiction over the TTC MIDC Industrial Area as it falls within the geographical area of NMMC is correct and suffers from no illegality.

- 62.** The alleged policy appended to notification dt.15/16.12.1994 gives a list of villages included in developed nodes where NMMC will exercise powers as a planning authority. This document nowhere provides that the land of the 44 villages later reduced to 30 villages as notified to be within the jurisdiction of the NMMC excludes the industrial area of TTC MIDC. It simply states that, the industrial areas of MIDC will not be included within the limits of Municipal Council or Corporation at least for 25 years. The said document has no statutory enforcement.

Moreover, it does not say that the area which has already been vested with the NMMC shall stand excluded. It is only a policy document whereunder it was envisaged that the MIDC Industrial Area would not be included within the municipal limits for at least 25 years but it nowhere further lays down that whether such a decision has been implemented or enforced or that any action in pursuance thereof was taken or that in fact, the TTC MIDC Industrial Area which had been vested in the NMMC earlier was taken out of it in any manner or that in respect thereof any instrument was executed. In the absence of any such thing on record, the said policy document would not exclude any area of TTC MIDC Industrial Area from the ambit of the NMMC, more particularly, when the said area had already been vested in the NMMC *vide* notification dated 17.12.1991.

- 63.** This apart, the High Court has considered the entire material on record in relation to the boundaries and the area to be included within the NMMC and has come to a definite conclusion that the area within the jurisdiction of the TTC MIDC has also been included within the municipal area of

NMMC. Therefore, if one court has taken a particular view of the matter on the basis of the perusal of material on record, it is not proper for this Court to form a different opinion unless the view taken by the court below is palpably incorrect or perverse. On the basis of perusal of material on record, the view taken by the High Court is one of the plausible views and if such a view has been taken by the court in exercise of its discretionary jurisdiction, it is not for this Court to take a different view. The possible view accepted has to be approved.

- 64.** In view of the aforesaid facts and circumstances, we are of the opinion that the area of the TTC MIDC is within the municipal limits of the NMMC and that the High Court has not committed error or illegality in recording a finding to that effect. Accordingly, we are also of the opinion that TTC MIDC area is included within territorial jurisdiction of the NMMC.

Point II: Whether the NMMC alone has jurisdiction to levy tax including property tax upon the unit/plot holders in the industrial area of the TTC MIDC when all facilities and amenities in the area are being provided by the MIDC for which it is charging the necessary fee?

- 65.** Article 366(28) of the Constitution defines “taxation” as under:

“(28) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly;”

- 66.** A bare reading of the aforesaid definition would make it clear that any kind of tax or impost whether general or local or special shall form part of tax.
- 67.** Article 365 of the Constitution contemplates that no tax shall be levied or collected except by authority of law. It means that levy or collection of a tax, must be supported by a statute. Therefore, until and unless the statute provides for the imposition of tax which may include impost, no tax can be levied or collected from any person.
- 68.** Article 243-X authorizes the legislature to empower the Municipalities to impose tax. It states that the legislature of the State, may by law authorize a Municipality to levy, collect and appropriate such taxes, duties, tolls and fee in accordance with such procedure and subject to such limits as may be specified in the law. Therefore, no Municipality is authorized to levy and collect taxes unless the same are imposed by following the procedure as may be specified in law.
- 69.** Now, we come to the MMC Act under which NMMC was established. The said Act *vide* Chapter XI provides for

municipal taxation. Section 127 of the Act contained therein specifically lays down that the corporation shall impose the following taxes including property tax. Section 128A provides as to what is included within the property tax. It provides that property tax leviable on building and land in the city shall include water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess, street tax and betterment charges. A combined reading of Section 127 and 128A of the MMC Act reveals that the Municipality has the power to impose property tax which include water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess, street tax and betterment charges but no other tax. It does not authorize the Municipality to collect any tax in the form of a fee or charges for rendering any services. It does not even authorize that any other kind of impost in the nature of a fee or charges would be imposed and collected by the Municipality other than those mentioned above.

- 70.** The plain reading of the above provisions would make it clear that the Municipality has the power to impose and collect property tax which include water tax, water benefit tax,

sewerage tax, sewerage benefit tax, general tax, education cess, street tax and betterment charges, but it does not include any service charges and as such Municipality is denuded from realizing any service charges as part of the tax in exercise of the above power.

- 71.** As already referred to earlier, MMC Act *vide* Section 63 is obliged to make reasonable and adequate provisions for the collection, removal, treatment and disposal of sewage, offensive matter and rubbish; construction, maintenance and cleansing of drains and drainage work etc.; to provide for the lighting of the public streets and the municipal markets; construction and improvement of public streets, bridges etc.; and management and maintenance of all municipal water works and construction or acquisition of new works necessary to ensure sufficient supply of water for public or private purposes. So, under the MMC Act, the NMMC is under an obligation to provide for the above facilities and amenities but the MMC Act nowhere authorizes NMMC to levy any kind of tax for such services/amenities and facilities. The fee and charges in respect of such amenities and facilities are not included in

property tax. Therefore, nothing in connection with the above amenities and facilities can be realized in the form of property tax.

72. On the other hand, the MID Act defines the “amenities” to include roads, supply of water, electricity, lighting, drainage, sewerage etc. and *vide* Section 15 of the Act empowers the Corporation to provide such amenities and common facilities and to maintain the same. Section 17 of the said Act authorizes the MIDC to levy fee or service charges only to cover its expenses on construction and maintenance of roads, drainage, water supply and such other services as may be provided. In other words, the MIDC has the power to levy fee or service charges in respect of the above amenities. However, from entire reading of the MID Act, we are at a loss to find any power to impose or collect any kind of tax much less the property tax vested with the MIDC.

73. The combine reading of both the aforesaid statutes i.e., the MMC Act and the MID Act, it is clear enough that the power to impose and collect property tax which include certain other kind of taxes vests with the NMMC whereas the power to levy

fee and charges for providing amenities is conferred upon the MIDC. It is also evident that the fee or service charges in respect of the amenities does not fall within the ambit of property tax as defined under Section 127 read with Section 128A of the MMC Act and are independent and separate from the property tax. They are not even in the nature of tax as the element of *quid pro quo* exist with regard to levy of such fee and service charges *vis-a-vis* the unit/plot holders and the MIDC.

- 74.** It is important at this juncture to have some discussion with regard to tax or impost and fee or charges and as to whether the fee/charges of the nature with which we are concerned would tantamount to tax or impost for the purposes of Article 265 and Article 366(28) of the Constitution.
- 75.** The word “tax” in ordinary sense or according to the dictionary meaning simply means a charge imposed by the Government on persons, entities, transactions or property to yield public revenue. So, whatever imposts are levied by the Government to enhance the revenue partakes the nature of the tax. Therefore, by necessary implication, the fee or charges in *quid pro quo* for the services rendered would not be for the enhancement of the

public revenue and would not be a tax but for the services rendered.

- 76.** In common parlance, “tax” is a compulsory extraction by the Government or the local Government to meet out its revenue expenditure. It is a money realized from the citizens by the Government for use of the nation/State and is generally in the nature of revenue. The “tax” so collected is generally utilized for public purposes and to meet out the expenses of the Government.
- 77.** The power of taxation is an essential and an inherent attribute of the sovereignty/Government and taxation is a method of collecting revenue to fund public expenditure. It is true therefore, that no Government can function and achieve its welfare objectives without levying and collecting taxes but the taxation cannot be without following the procedure prescribed for levying the same or without the authority of law.
- 78.** In a way, tax is a compulsory exaction of money by the Government or the public authority; it is imposed under statutory power and the consent of the tax payer is not necessary; the payment/collection of tax is enforceable by law;

and it is an imposition made for public purposes to meet the general expenses of the State without reference to any special benefit to be conferred upon the tax payer.

79. In the above context, it would be beneficial to quote Latham, C.J. from ***Matthews v. Chicory Marketing Board***¹¹ where “tax” has been defined as a “compulsory exaction of money by public authority for public purposes, enforceable by law and not a payment for services rendered”.

80. It is also beneficial in this regard to quote paragraph 44 from ***Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt***¹²:

“44.
.....

It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the taxpayer's consent and the payment is enforced by law [Lower Mainland Dairy Products Sales Adjustment Committee v. Crystal Dairy Ltd., 1933 AC 168 (PC)] . The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of quid pro quo between the taxpayer and the public

¹¹ (1938) 60 CLR 263 (Aust)

¹² (1954) 1 SCC 412

authority [Findlay Shirras, Science of Public Finance, Vol. I, 203] . Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the taxpayer depends generally upon his capacity to pay.”

(emphasis added)

- 81.** In the above quote, the second characteristic of the tax is very important. It is that “tax” is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax meaning thereby that in imposing tax no benefit has to be bestowed upon the tax payer. Therefore, the element of *quid pro quo* is missing in the imposition and realization of tax. In the same very case, it was held that a “fee” is a money taken by the Government “as a return for the work done or services rendered”. Therefore, levy of fee is characterized by an element of *quid pro quo* between the payer and the public authority.
- 82.** A Constitution Bench of five Judges in ***Corporation of Calcutta and Anr. v. Liberty Cinema***¹³ while dealing with the fee as distinguished from tax observed that there is no dispute that the Constitution draws a distinction between “fee” and “taxes”. The taxation entries conferring taxation powers

¹³ 1964 SCC OnLine SC 65

are separately enumerated whereas the entries in respect of fee are separate.

- 83.** In three Judges Bench decision in the case of ***Sreenivasa General Traders and Ors. v. State of Andhra Pradesh and Ors.***¹⁴ it was held that there is no generic difference between tax and a fee as the traditional law distinguishing tax from fee has undergone a sea change. The distinction between a fee and tax lies primarily between the fact that tax is a part of common burden while a fee is for payment of a specific benefit or privilege. In regard to the fee, there is, and must always be, direct relation between fee collected and the services intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services. The benefit, if any, derived by the State out of such fee collected is of no consequences. The power of any legislature to levy a fee is conditioned by the fact that it must “by and large” be a *quid pro quo* for the services rendered and that there should be a “reasonable relationship” between the levy of the fee and the services rendered.

¹⁴ (1983) 4 SCC 353

- 84.** In short, despite the distinction between “tax” and “fee” having been blurred to some extent but still it has not been completely done away with and the distinction, though very fine, continues to remain. The tax is a compulsory extraction for the collection of revenue whereas fee is in the nature of a charge for the services rendered. The element of *quid pro quo* is an essential characteristic of a fee or a charge. Therefore, so long as the said element *ex facie* exists, the levy of fee or charges cannot be equated with tax.
- 85.** The appellants have cited a large number of decisions including that of the Constitution Benches of this Court as large as of nine Judges to bring home the point that distinction between tax and fee has more or less vanished and that the levy of fee/charges partakes taxation. However, despite blurring of the traditional distinction between a fee and taxation, one thing is very much clear that where there is explicit reasonable relationship between levy of fee/ service charges and the services rendered, the distinction would continue to stand and the fee/charges would not be treated as part of tax.

- 86.** Notwithstanding the definition of taxation contained in Article 366(28) of the Constitution that includes impost as part of taxation and despite giving widest amplitude to it so as to include all money raised by the Government to be part of tax, it would not include the money collected and raised by means of fee or charges for rendering any services. Therefore, not all imposts would include fee or charges as part of taxation if such fee or charges are in lieu of some services.
- 87.** Additionally, it is settled in law that any liability arising out of a contract cannot be termed as an impost or tax. Here in the present case, the liability to pay the fee or service charges for the services rendered by the MIDC are in the nature of an obligation under the allotment/lease deeds executed by the MIDC in favour of the unit/plot holders. Therefore, the payment of fee/charges is a liability under the contract of lease and would not be termed as “tax”.
- 88.** In view of the above, the contention of the appellants that the fee or service charges realized by the MIDC for providing certain facilities and amenities such as roads, sewage, water and electricity would tantamount to imposition of tax and would not

essentially be in the nature of fee or charges is unacceptable. This is so, more particularly for the reason, the MIDC otherwise has no jurisdiction to levy and collect tax under MID Act. The moment it is held that the aforesaid levy of fee or service charge partakes the nature of tax, it will be without jurisdiction as MIDC has no such authority in law to impose any tax. Therefore, in a nutshell, in the case at hand the distinction between tax and fee has to be maintained and what the MIDC is realizing is not tax but fee/service charge only for the services rendered by it.

- 89.** In the light of the above discussion, without reference to the various authorities cited by either side, on the first principles itself we are of the opinion that NMMC is duly authorized to levy and collect property tax from the units/ plot holders within its area including the industrial area of TTC MIDC, even though the appellants or its members may be paying fee or service charges to the MIDC for providing necessary infrastructure, facilities and amenities and the fee or service charges paid by them to MIDC are not in the nature of any tax.

Point III: Whether TTC MIDC or the unit/ plot holders within their jurisdiction are exempt from payment of

property tax to NMMC in view of Clause 7 (1) of First Schedule of MRTP Act?

- 90.** The appellants are claiming exemption from payment of property tax to NMMC in the light of Clause 7 (1) of First Schedule of the MRTP Act. Therefore, the provisions of MMC Act, MID Act and the MRTP Act are required to be construed harmoniously in considering the above aspect of the matter.
- 91.** The interplay for all the above three enactments makes it clear that under the MID Act, MIDC has no power to levy or recover taxes but may levy fee or service charges for the services rendered in the form of providing infrastructure, facilities and amenities. It is only by virtue of provisions of Sections 127 and 128 (A) of the MMC Act that NMMC is authorized to impose property tax and collect the same from all those within its jurisdiction including the industrial area falling under the TTC MIDC Area. Under the MMC Act, various kinds of municipal taxes can be levied which may include property tax and even general tax in respect of buildings and lands in the city. Apart from the above taxes, it can also impose taxes on vehicles, boats, animals, theatre etc. The said Act at the same time postulates exemption from payment of tax of certain kinds

namely on vehicles, animals etc. but it does not contemplate of any kind of exemption in respect of property tax.

- 92.** The exemption in respect of property tax is claimed only by virtue of Clause 7 (1) of First Schedule of the MRTP Act and not under MMC Act. It may be noted that MIDC is the Special Planning Authority as per Section 159A of the MRTP Act which applies the First Schedule of the Act to MIDC/Special Planning Authority. Clause 7 (1) of First Schedule under the MRTP Act in unequivocal terms provides that whenever any relevant authority (MIDC in the instant case) itself provides in the area within its jurisdiction all or any of the amenities which the local authority (NMMC in the present case) is supposed to provide, the relevant authority shall not be liable to pay taxes including property tax, if any. It further provides that it shall be lawful for the local authority to enter into an agreement with the relevant authority with the 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.

- 93.** Clause 7 (1) of First Schedule under the MRTP Act, as stated above, is in two parts. The first part exempts the relevant authority providing all or any of the amenities in the area which the local authority is supposed to provide from payment of taxes including property tax to the local authority. The second part is only in relation to an agreement between the relevant and the local authority for payment of lump-sum amount in lieu of all or any of the taxes.
- 94.** The first part of the Clause 7 (1) of First Schedule to the MRTP Act is crystal clear. It exempts the relevant authority from paying taxes including property tax to the local authority if the relevant authority itself is providing all facilities and amenities in the area which otherwise are supposed to be provided by the local authority.
- 95.** In the case at hand, undoubtedly, all facilities and amenities in the industrial area of TTC MIDC are being provided by the MIDC. Since the facilities and the amenities supposed to be provided by the local authority are being provided by the MIDC which alone is collecting fee or service charges in respect of the same, the relevant authority stands exempted from payment of

taxes including the property tax to the local authority i.e., NMMC.

- 96.** The High Court while considering the above issue in regard to exemption under Clause 7 (1) of First Schedule to the MRTP Act took a narrow view of the above provision and held that such an exemption is permissible only to the relevant authority (MIDC in the present case) and not to the unit/plot holders situate within its jurisdiction.
- 97.** The statement and objects behind incorporating the Clause 7 (1) of First Schedule to the MRTP Act, as placed before us by the appellants, in categorical terms states that it envisages to provide that buildings or lands belonging to, or vesting in a relevant authority or buildings constructed on land belonging to such authority be exempt from taxation by local authorities. The statement and objects read with Clause 7 (1) further clearly provides exemption from taxation by local authorities to all buildings or lands belonging to or vesting in the relevant authority or constructed on land belonging to such authority. It must be remembered that TTC MIDC was constituted under the MID Act and was vested with the entire land of 19 villages

for the purposes of development of an industrial area. Therefore, the entire land within the jurisdiction of the TTC MIDC vests with the MIDC and does not belong to individual unit/plot holder. They are only the lessees using the said land under certain terms and conditions but the ownership continues to vest with the MIDC. Therefore, the entire land within the industrial area of TTC MIDC belongs to or vest in the MIDC and, therefore, any building constructed on such land stands exempted from taxation, irrespective of the fact that the constructions have been raised by individual unit/plot holders.

- 98.** The purpose of providing exemption under Clause 7 (1) of First Schedule of the MRTP Act to the relevant authority (MIDC in the instant case) refers to entire land and buildings belonging to or vested in the relevant authority. This cannot be construed in a manner which may render the provision useless or meaningless as there would be no purpose in granting exemption to the relevant authority (MIDC in the present case) who might hardly be owning/occupying any land and building of its own. All lands and buildings in the industrial area vest in the MIDC and, therefore, the exemption permitted under the

aforesaid clause refers to the entire land and buildings in the area including those occupied by each unit/plot holder. Any other meaning, if given to the aforesaid clause, would render the exemption *otiose* and will lead to an absurd situation.

- 99.** In view of the above discussion, we are of the opinion that the High Court misconstrued Clause 7 (1) of First Schedule of the MRTP Act and gave it a too narrower meaning which is not warranted under the fact situation of the present case.
- 100.** It must be kept in mind that in context with fiscal statutes, if there is any ambiguity in the interpretation of any provision or clause, the benefit of the same should always be given to the assessee. In this regard, reference may be had to ***Government of Kerala and Another v. Mother Superior Adoration Convent***¹⁵, wherein it has been laid down that in the event of ambiguity in a beneficial tax exemption provision, the benefit accrues in favour of the assessee.
- 101.** Therefore, in the overall facts and circumstances of the case, the benefit of exemption provided under Clause 7(1) of First Schedule of the MRTP Act goes not only in favour of the MIDC

¹⁵ (2021) 5 SCC 602

but also to everyone holding land within its jurisdiction. However, there is a caveat to it. The exemption available under Clause 7(1) of First Schedule of the MRTP Act would be only so long till the facilities and amenities supposed to be provided by the local authority are being provided by the relevant authority (MIDC). The moment the relevant authority (MIDC) stops providing those facilities and the responsibilities of the same are taken by the NMMC the benefit of the aforesaid exemption would cease to exist.

102. In the present case, ever since the establishment of MIDC in 1962 all such facilities and amenities in the industrial area of TTC MIDC were being provided by the MIDC. However, with effect from 16.12.2004, MIDC handed over the management of the industrial areas under its jurisdiction to NMMC with the clear understanding that it will not levy any service charge with effect from January, 2005 onwards.

103. In this connection, an agreement was also entered into between MIDC and NMMC on 01.12.2005 wherein it was decided to handover the roads along with street lights, drains and storm water drains in block wise manner for maintenance,

upgradation and for providing all facilities in connection thereto to the NMMC who in turn agreed to take over the infrastructure development as provided by the MIDC. The said agreement *vide* paragraph 9 clearly stipulates that from the date of handing over, NMMC will look after the maintenance of roads along with street lights and storm water system of open/built up *nalla* and shall keep all roads neat and clean, free from weeds, shrubs etc. The NMMC will have full right to make any development work and necessary modifications in future as roads and lights services stand transferred to it. Even the land meant for public utility services such as public toilets, urban health posts stand transferred to the NMMC, provided the said land is not earmarked for industrial use.

- 104.** Thus, in the light of the aforesaid agreement and the transfer of infrastructure facilities, their development and maintenance to the NMMC, the MIDC denuded itself of its power to provide those facilities and, in the result, to levy fee or service charge for providing the same. The burden for developing and maintaining the said facilities fell squarely upon the NMMC and, therefore, the exemption envisaged under Clause 7(1) of

First Schedule to the MRTP Act ceases with effect from handing over of the said development and maintenance work to the NMMC. Since now, the said services are being provided by the local authority i.e., NMMC, there is no question of grant of exemption in payment of taxes or the property tax.

105. Based upon the above discussion, though the appellants or its members as also the MIDC stood exempted from payment of property tax to NMMC but only till the execution of the aforesaid agreement dated 01.12.2005. The benefit of said exemption would not be available to the MIDC or its unit/plot holders after the aforesaid date. It will be the jurisdiction of the NMMC to realise property tax after the aforesaid date in respect of the areas or the properties handed over or transferred to it. If, in any event, the areas and the properties are transferred to the NMMC in a phased manner, the exemption would cease to operate from the date of such transfer area wise.

106. In view of the aforesaid facts and circumstances and the discussion, we conclude that the TTC MIDC Industrial Area falls within the jurisdiction of the NMMC; the MIDC rightly realise fee/ service charges for providing infrastructure and

other amenities in the industrial area; the power to levy and collect property tax as provided under Sections 127 and 128-A of the MMC Act is only upon the NMMC; however, as the MIDC was providing the infrastructure facilities and amenities and was realizing fee/ service charges, the MIDC including all its unit/ plot holders were exempt from payment of tax under Clause 7(1) of First Schedule of MRTP Act, till the time those facilities were handed over to the NMMC whereupon it is within the sole domain of the NMMC to realise property tax without any exemption.

107. The appeals are thus partly allowed, as above, with no orders as to costs.

..... **J.**
(PANKAJ MITHAL)

..... **J.**
(PRASANNA B. VARALE)

NEW DELHI;
MAY 27, 2026.