

INDORE MUNICIPAL CORPORATION
v.
GUJARAT CO-OPERATIVE HOUSING SOCIETY LTD. & ANR.

NOVEMBER 28, 1991

[K. JAGANNATHA SHETTY AND YOGESHWAR DAYAL, JJ.]

Madhya Pradesh Municipal Corporation Act, 1956: Sections 132, 133, 143, 429 and 431.

'Sanitary Cess', 'Water tax', 'Lighting rate' and 'Drainage tax'—Levy and collection—Validity of—'Premises'—Scope of.

Madhya Pradesh Sthawar Sampatti Kar Adhiniyam, 1964.

Levy of taxes under M.P. Municipal Corporation Act, 1956—Determination of annual letting value under the provision of 1964 Adhiniyam—Permissibility of.

Indore Municipal Corporation Drainage Tax (Assessment, Collection and Refund) Bye-laws, 1975—Bye-law No. 4—Scope of.

Indore Municipal Lighting Rate (Assessment, Collection and Refund) Bye-laws, 1974—Bye-law No. 4—Scope of.

The appellant-Corporation issued a bill dated 26 October, 1971 and a demand notice dated 14.8.1973 to the respondent demanding payment of lighting rate and drainage tax. In the bill the demand related to lighting rate and drainage tax for the year 1971-72, while the demand notice related to lighting rate and drainage tax in respect of arrears and current dues up to 31.3.1974. These taxes were levied by the Corporation under section 132 of the Madhya Pradesh Municipal Corporation Act, 1956 but the assessment was made on the basis of annual letting value of the property calculated under the provision of Madhya Pradesh Sthawar Sampatti Kar Adhiniyam, 1964. The assessment was challenged. By an order dated 2.3.1979 a single judge of the Madhya Pradesh High Court quashed the demand by holding that the drainage tax and lighting rate was to be assessed in accordance with the annual letting value determined under section 138 of the Act and that the assessment with reference to the annual value determined under the 1964 Adhiniyam was illegal. Against the decision of the single judge of the High Court, the Indore Municipal Corporation filed an appeal (C.A.No. 2377 of 1980) in this Court.

- A In the connected appeal (C.A.No. 2378/80) a writ petition was filed to quash a demand No. 855 dated 8.2.1974 levying general sanitary cess on the respondent for the period commencing from 1973-74. The general sanitary cess was levied at the rate of 2 per cent on the annual letting value of the house property under Section 132(1)(c) of the M.P.Municipal Corporation Act. In this case also the annual letting value was determined
- B in accordance with the provisions of the 1964 Adhiniyam and not in accordance with the mode prescribed under section 138 of the Act. By an order dated 2.3.1979 a single judge of the High Court quashed the demand. Against the decision of the single judge, the Indore Municipal Corporation filed an appeal in this Court.
- C The connected petition (SLP (C) No. 10376 of 1981) has been filed by a Cloth Market Merchants Association against the judgment of a Division Bench of the Madhya Pradesh High Court dated 25.7.1981. In the impugned order the learned Division Bench was concerned with the legality of the demand for drainage tax and lighting rate, general sanitary cess and the validity of graduated flat rate. The Division Bench held the general
- D sanitary cess in force with effect from 24.8.1973, till 31st March 1976 to be illegal. Consequently, the division bench quashed the demand for general sanitary cess. However, it upheld the demand for drainage tax and lighting rate as well as graduated flat rate. To the extent the division bench declined the relief, the petitioners have filed the Special Leave Petition
- E challenging the decision relating to the drainage tax, lighting rate and the graduated flat rate.

Disposing the appeals, this Court,

- F HELD: 1. Property tax is one of the taxes which the Corporation can impose under Section 132(1)(a) of the Madhya Pradesh Municipal Corporation Act, 1956. The imposition of this tax is regulated by sections 135 to 159. The rate of property tax is relatable to annual value which is defined in section 138.[22-H]

- G 2. The bye-laws are framed under section 427 of the Act, and Section 431 provides that all bye-laws shall be published in the Gazette. The effect of these provisions is that the bye-laws become part of the Act. Thus the Corporation while providing the system of assessment for various taxes can propose a basis but after the bye-laws provided the system of assessment, the Corporation has to abide by that system of assessment.[23-B]

- H 2.1 The bye-laws in relation to lighting rate came into force on

24.5.1974, general sanitary cess on 9.1.1976 and drainage tax on 12.2.1976. However, before the bye-laws became effective the resolutions of the Corporation held the field. But if the resolutions come in conflict with the method of assessment then the resolution with effect from which date the bye-laws come into force, will become illegal and ineffective

[17F, 19 C, 23D]

3. There is a distinction between general sanitary cess on the one hand and drainage tax and lighting rate on the other. [19-B]

3.1 The general sanitary cess was enforced from 1.4.1973 but the bye-laws in relation thereto were finally approved and published only on 9.1.1976. The proposal in relation to imposition of sanitary cess did not give any option to adopt the annual letting value determined under the Adhiniyam if no annual letting value was determined for the imposition of property tax under the Act. The resolutions of the Corporation provide only one method namely to assess it in accordance with the annual letting value of the property tax provided under the Act. [19A-B, 23-D]

3.2 The option, however, was available to the Corporation in relation to drainage tax and lighting rate. The Corporation could in view of the resolution follow the option of working out these taxes on the basis of annual letting value prepared under the Adhiniyam. Therefore, so far as drainage tax is concerned, it could continue on such basis till 12.2.1976 and so far as the lighting rate is concerned till 24.5.1974. [23-E]

4. The water rate imposed on houses where there is no water connection is known as "graduate flat rate". That rate is revised from time to time and it was last revised by the Indore Municipality by a Notification dated 22nd December, 1940. The graduated flat rate in this Notification is on the basis of rental value of the houses. The graduated flat rate at the aforesaid revised rate continued to be in force even after the enforcement of the Act and the Constitution of Indore Municipality as a Corporation under the Act.[25 C-D]

4.1 The graduated flat rate is covered by the provisions of Section 132(1)(d) of the Madhya Pradesh Municipal Corporation Act, 1956 and the water tax is leviable in respect of the premises. It is clear from clause (d) of sub-section (1) of Section 132 that water tax could be levied in respect of premises not only where premises are connected by means of municipal pipes or Government water pots but where the premises were situated in a portion of the city in which the Commissioner has given public notice that the Corporation has arranged to supply water from

- A municipal or Government pots by means of providing water connection or public stand-pots, fountains or by any other means.[25 F-G]

4.2 But so far as the Act is concerned, water rate is leviable to the premises without distinction to the nature of the premises or their user.

[26-A]

- B 4.3 The premises is a very wide word and includes buildings of all types whether residential, commercial or factory etc. etc. Merely because the premises are godowns, it cannot be urged that the water rate or graduated flat rate could not be imposed.[26-B]

- C 5. The bill regarding lighting rate is held to be partly illegal and unenforceable for the period from 24.5.1974 to 31.3.1976 as basis of assessment was contrary to the relevant Indore Municipal Lighting Rate (Assessment, Collection & Refund) Bye-laws, 1974. But the demand for lighting rate after 1.4.1976 is valid and to that extent, is confirmed.

[26D-E]

- D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2377-78 of 1980 etc. etc.

From the Judgment and order dated 2.3.79 of the Madhya Pradesh High Court in Misc. Petition No. 781 of 1974.

- E B.Sen, Sunil Gupta, D.N.Mishra, S.K.Gambhir and Vivek Gambhir for the Appellants.

L.N.Gupta, S.R.Phodnis, Sunil Gupta and D.N.Mishra the Respondents.

The Judgment of the Court was delivered by

- F YOGESHWAR DAYAL, J. This order will dispose of C.A.2377 and 2379 of 1980 and S.L.P.(C) 10376 of 1981. C.As. 2377 and 2378 of 1980 have been filed against two separate judgments of the learned Single Judge of the Madhya Pradesh High Court dated 2.3.1979 by the Indore Municipal Corporation.

- G The impugned order in C.A.2377 of 1980 was passed in Civil Miscellaneous Petition No. 781 of 1974 filed by *Gujarati Co-operative Housing Society Ltd. and Another v. The Indore Municipal Corporation and Others* and the impugned order in C.A.2378 of 1980 was passed in Miscellaneous Petition No.253 of 1974 filed by the *Madhya Pradesh Awast Samasya Nivaran Sanstha and another v. The Indore Municipal Corporation and other.*

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The S.L.P.(C)No. 10376 of 1981 has been filed by M/s M.T. Cloth Market Merchants Association against the Indore Municipal Corporation and others against the judgment of a division bench of the High Court dated 25.7.1981 in Miscellaneous Petition No. 172 of 1980. The division bench in the impugned judgment approved the decision of the Single Judge which is subject matter of C.A. 2378 of 1980 but dissented from the decision of the same learned Single Judge, which is the subject matter of C.A.2377 of 1980.

Heard. Special Leave granted.

In C.A.2377 of 1980 the order impugned, on behalf of the respondents in the writ petition, was a bill dated 26th October, 1971 (filed as annexure-J to the writ petition) and a demand notice dated 14.8.1973 (filed as annexure-M to the writ petition) by which a demand for payment of lighting rate and drainage tax had been made by Indore Municipal Corporation from petitioner No. 2, Gaya Prasad Sahu in the writ petition in respect of house No. 25, Mohalla Vallabh Nagar, Indore for the period commencing from 1971-72. In the aforesaid bill dated 26th October, 1971 the demand related to lightning rate and drainage tax for the year 1971-72 (see page 30 of the paper book) and demand notice dated 14.8.1973 *inter alia* related to lightning rate and drainage tax in respect of arrears and current dues up to 31.3.1974 (see page 36-37 of the paper book). These taxes have been levied under Section 132 of the Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter referred to as the Act). The learned Single Judge quashed the demand on the ground that the basis of the demand were illegal. The demand for lightning rate and drainage tax had been made on the basis of annual letting value of the writ petitioners' property calculated in accordance with the annual letting values prepared by the State Government under the provisions of Madhya Pradesh Sthawar Sampatti Kar Adhiniyam, 1964 (hereinafter referred to as the Adhiniyam) and not in accordance with the mode prescribed in Section 138 of the Act even though those taxes have been imposed under Section 132 of the Act. It was held that the drainage tax and lightning rate under the Act is to be assessed in accordance with the annual letting value determined under Section 138 of the Act and that the assessment of the said rate and tax with reference to the annual value determined under the Adhiniyam was illegal and consequently the bill served on the writ petitioner was liable to be quashed. On this ground the aforesaid demands made in annexure-J & M (as filed in the writ petition) was quashed by the learned Single Judge. On the same basis the impugned order dated 2.3.1979 in C.A.No. 2378, was passed by the learned Single Judge where the writ petition was filed to quash a demand No. 855 dated 8.2.1974 (annexure-H to the writ petition) in relation to general sanitary cess made by the Indore Municipal Corporation from the writ petitioner No. 2, Laxman Das

A in respect of House No. 121, Mahatma Gandhi Road, Indore for the period commencing from 1973-74. The general sanitary cess had been levied at the rate of 2 per cent on the annual letting value of the house property under Section 132(1)(c) of the Act which enabled the Corporation to impose general sanitary cess for the construction and maintenance of public latrines for the removal and disposal of refuse. The annual letting value of the house property
B was the base for calculation of the cess from the property owner and in this case also the annual letting value on the basis of which the demand was made was in accordance with the provisions of the Adhiniyam and not in accordance with the mode prescribed under Section 138 of the Act even though the cess had been imposed under Section 132(1)(c) of the Act.

C In the impugned order passed by the division bench, which is the subject matter of the S.L.P. (C), No. 10376 of 1981 the learned division bench was concerned with the legality of the demand for drainage tax and lighting rate, general sanitary cess and the validity of graduated flat rate. The division bench found the general sanitary cess in force w.e.f. 24.8.1973 till 31st March, 1976 to be illegal. Consequently, the division bench quashed the demand for general
D sanitary cess. The division bench, however, upheld the demand for drainage tax and lightning rate as well as graduated flat rate. Consequently, the division bench partly allowed the writ petition.

To the extent the division bench declined the relief, the petitioners have filed the Special leave Petition. The petitioners in this Special Leave Petition
E have challenged the decision relating to drainage tax, lighting rate and graduated flat rate and have relied upon the decision of learned Single Bench which is the subject matter of C.A.2377 of 1980.

For appreciating the points involved in the cases it will be necessary to refer to the relevant provisions of the Act and the bye-laws framed under the
F Act and the provisions of the Adhiniyam.

We will first notice the factual position about the various bye-laws and the resolution passed by the Municipal Corporation in relation to these taxes and the cess. The draft bye-laws for the general sanitary cess are called "the
G Indore Municipal Corporation General Sanitary Cess (assessment, collection and refund) Bye-laws, 1973 (hereinafter referred to as the Draft General Sanitary Cess Bye-laws, 1973). They appear at pages 115 to 119 of the paper book of the S.L.P. The final bye-laws in relation to general sanitary cess, however, came to be published in the prescribed manner only on 9th January, 1976. The General sanitary cess had been introduced by the Indore
H Municipal Corporation w.e.f. 1.4.1973. The relevant bye-law for assessment of

general sanitary cess is bye-law No. 4. The assessment under these bye-laws is to be made on the basis of the annual letting value of any building or land at the rate of 2 per cent prepared in accordance with the provisions of section 138 of the Act. The Draft General Sanitary Cess Bye-laws 1973 appear at pages 115 to 119 of the paper book of the S.L.P. but the final bye-laws as published in the Gazette on 9.1.1976 are not part of the paper book.

The proposed bye-laws in relation to drainage tax are at pages 97 to 99 but the final bye-laws in relation to drainage tax were not filed with the appeal book. The draft bye-laws were called "Indore Municipal Corporation Draft Drainage Tax (Assessment, Collection, Refund) Bye-laws 1973 (hereinafter referred to as the Draft Drainage Tax Bye-laws, 1973). But the final bye-laws in relation to drainage tax came to be published only on 12.2.1976 from which date they became enforceable and as translated are called "Indore Municipal Corporation Drainage Tax (Assessment, Collection and Refund) Bye-laws, 1975 (hereinafter referred to as the Drainage Bye-laws 1975). Bye-law No.4 thereof contemplates that the assessment of drainage tax on the annual letting value of any building or land at the rate of Rs. 1.50 per cent or such rate as may from time to time be fixed by the Corporation in accordance with the provisions of Section 138 of the Act and the assessment shall be done in the manner laid down for assessment of property tax in Sections 139 to 159 of the Act. The drainage tax was, however, levied by the Corporation w.e.f. 1.4.1971.

The bye-laws in relation to lighting rate were published by a Notification dated 18th April, 1974 in the Madhya Pradesh Gazette dated 24th May, 1974 and came into effect from date of publication. They are called "Indore Municipal Lightning Rate (Assessment, Collection and Refund) Bye-laws 1974. The relevant bye-law for assessment of lightning rate is bye-law No. 4 which prescribes that the assessment of lightning rate will be on the basis of determination of annual letting value for assessment of property tax in accordance with the Act.

The position thus boils down to this that the bye-laws in relation to lightning rate came into force on 24.5.1974, general sanitary cess on 9.1.1976 and drainage tax on 12.2.1976.

It appears that before the aforesaid bye-laws were made effective in relation to drainage tax the resolution No. 925 dated 10th march, 1970 was passed by the Corporation proposing to levy drainage tax at a particular rate on a particular basis. This resolution was passed at a special meeting of the Corporation under sub-section (2) of Section 132 of the Act and the proposal was made effective by the order of the Administrator No.491 dated 26.10.1970.

- A when the objections received to the proposal were considered and it was decided to impose the drainage tax as per the order of the Corporation vide resolution No. 924 dated 10th March, 1970. The proposal had mentioned that the drainage tax shall be levied at the rate of 1-1/2 per cent after deducting 10 per cent as maintenance charges on the basis of annual letting value. The basis for determination of the annual rental value was stated to be the annual property value assessed by the Municipal Corporation or State Government from time to time and the drainage tax shall be imposed on same basis.

- C Similarly, in relation to lighting rate the Corporation passed the resolution no. 926 dated 11th March, 1970 proposing to impose lighting rate at the rate of Rs. 0. 40 p. on the remaining amount of letting value after deducting 10 per cent maintenance charges from it. The basis of rental value was to be determined from the annual rental value assessed by the Municipal Corporation of State Government from time to time. The lightning tax was directed to be imposed on same basis. This resolution was confirmed by order No. 492 dated 26.10.1970 by the Administrator.

- D No resolutions giving option of basis for assessment on either of annual letting value fixed by the Corporation or State were passed for imposition of general sanitary cess.

- E It may be mentioned that from 1964 to 31st March, 1970 the property tax was levied both by the Government and the local bodies such as the Municipal Corporation. The Government levied the property tax under the Adhiniyam whereas the Municipal Corporation levied it under the Act. From 1st April, 1971 to 31st March, 1976 the State alone recovered the property tax as a prohibition for local bodies from imposing property tax was introduced in Section 36 of the Adhiniyam by Act No. 3 of 1971. By the Act No. 50 of 1976, Section 36 was deleted from the Adhiniyam and the areas within the Municipal Corporation limits were taken out from the operation of the Adhiniyam. So from 1st April, 1976 the Municipal Corporations are alone recovering the property tax within their local areas.

- G The drainage tax and the lighting rate came into force on 1st April, 1971. At the time when these taxes were imposed the Corporation was prohibited from imposing property tax and the annual letting value of the building or land was thus not being determined under the Act for levying property tax. This position continued till 1st April, 1976 when the Corporation again got the power to impose property tax.

- H We have already referred to the proposals that were finally approved by

the Administrator for imposition of these taxes as well as the rate of such taxes and also the basis being the annual letting value as determined by the Corporation of the State Government for imposition of property tax from time to time. The general sanitary cess were enforced from 1.4.1973 but the bye-laws in relation thereto were finally approved and published only on 9.1.1976. The proposal in relation to imposition of sanitary cess did not give any option to adopt the annual letting value determined under the Adhiniyam if no annual letting value was determined for the imposition of property tax under the Act. There is thus a distinction between general sanitary cess on the one hand and drainage tax and lightning rate on the other. The basis for computing these taxes is given in the bye-laws but the bye-laws become effective only on their publication in the Gazette. Thus before the bye-laws became effective the resolutions of the Corporation/Administrator held the field.

We may now examine the provisions of the Act and the Adhiniyam of 1964. As we have noticed earlier that for sometime the properties within the Corporation and the Municipalities areas were subjected to property tax by two authorities namely the Municipal Corporation and the State Government simultaneously but the power of the Municipalities was taken away in view of enactment of Section 36 of the Adhiniyam. The power of the Corporation was restored only w.e.f. 1.4.1976. The property tax was the main tax which was being recovered by the Municipal Corporation and the Municipalities and for collection of property tax the Municipalities and the Corporations were preparing annual letting value of the properties. But when the power of the Municipalities and the Corporation was taken away in view of Section 36 of the Adhiniyam, the Corporation was not maintaining any list of annual letting value determined under the Act.

Section 132 of the Madhya Pradesh Municipal Corporation Act, 1956 enumerates the taxes which can be imposed by a Municipal Corporation. The Section, in so far as relevant for purposes of this case, reads as follows:

"Sec. 132. Taxes to be imposed under this Act.

- (a) a tax payable by the owners of buildings lands situated within the city with reference to the gross annual letting value of the building or land called the property tax;

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- (c) a general sanitary cess for the construction and maintenance of public latrines and for removal and disposal of refuse;

A (d) a water rate;

provided that the water tax shall be levied only in respect of the premises —

B (a) to which the private water-supply is furnished from, or which are connected by means of communication pipes with any Municipal or Government water works; or

C (b) which are situated in a portion of the city in which the Commissioner has given the public notice that the Corporation has arranged to supply water from Municipal and Government water-works by means of private water connections or public stand-pots, fountains or by any other means.

(2) In addition to the taxes mentioned in sub-section (1) the Corporation, may, for the purposes of this Act, impose any of the following taxes, namely :

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(e) a lighting rate where the lighting of public streets, places and buildings is undertaken by the Corporation :

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xxx xxx xxx

(g) a drainage tax, where a system of drainage has been introduced;

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xxx xxx xxx

G (3) Subject to the provisions of Article 277 of the Constitution of India any tax which immediately before the commencement of the Madhya Pradesh Municipal Corporation Law (Extension) Act, 1960 (13 of 1960) was being lawfully levied by the Corporation may, notwithstanding that such tax is not specified in sub-section (1) or (2), continue to be levied by the Corporation.

(4) The imposition of any tax under this section shall be subject to the provisions of the Act and of any other enactment for the time being in force.

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(5) The Municipal taxes shall be assessed and levied in accordance with the provisions of this Act and the rules and bye-laws made thereunder : A

(6) The Government may, by notification in the Gazette, prescribe such maximum and minimum limits with respect to the amount or to the rate or both as may be specified in such notification within which the Corporation may impose taxes mentioned in sub-sections (1) and (2). B

A perusal of the section quoted above would show that the taxes mentioned in sub-section (1) are obligatory. In other words, the Corporation must impose these taxes. General sanitary tax and water rate fall under this category. The taxes mentioned in sub-section (2) are not obligatory but they can also be imposed by the Corporation; lighting rate and drainage tax come under this class. Apart from the taxes which can be imposed under sub-sections (1) and (2), the Corporation can continue to levy any tax not mentioned therein which immediately before the commencement of the M.P. Municipal Corporation Law (Extension) Act, 1960 was being lawfully levied by the Corporation. The taxes as provided in sub-section (5) are to be assessed and levied in accordance with the provisions of the Act and the rules and bye-laws made thereunder. Sub-section (6) authorises the Government to prescribe maximum and minimum limits of the taxes. C D

3. The procedure for imposition of taxes is contained in section 133 which reads as follows : E

Sec. 133 Procedure for imposing tax —

(1) The Corporation may at a special meeting bring forward a resolution to propose the imposition of any tax under section 132 defining the class of persons or description of property proposed to be taxed, the amount or rate of tax to be imposed and the system of assessment to be adopted. F

Provided that no such resolution shall be passed by the Corporation for the imposition of any tax coming under clause (o) of sub-section (2) of section 132 unless the Government shall have first given their approval to the selection of the tax by the Corporation. G

(2) Such resolution shall be published in the Gazette and in such other manner as may be prescribed by bye-laws. Any person H

- A residing within the city and objecting to the proposed tax may, within thirty days from the publication of the resolution in the Gazette, submit his objection in writing to the Corporation and the Corporation shall at a special meeting take his objection into consideration.
- B (2-A) If the Corporation decides to amend its proposals or any of them it shall publish amended proposals, along with a notice indicating that they are in modification of those previously published for objections.
- C (2-B) Any objections which may be received to the amended proposals within thirty days shall be dealt with in the manner prescribed in sub-section (2-A).
- D (2-C) The Corporation shall publish its final proposals in the Gazette, and the tax shall then come into force on such date as may be specified in that notification.
- E (3) A notification of the imposition of a tax under this section shall be conclusive evidence that the tax has been imposed in accordance with the provisions of this Act.
- F (4) Nothing contained in this section shall apply to tax mentioned in clause (a) of sub-section (1) of section 132 which shall be charged and levied in accordance with section 135."

Briefly stated, the first step is passing of a resolution defining the class of persons, description of property proposed to be taxed, the amounts or rate of tax to be imposed and the system of assessment to be adopted. The resolution is published in the Government Gazette for inviting objections. Objections filed within thirty days are considered by the Corporation. The Corporation then publishes its final proposals and the tax comes into force on the date as may be specified in the notification. The notification of the imposition of tax is conclusive evidence that the tax has been imposed in accordance with the provisions of the Act.

Property tax is one of the taxes which the Corporation can impose (see section 132 (1)(a)). The imposition of this tax is regulated by sections 135 to 159. The rate of property tax is relatable to annual value which is defined in section 138. The preparation of assessment list is covered by sections 143 to 153. It is also clear from the provisions of section 133 that the Corporation may

by special meeting bring forward resolutions about the system of assessment to be adopted. A

The bye-laws are framed under section 427 of the Act and Section 431 provides that all bye-laws shall be published in the Gazette. The effect of these provisions is that the bye-laws become part of the Act. Thus the Corporation while providing the system of assessment for various taxes can propose a basis but after the bye-laws provided the system of assessment, the Corporation has to abide by that system of assessment. B

So far as the drainage tax is concerned, there were no bye-laws till 12.2.1976. The resolutions of the Corporation could thus hold the field by providing a method of assessment till 12.2.1976. Similarly, the resolution in relation to general-sanitary cess could also hold the field till the publication of bye-laws in relation thereto on 9.1.1976 and similarly for lighting rate till the publication of bye-laws in relation thereto on 24.5.1974. But the resolutions if they come in conflict with the method of assessment then the resolution w.e.f. from which date the bye-laws come into force, will become illegal and ineffective. C

So far as the general sanitary cess is concerned, the resolutions of the Corporation provide only one method namely to assess it in accordance with the annual letting value of the property tax provided under the Act. The option, however, was available to the Corporation in relation to drainage tax and lighting rate. The Corporation could in view of the resolution follow the option of working out these taxes on the basis of annual letting value prepared under the Adhiniyam. Therefore, so far as drainage tax is concerned, it could continue such basis till 12.2.1976 and as far as the lighting rate is concerned till 24.5.1974. After 24.5.1974, in relation to lighting rate, determination of it on the basis of annual letting value prepared under the Adhiniyam will become bad. Therefore, dealing with the matter further we may notice another change which was brought about w.e.f. 1.4.1976. With effect from 1.4.1976 section 143 was added to the Act which provides as under :— D

Section. 143. Assessment of annual value and duration of assessment. E

(1) The annual value of any land or building situate within the city as determined under the Madhya Pradesh Nagariya Sthawar Sampatti Kar Adhiniyam, 1964 (No. 14 of 1964) or the rules made thereunder, and in force for the purpose of that Act immediately before the 1st day of April, 1976 shall be deemed to be the annual value for the assessment of property tax on such land or building F

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A under this Act, until such time as the Commissioner makes a fresh valuation and determines annual value under this Act of the land and buildings therein and the annual value of such land or buildings shall remain unchanged for a period of one year and may be revised thereafter by the Commissioner at the termination of successive period of one year.

B (2) The Commissioner may, instead of making a new assessment every year, adopt the existing assessment, with such alteration as he thinks fit, as the assessments for each new year, giving to persons affected by such alterations the same notice of the altered valuation and assessment as would have been required if a new assessment had been prepared.

C (3) The Commissioner shall arrange for a survey for the purpose of assessment of each part of the city at least once in five years save for the omission, with the previous consent of the Standing Committee, of any small areas which might be more conveniently re-assessed in a subsequent year."

D By its very wording Section 143 is prospective and it makes that the annual value of the building as under the Adhiniyam to be deemed to be the annual value for the assessment of property tax or land or building under the Act. Until such time as the Commissioner makes a fresh valuation and prepares annual value specifically under the Act and sub-section (2) thereof gives power to the Commissioner to adopt the existing value of such land after following the procedure. The effect of enactment of Section 143 of the Act. w.e.f. 1.4.1976 is that from such date the Corporation could legitimately adopt the annual value prepared under the Adhiniyam as the basis for determination of the aforesaid three taxes.

F Until a new list is prepared, the annual value so adopted by Section 143 is deemed to be the annual value under the Act. The annual value so enforced for the purpose of assessment of property tax under the Act could also be used for assessment of drainage tax, lighting rate and general sanitary cess.

G We have already mentioned earlier that so far as drainage tax and lighting rate are concerned, their assessment could be made by the Corporation on the basis of the annual value fixed under the Adhiniyam in view of the resolutions passed by the Corporation and the orders made by the Administrator till the bye-laws came into effect in relation thereto and in view of Section 143 there is again no difficulty in assessing general sanitary cess on the basis of annual value adopted by Section 143 for the period from 1st April, 1976 onwards.

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We may now deal with the decision of the division bench in relation to the imposition of water rate known as "graduated flat rate". The tax known by this name is in reality water rate imposed by the Corporation. The Corporation supplies water in the corporation limits. The Corporation was earlier a Municipality governed by the Indore Municipal Act (Act No.4 of 1909). Section 21(x) of this Act authorised the Municipality to impose water rate (where water is supplied by the Municipality). The water rate was imposed under the provisions of the Indore Municipal Act. There were separate rates for houses in which water connection was taken with meters or without meters and different rates for those houses where no water connection was at all taken. The water rate for houses where no water connection was taken imposed on the theory that the house owners must be taking water from some public tap or stand pot or fountain provided by the Municipality. The water rate imposed on houses where there is no water connection is known as "graduated flat rate". That rate is revised from time to time. It was last revised by the Indore Municipality by a Notification dated 22nd December, 1940. The graduated flat rate in this Notification is on the basis of rental value of the houses. The graduated flat rate at the aforesaid revised rate continued to be in force even after the enforcement of the Act and the Constitution of Indore Municipality as a Corporation under this Act. The challenge before the High Court to the assessment of graduated flat rate was with the revision of graduated flat rate by the Administrator's order dated 18th May 1973 passed under Section 162 of the Act. The petitioners had filed objections to the bill in relation to graduated flat rate (annexure-S to the S.L.P.) which was sent under postal certificate.

It may be noticed that the graduated flat rate is now related to the area of the building and not to the rental value. The argument before the High Court was that it was not open to the Corporation to exercise the power of revision of tax under section 162(2) as this was not a tax covered under sub-section (1) or (2) of Section 132 of the Act. It was admitted before the High Court that before a notification for revising the rate was issued the sanction of the Government had been obtained. However, it is clear that the graduated flat rate is covered by the provisions of Section 132(1)(d) and the water tax is leviable in respect of the premises. It is clear from clause (d) of sub-section (1) of Section 132 that water tax could be levied in respect of premises not only where premises are connected by means of municipal pipes or Government water pots but where the premises were situated in a portion of the city in which the Commissioner has given public notice that the Corporation has arranged to supply water from municipal or Government pots by means of providing water connection or public stand-pots, fountains or by any other means. No objection was raised before the Commissioner, Municipal Corporation of Indore that for godowns no water rate could be charged and that they were not subject to water

- A rate for the purposes of Indore Municipal Act. But so far as the Act is concerned, water rate is leviable to the premises without distinction to the nature of the premises or their user.

- Before us an argument was put forward that since the premises are made godowns no water supply is provided. We are afraid that what clause (d) of sub-section (1) of Section 132 talks about is not in relation to any house, building or godowns but refers to expression "premises". The premises is a very wide word and includes buildings of all types whether residential, commercial or factory etc. etc. Merely because the premises are godowns, it cannot be urged that the water rate or graduated flat rate could not be imposed. We are also of the view that it is not fair again to permit the petitioner to urge that the water rate is not applicable to the premises in dispute as no such objection was also taken either in the objection petition before the Commissioner referred to earlier, or in the writ petition before the High Court nor in the Special Leave Petition.

- The result of the above discussion is that C.A. 2378 of 1980 and Civil Appeal arising out of S.L.P. (C) No. 10376 of 1981 in relation to drainage tax, general sanitary cess and water rate are dismissed. However, in relation to the bill regarding lighting rate impugned in the judgment of the division bench, it is held to be partly illegal and unenforceable for the period from 24.5.1974 to 31.3. 1976 as basis of assessment was contrary to the relevant Indore Municipal Lighting Rate (Assessment, Collection & Refund) Bye-laws, 1974. But the demand for lighting rate after 1.4.1976 is valid and to that extent, in relation to lighting rate, the impugned order of the division bench is confirmed to the aforesaid extent. In regard to C.A.2377 of 1980 where the bill dated 26th October, 1971 and the demand notice dated 14th August, 1973 in relation to lighting rate and drainage tax are only challenged, the impugned judgment of the High Court is set aside and the appeal is allowed. Parties are, however, left to bear their own costs.

T.N.A.

Appeals disposed of.