AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.2 of 2018

Order reserved on: 18-5-2018

Order delivered on: 19-6-2018

Steel Authority of India Limited, Bhilai Steel Plant, Bhilai, Through the Chief Executive Officer, Bhilai Steel Plant, Ispat Bhawan, Bhilai, Distt. Durg (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Urban Administration and Development, Mahanadi Bhawan, Mantralaya, Naya Raipur (C.G.)
2. Municipal Corporation, Through its Commissioner, Bhilai, Distt. Durg (C.G.)
3. Property Tax Officer, Municipal Corporation, Bhilai, Distt. Durg (C.G.)

---- Respondents

For Petitioner: Dr. N.K. Shukla, Senior Advocate with Mr. Shailendra Shukla and Mr. Vikram Sharma, Advocates.

For Respondent No.1 / State: - Mr. Gary Mukhopadhyay, Govt. Advocate.

For Respondents No.2 and 3: - Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The jurisdiction of this Court under Article 226 of the Constitution of India has been invoked questioning the notification dated 8-9-2016 issued by the Commissioner, Municipal Corporation, Bhilai by which property tax has been directed to be enhanced on the basis of memo/order issued by the State Government under Section 133-B

of the Chhattisgarh Municipal Corporation Act, 1956 (for short, 'the Act of 1956') on 31-8-2015. The petitioner also seeks to challenge the order dated 18-10-2016 by which the Corporation has directed the petitioner to submit revised return as per the resolution dated 8-9-2016.

2. The petitioner, which is a Government Company, filed self-assessment assessing its property tax in the year 2016-17 with rebate of 5%. Thereafter, on 8-9-2016, the Commissioner, Municipal Corporation, Bhilai, on the basis of memo dated 31-8-2015 enhanced the property tax with effect from assessment year 2016-17 treating the memo dated 31-8-2015 to be the order of the State Government. Thus, the petitioner seeks to challenge the notification dated 8-9-2016 as well as the order dated 18-10-2016 on the ground that the memo dated 31-8-2015 is not an order at all, it is only a notice inviting objections from the Corporation and local public under Section 133-B of the Act of 1956 and, therefore, revision of annual letting value as well as enhancing property tax on the basis of memo dated 31-8-2015 is without jurisdiction and without authority of law. Therefore, the notification dated 8-9-2016 be quashed and the consequential order dated 18-10-2016 be also quashed.

3. Return has been filed by the State / respondent No.1 stating inter alia that no relief has been sought against the State and the State Government while exercising powers under Section 133-B of the Act of 1956 has only issued notices to the Corporation and local public in the prescribed manner for imposition of property tax. It is

further stated that all the averments relate to respondents No.2 and 3 for which they have filed separate return.

4. Respondents No.2 and 3 – Municipal Corporation, Bhilai has filed its separate return stating inter alia that pursuant to the memo dated 31-8-2015, the Corporation has invited objections from general public and objections were sent to the State Government for its proper disposal and in pursuance of the notification dated 31-8-2015 and the schedule appended thereto, the Municipal Corporation issued notification dated 8-9-2016 whereby new annual letting value has been fixed by the Corporation and thereafter, it has been informed to general public by publication through notification dated 8-9-2016. It has also been pleaded that since the petitioner has not submitted self-assessment as per the notification dated 8-9-2016 and the petitioner paid property tax on the basis of notification issued in the year 2011-12 and after the year 2012, notification dated 8-9-2016 has been issued, therefore, the petitioner is required to make disclosure in accordance with the notification dated 8-9-2016. The petitioner's appeal has already been dismissed and property tax enhanced with effect from 1-4-2016 is strictly in accordance with law. The petitioner has already made self-assessment on the basis of rates notified on 8-9-2016 and deposited the property tax, as such, the writ petition deserves to be dismissed.

5. Dr. N.K. Shukla, learned Senior Counsel appearing on behalf of the petitioner, would submit that the Municipal Corporation, Bhilai has passed the impugned order relying upon the notification dated 31-8-

2015 allegedly passed under Section 133-B of the Act of 1956, whereas notification dated 31-8-2015 is only a notice issued for passing order under Section 133-B of the Act of 1956 for hearing the person mentioned therein. In fact, no order under Section 133-B of the Act of 1956 has been passed by the State Government after hearing the Municipal Corporation and the local public in the prescribed manner and therefore making the notification dated 31-8-2015 base, the order impugned passed by the Commissioner, Municipal Corporation enhancing the annual letting value and thereby increasing the property tax is without jurisdiction and without authority of law. He would further submit that the annual letting value has to be determined in accordance with the Chhattisgarh Municipality (Determination of Annual Letting Value of Building/Lands) Rules, 1997 and *dehors* the rules, no such annual letting value can be determined, as in this case, there is no order under Section 133-B of the Act of 1956 passed by the State Government enhancing the property tax. Therefore, the order impugned passed by the Commissioner, Municipal Corporation deserves to be set aside being without jurisdiction and without authority of law.

6. Mr. Gary Mukhopadhyay, learned Government Advocate appearing on behalf of the State/respondent No.1, would submit that the State Government has only issued notice inviting objections from the Municipal Corporation and local public, as such, the writ petition deserves to be dismissed.

7. Mr. Manoj Paranjpe, learned counsel appearing for the Municipal

Corporation / respondents No.2 and 3, would vehemently submit that the property tax levied by the Municipal Corporation is strictly in accordance with law and pursuant to the notification dated 31-8-2015, the Corporation has invited objections and same have been sent to the State for disposal in accordance with law. The notification issued by the Corporation on 8-9-2016 is strictly in accordance with law.

8. I have heard learned counsel for the parties and considered their rival submissions and also went through the record with utmost circumspection.

9. The question for consideration would be, whether respondent No.2 Municipal Corporation, Bhilai is justified in enhancing the annual letting value of the property in question and thereby increasing the property tax by the impugned order dated 8-9-2016 on the basis of memo dated 31-8-2015 alleged to have been issued by the State Government in exercise of jurisdiction conferred under Section 133-B of the Act of 1956.

10. Before dwelling into the main issue involved herein, it would be appropriate to notice the status of the Municipalities including the Municipal Corporation.

11. The Constitution of India suffered amendment by the Constitution (Seventy-fourth Amendment) Act, 1992 with effect from 1-6-1993 and by the said amendment, Part IXA has been inserted into the Constitution with the heading “The Municipalities”. Section 243P of the Constitution of India is the definition clause, clause (e) provides that “Municipality” means an institution of self-government

constituted under article 243Q. Article 243Q(1) of the Constitution provides that there shall be constituted in every State, (a) a Nagar Panchayat for a transitional area, that is to say, an area in transition from a rural area to an urban area; (b) a Municipal Council for a smaller urban area; and (c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part. Thus, Part IXA of the Constitution confers upon the Municipal Corporation a constitutional status as a basic democratic unit. Article 243X of the Constitution states about the power to impose taxes by, and Funds of, the Municipalities. It provides as under: -

> "**243X. Power to impose taxes by, and Funds of, the Municipalities**.—The Legislature of a State may, by law, —
>
> (a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
>
> (b) assign to a Municipality such taxes, duties, tolls, and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
>
> (c) provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and
>
> (d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom,
>
> as may be specified in the law."

12. Thus, a constitutional status has been conferred upon the Municipal Corporation, it has competence to levy and collect taxes subject to authorisation by the State Government and the State Legislature itself has been authorised by law with the power of imposing tax

which it passes or delegates to the Corporation.

13. This would bring me to the provisions of the Chhattisgarh Municipal Corporation Act, 1956. Part-IV, Chapter XI, of the Act of 1956 deals with Taxation. Section 132 (1) (a) of the Act of 1956 deals with the power of Corporation to levy the property tax and states as under: -

> "**132. Taxes to be imposed under this Act**.—(1) For the purpose of this Act, the Corporation shall, subject to any general or special order which the State Government may make in this behalf, impose in the whole or in any part of the Municipal Area, the following taxes, namely :–
>
> (a) a tax payable by the owners of buildings or land situated within the city with reference to the gross annual letting value of the buildings or lands, called the property tax, subject to the provisions of Sections 135, 136 and 138;"

14. A focused glance of the aforesaid provision would show that the Municipal Corporation is entitled to levy property tax subject to any general or special which the State Government may make in this behalf, impose in the whole or in any part of the Municipal Area, in India. The property tax is payable by the owners of buildings or lands situated within the city with reference to the gross annual letting value of the buildings or lands, subject to the provisions of Sections 135, 136 and 138 of the Act of 1956. Section 135 of the Act of 1956 provides imposition of property tax. Basically it provides the rate of property tax. Section 136 is exemption to property tax stating that the property tax levied under Section 135 shall not be leviable in respect of the properties mentioned in clauses (a) to (k). Section 138, which provides for annual letting value of land or building, has been incorporated by the M.P. Act No.18 of 1997. For determination of annual letting value under

Section 138, the rules namely the Chhattisgarh Municipality (Determination of Annual Letting Value of Building/Lands) Rules, 1997 have been enacted by the State Legislature.

15. Section 133 of the Act of 1956 provides imposition of taxes and fees. The Corporation is empowered to impose tax and fees by a resolution, at the time of final adoption of the budget estimates for the next financial year, subject to the provisions of this Act and subject to such limitations and conditions, as may be prescribed by the State Government in this behalf.

16. Section 135 of the Act of 1956 provides for imposition of property tax which reads as under: -

> "**135. Imposition of property tax.**—(1) Notwithstanding anything contained in this Act, the tax under clause (a) of sub-section (1) of Section 132 shall be charged, levied and paid, at the rate not less than six percent and not more than twenty percent of the annual letting value, as may be determined by the Corporation for each financial year :
>
> Provided that if the Corporation fails to determine the rate of the property tax by 31st March the rate as prevailing during the previous financial year shall be deemed to be the rate for current financial year."

17. Thus, Section 135 of the Act of 1956 provides for imposition of property tax as provided under Section 132. It further provides slab for imposition of property tax by providing that every Municipal Corporation is empowered to charge and levy property tax at the rate of not less than six percent and not more than twenty percent of the annual letting value of the property as determined by the Corporation for each financial year.

18. Section 138 of the Act of 1956 provides for annual letting value of

land or building. It provides as under: -

> "**138. Annual letting value of land or building.**—(1) Notwithstanding anything contained in this Act or any other law for the time being in force, the annual letting value of any building or land, whether revenue paying or not, shall be determined as per the resolution of the Corporation adopted in this behalf, on the basis of per square meter of the built up area of a building or land, as the case may be taking into consideration the area in which the building or land is situated, its location, situation, purpose for which it is used, its capacity for profitable user, quality of construction of the building and other relevant factors and subject to such rules, as may be made by the State Government in this behalf.
>
> (1-a) xxx xxx xxx
>
> (2) On the basis of the resolution adopted by the Corporation under sub-section (1), every owner of land or building shall assess the annual letting value of his land or building and deposit the amount of property tax along with a return in this behalf, in the prescribed form, on or before the date fixed by the Corporation, failing which a surcharge at the rate, as may be determined by the Corporation, shall be charged.
>
> (3) The variation up to ten percent on either side in the assessment made under sub-section (2) shall be ignored. In cases where the variation is more than ten percent, the owner of land or building, as the case may be, shall be liable to pay penalty equal to five times the difference of self assessment made by him and the assessment made by the Corporation.
>
> (4) An appeal shall lie to the Mayor-in-Council against the orders passed under sub-section (3)."

19. The above-stated provision contained in Section 138 of the Act of 1956 has been substituted by M.P. Act 18 of 1997 with effect from 21-4-1997 and entirely new provisions have been incorporated. It deals with determination of Annual Letting Value of land or building. The Annual Letting Value of any building or land, whether revenue paying or not, shall be determined as per the resolution of the Corporation adopted in this behalf, on the basis of per square foot of the built of area of a building or per square foot of land, as the

case may be, taking into consideration the area in which the building or land is situate, its location, situation, purpose for which it is used, its capacity for profitable user, quality of construction of the building and other relevant factors and subject to such rules, as may be made by the State Government in this behalf.

20. The Chhattisgarh Municipality (Determination of Annual Letting Value of Building/Lands) Rules, 1997 (for short, 'the Rules of 1997') have been framed for determining the annual letting of the building. Rule 3 of the Rules of 1997 provides classification of municipal area requiring the municipality to be classified as municipal area in more than one zone as far as possible, similar situations of the buildings and lands situated therein. Rule 4 provides classification of buildings and lands. Rule 5 provides rate of annual letting value. Rule 6 provides for duty of the municipality to adopt resolution by including the points enumerated therein for the purpose of annual letting value. Rule 9 provides calculation of annual letting value. Rule 10 provides self-assessment of the property tax. Thus, complete procedure has been prescribed for determining the annual letting value and for charging the property tax as provided under Section 138 of the Act of 1956.

21. At this stage, it would be appropriate to notice Section 133-B of the Act of 1956 which provides as under: -

> "**Section 133-B. Power of the State Government to require Corporation to impose taxes.** – Whenever it appears to the State Government that the balance of Municipal Fund of any Corporation or its revenue is insufficient for the discharge of its duties or obligatory functions imposed upon it under the Act or for meeting the expenditure to be incurred under Section 418 or for

performance of any duties in respect of which it shall have been declared under Section 419 to have committed default, the State Government after giving a notice of fifteen days to the Corporation and to the local public in a prescribed manner may require the Corporation to impose within the Municipal area any tax which it is empowered to impose under Section 132 or to enhance any existing rate of tax in such manner or to such extent as the State Government considers fit, and the Corporation shall forthwith proceed to impose or enhance in accordance with the requisition such tax under the provisions of this Chapter, as if a resolution of the Corporation had been passed for the purpose under Section 133 :

Provided that –

(a) the State Government shall take into consideration any objection which the Corporation or any inhabitant of the municipal area may make against the imposition or enhancement of such tax;

(b) it shall not be lawful for the corporation to abandon or modify or to abolish such tax when imposed, without the sanction of the State Government;

(c) the State Government may, at any time by notification, abolish or reduce the amount or rate of any tax levied or enhanced under this section and the levy of the tax or the enhancement except as to arrears thereto for accrued due, shall thereupon cease or be modified accordingly."

22. A focused glance of the aforesaid provision would show that it is an exception to the procedure prescribed in the determination of annual letting value as provided in Section 138(1) of the Act of 1956 read with Rules 6 and 9 of the Rules of 1997.

23. Section 133-B of the Act of 1956 is an exception to Section 138 of the Act of 1956 read with the Rules of 1997. Section 133-B of the Act of 1956 prescribes two different kinds of jurisdictions. Power of prescribing the manner and indicating the extent of tax lies with the State Government and the Corporation has to comply and levy the said enhanced tax to the assessee within the Corporation limit, but

that enhanced tax cannot abandon or abolish the tax without prior sanction of the State Government. It provides that the State Government may in the circumstances specified in the aforesaid provision i.e. the Corporation or the revenue is insufficient for discharge of its duties or obligatory functions imposed upon it under the Act or for meeting the expenditure to be incurred under Section 418 or for performance of any duties in respect of which it shall have been declared under Section 419 to have committed default, the State Government after hearing the Corporation and local public giving 15 days notice require the Corporation to impose within the municipal area any tax which it is empowered to impose under Section 132 or to enhance any existing rate of tax in such manner or to such extent as the State Government considers fit. Thus, the condition precedent for exercise of power by the State Government under Section 133-B is to hear the Municipal Corporation and the local residents and to pass order under Section 133-B fulfilling the requirement clearly requiring the Corporation to enhance the tax or to impose a new tax in accordance with the requisition and that requisition shall have the effect of resolution of the Corporation deemed to have been passed for the purpose under Section 133 of the Act. The word “require” has not been defined in the Act of 1956, but the Black's Law Dictionary (Sixth Edition) defines the word “require” as under: -

> “Require. To direct, order, demand, instruct, command, claim compel, request, need, exact. State ex rel. Frohmiller v. Hendrix, 59 Ariz. 184, 124 P.2d 768, 773. To be in need of. To ask for authoritatively or imperatively. State v. Community Distributors, Inc., 123 N.J.Super. 589, 304 A.2d 213, 217.”

24. Now, the question is, whether the procedure envisaged in Section 133-B of the Act of 1956 has been followed by the State Government in the instant case before enhancing the annual letting value of the property / property tax within the Municipal Corporation area.

25. It would be pertinent to notice what the State Government has done in this behalf under Section 133-B of the Act of 1956 to enhance the property tax. The State Government issued notice dated 31-8-2015 proposing to enhance the annual letting value of the property to increase the property tax to the extent of 50% as per the appendix annexed with the notice (unsigned and undated) which states as under: -

छत्तीसगढ़ शासन
नगरीय प्रशासन और विकास विभाग
मंत्रालय, महानदी भवन, नया रायपुर

क्र. /231/2015 रायपुर, दिनांक 31/08/15

प्रति,

समस्त आयुक्त
नगर पालिक निगम
छत्तीसगढ़

विषयः– नगरीय निकायों में संपत्तिकर अधिरोपण के संबंध में निर्देश जारी करने के पूर्व छत्तीसगढ़ नगर पालिक निगम अधिनियम, 1956 की धारा 133–ख के अंतर्गत नोटिस ।

––00––

नगर पालिक निगमों की आर्थिक स्थिति सुधारने हेतु यह आवश्यक प्रतीत होता है कि संपत्ति कर से प्राप्त होने वाली राजस्व में वृद्धि की जावे। इस हेतु राज्य सरकार द्वारा प्रदेश के समस्त नगर पालिक निगमों को नीचे परिशिष्ट के अनुसार उचित निर्देश देना प्रस्तावित है। निर्देश के पूर्व, छत्तीसगढ़ नगर पालिक निगम अधिनियम, 1956 की धारा 133–ख के अंतर्गत एतद् द्वारा नोटिस दिया जाता है। इस नोटिस तथा संलग्न परिशिष्टि

को स्थानीय जनता के सूचनार्थ निगम के सूचना पटल पर प्रमुखता से चस्पा करें ।

सही/-
(आर.पी.मण्डल)
प्रमुख सचिव
छत्तीसगढ़ शासन
नगरीय प्रशासन एवं विकास विभग
मंत्रालय, रायपुर

परिशिष्ट

छत्तीसगढ़ शासन
नगरीय प्रशासन और विकास विभाग
मंत्रालय, महानदी भवन, नया रायपुर

क्र. / /2015 रायपुर, दिनांक / /15

प्रति,
समस्त आयुक्त
नगर पालिक निगम
छत्तीसगढ

विषयः- नगरीय निकायों में संपत्तिकर अधिरोपण के संबंध में निर्देश

राज्य स्तरीय समीक्षा बैठकों में राज्य शासन के संज्ञान में यह विषय आया है कि, नगरीय निकायों द्वारा प्रतिवर्ष छत्तीसगढ़ नगरपालिका (भवनों/भूमियों के वार्षिक भाड़ा मूल्य का अवधारण) नियम, 1997 के प्रावधानों के अनुसार प्रचलित बाजार दर पर वार्षिक भाड़ा मूल्य का निर्धारण नहीं किया गया है, जिससे कि निकायों को संपत्तिकर के रूप में समुचित राशि प्राप्त नहीं हो पा रही है । उपरोक्त स्थिति को देखते हुए, राज्य शासन द्वारा समस्त निकायों में प्रचलित संपत्तिकर का परीक्षण कराया गया, जिसमें तदाशय की पुष्टि हुई । आय में समानुपातिक वृद्धि नहीं होने के कारण, निकायों की वित्तीय स्थिति निरंतर कमजोर हो रही है तथा शासकीय अनुदान पर उनकी निर्भरता लगातर बढ़ रही है ।

2. उपरोक्त से राज्य सरकार को यह प्रतीत हो रहा है कि नगरीय निकायों का राजस्व अधिनियम के अधीन उन पर अधिकरोपित किय गये उनके कर्तव्यों का या बाध्यकारी कृत्यों के निर्वहन के लिए अपर्याप्त है । इस स्थिति को सुधारने हेतु छत्तीसगढ़ नगर पालिक निगम अधिनियम, 1956 की धारा 133-ख के अंतर्गत प्राप्त अधिकारों का प्रयोग करते हुए राज्य शासन निम्नानुसार निर्देश देती हैः-

1) प्रचलित वित्तीय वर्ष 2015-16 में वार्षिक भाड़ा मूल्य के निर्धारण हेतु भवन एवं भूमि का प्रति वर्गफुट दर में परिवर्तन, इस प्रकार करें कि किसी भी करदाता द्वारा वर्तमान में निकाय में संपत्तिकर की देय राशि में न्यूनतम 50 प्रतिशत वृद्धि

सुनिश्चित हो सके ।

2) विहित प्रक्रिया का अनुसरण करते हुए, उपरोक्तानुसार कार्यवाही 01 माह की समयावधि में किया जाना सुनिश्चित करें ।

3) उपरोक्त प्रक्रिया द्वारा निर्धारित वार्षिक भाड़ा मूल्य को आगामी वर्ष हेतु आकार मानते हुए आगामी वित्तीय वर्ष 2016–17 से, जिला कलेक्टर द्वारा निर्धारित गाईडलाईन के समानुपातिक वृद्धि किया जाना अनिर्वाय रूप से सुनिश्चित किया जावे ।

3. निकाय में वार्षिक भाड़ा मूल्य का निर्धारण नगर पालिक निगम पर लागू प्रावधानों के अंतर्गत विगत वर्षों में नहीं करने वाले अधिकारियों/पदाधिकारियों की जानकारी उपलब्ध कराया जाना सुनिश्चित किया जावे ।

(आर.पी.मण्डल)
प्रमुख सचिव
छत्तीसगढ़ शासन
नगरीय प्रशासन एवं विकास विभग
मंत्रालय, रायपुर

26. After receipt of notice, the Municipal Corporation, Bhilai published the said notification on the notice board inviting objections and after receipt of objections, sent the same to the State Government for disposal in accordance with law. But without waiting for any reply / order from the State Government under Section 133-B of the Act of 1956, the Commissioner, Municipal Corporation has issued the order on 8-9-2016, a copy of which is filed as Annexure R-2/3, which states as under: -

कार्यालय, नगर पालिक निगम, भिलाई

क्रमांक/चार/तीन/सं.क.वि./2016/432 भिलाई, दिनांक 8/9/2016

//आदेश//

नगर पालिक निगम, भिलाई में संपत्तिकर स्व–निर्धारण प्रक्रिया के अंतर्गत छत्तीसगढ़ नगर पालिक निगम अधिनियम 1956 की धारा 132 से 138 एवं अधिनियम के अंतर्गत राज्य सरकार द्वारा अधिसूचित छत्तीसगढ़ नगर पालिका (भवनों/भूमियों के वार्षिक भाड़ा मूल्य का अवधारण) नियम, 1997 के तहत् प्रत्येक वित्तीय वर्ष में वार्षिक भाड़ा मूल्य निर्धारण करने का प्रावधान है जिसका पालन नहीं होने के कारण छत्तीसगढ़ शासन नगरीय प्रशासन एवं विकास विभाग,

रायपुर के जारी नोटिस क्र. 231/2015 रायपुर दिनांक 31.08.2015 के द्वारा छत्तीसगढ़ नगर पालिक अधिनियम 1956 की धारा 133–ख, के तहत् नगरीय निकायों की आय में वृद्धि की दृष्टि से वार्षिक भाड़ा मूल्य के निर्धारण हेतु भवनों/भूमियों का दर में परिवर्तन कर करदाता द्वारा वर्तमान निकाय में संपत्तिकर की देय राशि में न्यूनतम 50% वृद्धि सुनिश्चित करने के निर्देश दिये गये हैं । राज्य शासन के उपरोक्त निर्देशों का पालन नहीं किया गया है । राज्य शासन उच्च नियंत्रणकर्ता प्रशासनिक पदाधिकारी है । राज्य शासन द्वारा छत्तीसगढ़ नगर पालिक निगम अधिनियम 1956 की धारा 133–ख के अंतर्गत जारी नोटिस/निर्देश को राज्य सरकार की मंजूरी के बिना उसका परित्याग या उपान्तरण या समाप्त निगम द्वारा नहीं किया जा सकता ।

अतः छत्तीसगढ़ शासन नगरीय प्रशासन एवं विकास विभाग, रायपुर के जारी नोटिस क्र. 231/2015 रायपुर दिनांक 31.08.2015 एवं छत्तीसगढ़ नगर पालिका (मेयर–इन–काउंसिल/प्रेसीडेन्ट–इन–काउंसिल के कामकाज का संचालन तथा प्राधिकारियों की शक्तियां एवं कर्तव्य) नियम, 1998 के आज्ञापक प्रावधानों का पालन करते हुए छत्तीसगढ़ नगर पालिका (भवनों/भूमियों के वार्षिक भाड़ा मूल्य का अवधारण) नियम, 1997 के प्रावधानों के परिपालन में, नगर पालिक निगम, भिलाई के वित्तीय हितों को देखते हुए वार्षिक भाड़ा मूल्य की दरों एवं जोनों का वर्गीकरण करते हुए वित्तीय वर्ष 2016–17 हेतु संलग्न परिशिष्ट अनुसार संपत्तिकर की वार्षिक भाड़ा मूल्य की दरें तथा जोनो का वर्गीकरण के आधार पर वित्तीय वर्ष 2016–2017 का संपत्तिकर निर्धारण एवं संग्रहण किया जावें । जिन भवन/भूमि स्वामियों के द्वारा वित्तीय वर्ष 2016–2017 का संपत्तिकर की राशि जमा कर दिया गया है उनसे छत्तीसगढ़ नगर पालिका (भवनों/भूमियों के वार्षिक भाड़ा मूल्य का अवधारण)नियम, 1997 के नियम–6–क. अनुसार अंतर की राशि पुनरीक्षित संपत्तिकर स्व–विवरणी के साथ जमा कराया जावे ।

सही/–
नरेन्द्र कुमार दुग्गा (आई.ए.एस.)
आयुक्त
नगर पालिक निगम
भिलाई

27. On the same day i.e. 8-9-2016, the Commissioner, Municipal Corporation, Bhilai issued a notification enhancing the annual letting value of property with effect from 1st April, 2016 which states as under: -

कार्यालय, नगर पालिक निगम, भिलाई, जिला–दुर्ग (छ.ग.)

क्रमांक/चार/तीन/सं.क.वि./434/2016–17 भिलाई, दिनांक 8/9/2016

//अधिसूचना//

(वित्तीय वर्ष 2016–2017 में संपत्तिकर के स्व–निर्धारण हेतु वार्षिक भाड़ा मूल्य की दरें एवं जोनों का वर्गीकरण्)

छत्तीसगढ़ शासन नगरीय प्रशासन एवं विकास विभाग, रायपुर के जारी नोटिस क्र. 231/2015 रायपुर दिनांक 31.08.2015 एवं छत्तीसगढ़ नगर पालिका (मेयर–इन–काउंसिल/प्रेसीडेन्ट–इन–काउंसलि के कामकाज का संचालन तथा प्राधिकारियों की शक्तियां एवं कर्तव्य) नियम, 1998 के आज्ञापक प्रावधानों का पालन करते हुए छत्तीसगढ़ नगर पालिका (भवनों/भूमियों के वार्षिक भाड़ा मूल्य का अवधारण) नियम, 1997 के प्रावधानों के परिपालन में, नगर पालिक निगम, भिलाई क्षेत्रांतर्गत स्थित समस्त भवन/भूमि स्वामियों को एतद्द्वारा सूचित किया जाता है कि आयुक्त नगर पालिक निगम भिलाई के आदेश दिनांक 08/09/2016 के तहत नगर पालिक निगम भिलाई सीमा क्षेत्र में छत्तीसगढ़ नगर पालिका निगम अधिनियम 1956 की धारा 132, 138 तथा इसके अंतर्गत निर्मित छत्तीसगढ़ नगर पालिका (भवनों/भूमियों के वार्षिक भाड़ा मूल्य का अवधारण) नियम,1997 के अधीन निम्नानुसार संपत्तिकर, समेकत कर, (सामान्य स्वच्छता कर, सामान्य प्रकाश कर तथा सामान्य अग्नि कर) शिक्षा उपकर के आरोपण करने का निर्णय लिया गया है उक्त वार्षिक भाड़ा मूल्य की दरें दिनांक 01 अप्रैल 2016 से प्रभावशील होगी, विवरण निम्नानुसार हैः–

1. जोनवार भूमियों के लिए वार्षिक भाड़ा मूल्य की दरें प्रति वर्गफुट में–

जोन क्रमांक	आवासीय दरें	व्यवसायिक दरें
जोन–1	रु. 8.00 प्रति वर्गफुट	रू. 10.00 प्रति वर्गफुट
जोन–2	रु. 6.00 प्रति वर्गफुट	रू. 8.00 प्रति वर्गफुट
जोन–3	रु. 4.00 प्रति वर्गफुट	रू. 6.00 प्रति वर्गफुट
जोन–4(औद्यो.)	–	रू. 2.50 प्रति वर्गफुट

2. सम्पत्तिकर निर्धारण के लिए जोन का विर्गीकरण– वर्तमान में प्रचलित संपत्तिकर के लिए आवासीय, व्यवसायिक एवं औद्योगिक के अनुसार कुल 4 (चार) जोन में निर्धारित है । तद्नुसार जोन का वर्गीकरण निम्नानुसर हैः–

.....

.....

.....

नगर पालिक निगम, भिलाई क्षेत्र में स्थित प्रत्येक भवन/भूमि स्वामी/दखलकार को प्रत्येक वर्ष में निगम की निर्धारित प्रपत्र में अपने भवन/भूमि की स्व–विवरणी देय राशि सहित निर्धारित अवधि तक निगम कार्यालय में जमा करना अनिवार्य होगा । चाहे उसका भवन/भूमि संपत्तिकर से मुक्त क्यों न हो । भवन/भूमि स्वामी द्वारा अपनी सम्पत्तिकर का गलत विवरणी प्रस्तुत करने पर जांच के उपरांत भवन/भूमि स्वामी से देय राशि के अंतर की राशि का 5 गुना अधिक आर्थिक दंड देय होगा । तथा जिन भवन/भूमि स्वामियों के द्वारा संपत्तिकर की राशि जमा कर दिया गया है, उनसे छत्तीसगढ़ नगर पालिका (भवनों/भूमियों के वार्षक भड़ा मूल्य का अवधारण) नियम, 1997 के नियम 6–क. में उल्लेखित प्रावधान के अनुसार दरों की घोषणा की जाने पर अंतर की राशि पुनरिक्षित संपत्तिकर स्व–निर्धारण विवरणी के साथ जमा करना अनिवार्य होगा ।

उपरोक्तानुसार अधिसूचना 01 अप्रैल 2016 से 31 मार्च 2017 तक नगर पालि निगम, भिलाई क्षेत्र में स्थित समस्त भवन/भूमि स्वामी/दखलकार पर प्रभावशील होगी ।

28. From the aforesaid sequence of events, it is quite vivid that the State Government merely issued notice under Section 133-B of the Act of 1956 proposing to enhance the annual letting value of the properties situated in the Municipal Corporation area so as to enhance the property tax to the extent of 50% and thereafter, the Corporation only invited objections and the Commissioner, Municipal Corporation, Bhilai issued notification dated 8-9-2016 enhancing the annual letting value and recovered property tax on the basis of notification dated 8-9-2016. Thus, the State Government did not take any decision on the objections sent by the Corporation requiring the Corporation to enhance the property tax, as such, no order was passed by the State Government in exercise of power and jurisdiction under Section 133-B of the Act of 1956 in line with that provision, but the Commissioner, Municipal Corporation on its own proceeded to hold the memo dated 31-8-2015 which is only a notice under Section 133-B holding the same

to be an order by the State Government which is the controlling and higher authority of the Corporation, passed order enhancing the annual letting value of the property as well as property tax, as such, there is no order under Section 133-B of the Act of 1956 requiring the Municipal Corporation to enhance the annual letting value of the property and it has been enhanced only on the basis of notice dated 31-8-2015 issued by the State Government as such, there is complete disregard to the procedure prescribed in Section 133-B of the Act of 1956. Thus, the Commissioner, Municipal Corporation has enhanced the property tax without any order or decision of the State Government passed under Section 133-B directing enhancement of property tax. The said action of the Municipal Corporation is apparently without jurisdiction and without authority of law and is hit by Article 265 of the Constitution of India.

29. An ultra vires act or transaction is void ab initio. An act is ultra vires because the authority has acted beyond its power. If the body created by statute goes beyond the area of its power, the act is ultra vires and is of no effect. In this regard, pertinent observations made by N. Rajagopala Ayyangar, J, speaking for the Supreme Court (Constitution Bench) in the matter of **S. Partap Singh v. State of Punjab**[1] may be noticed profitably herein: -

> "6. … It was really the first aspect of ultra vires that was stressed by Lord Parker when in Vatcher v. Paull, 1915 AC 372 at p. 378 of the report he spoke of a power exercised for a purpose or with an intention beyond the scope of or not justified by the instrument creating the power. In legal parlance it would be a case of a fraud on a power, though no corrupt motive or bargain is imputed. In this sense, if it could be shown that an authority exercising a power has taken into account—it may even

1 AIR 1964 SC 72

be bona fide and with the best of intentions, as a relevant factor something which it could not properly take into account, in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. ..."

30. The doctrine of ultra vires is a principle, if a person exists for a limited purpose alone and that purpose is defined by law whether expressly or by implication, the doctrine of ultra vires governs him and confines him to that purpose. The person can act within the four corners of its constituting instrument. The doctrine prevents him from acting beyond the conferred power. Likewise, colourable exercise of power or mala fide in the province of exercise of power came-up for consideration before the Supreme Court in the matter of **The State of Punjab and another v. Gurdial Singh and others**[2], in which V.R. Krishna Iyer, J, speaking for the Supreme Court held as under: -

"9. ... bad faith which invalidates the exercise of power — sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions — is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat...that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the

2 AIR 1980 SC 319

> action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the acquisition or other official act."

31. The concept of "fraud on a power" applicable to trust law is equally applicable to the power exercised by the statutory body or the person having the statutory power. A "fraud on a power" has been defined under the trust law as:-

> "A fraud on power is trust law doctrine whose purpose is to limit and control the exercise by trustee of power given to them (by general law or the instrument that created the power). The doctrine applies to all trustees powers including administrative powers and describes the exercise of trustee power for a purpose or with an intention which is outside the scope of power being exercised."

32. Thus, the act of the Municipal Corporation in enhancing the property tax is apparent transgression to the constitutional power as provided under Article 243X of the Constitution of India read with Section 133-B of the Act of 1956, which is not only substantially ultra vires but also colourable exercise of power, as the action of the Corporation goes beyond the scope of authority conferred on it by statute.

33. At this stage, it would be appropriate to notice Article 265 of the Constitution of India which states as under: -

> "**Art. 265. Taxes not to be imposed save by authority of law.** No tax shall be levied or collected except by authority of law."

34. Thus, by virtue of constitutional mandate, no tax shall be levied or collected except by authority of law.

35. The increase of an existing duty constitutes the 'levy' of an impost

and must equally be made under the authority of law in the manner prescribed by Article 265 of the Constitution of India. (See **State of Kerala v. Joseph, P.J.**[3] and **Mangalore Ganesh Beedi Works v. State of Mysore**[4].)

36. In the matter of **Municipal Council, Khurai and another v. Kamal Kumar and another**[5], the Supreme Court has clearly held that under Article 265 of the Constitution of India, no tax shall be levied or collected except by authority of law. It has further been held that Article 265 implies that the procedure for imposing the liability to pay a tax to be strictly complied with. Where it is not so complied with the liability to pay the tax cannot be said to be according to law. Their Lordships observed as under: -

> "9. … This clearly implies that the procedure for imposing with the liability to pay a tax has to be strictly complied with. Where it is not so complied with the liability to pay the tax cannot be said to be according to law. …"

37. In the matter of **Commissioner of Wealth Tax, Gujarat-III, Ahmedabad v. Ellis Bridge Gymkhana**[6], the Supreme Court while considering Article 265 of the Constitution of India held that charging section has to be construed strictly and the person to be taxed must be brought within its ambit by clear words. It was further held as under: -

> "5. The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit

3 AIR 1958 SC 296
4 AIR 1963 SC 588
5 AIR 1965 SC 1321
6 (1998) 1 SCC 384

of the charging section by clear words, he cannot be taxed at all."

38. Likewise, in the matter of **Hansraj & Sons v. State of Jammu & Kashmir and others**[7], the Supreme Court while following the decision in **Ellis Bridge Gymkhana's** case (supra) has held that the taxing statute should be construed strictly. It was observed as under: -

> "22. A Constitution Bench of this Court in the case of *A.V. Fernandez v. State of Kerala*[8] observed: (AIR p. 661, para 29)
>
> > "29. It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. We must of necessity, therefore, have regard to the actual provisions of the Act and the rules made thereunder before we can come to the conclusion that the appellant was liable to assessment as contended by the Sales Tax Authorities."
>
> In that case this Court noted with approval, the following observations of Lord Russel of Killowen in *IRC v. Duke of Westminster*[9] AC at p. 24: (AIR p. 661, para 27)
>
> > "I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a court's view of what it considers the substance of the transaction, the court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case."

---

7 (2002) 6 SCC 227
8 AIR 1957 SC 657
9 1936 AC 1

The observations of Lord Russel in the aforementioned case were also referred by the Privy Council in *Bank of Chettinad Ltd. v. CIT*[10]. The Privy Council did not accept the suggestion that in revenue cases "the substance of the matter" may be regarded as distinguished from the strict legal position.

24. Again in the case of *Diwan Bros. v. Central Bank of India*[11] a three-Judge bench of this Court, construing the principles of interpretation of fiscal statutes, quoted with approval, the observations in *A.V. Fernandez v. State of Kerala* (supra) and in *State of Maharashtra v. Mishrilal Tarachand Lodha*[12] in which it was observed: (AIR p. 459, para 9)

> "The Act is a taxing statute and its provisions therefore have to be construed strictly, in favour of the subject litigant".

39. Similar is the proposition of law laid down by the Supreme Court in the matter of **Vikram Cement and another v. State of Madhya Pradesh and others**[13] dealing with Article 265 of the Constitution of India in which it was observed as under: -

> "14. At this stage, we would like to refer to another judgment of this Court which is quite proximate to the situation at hand, namely, *Corporation Bank v. Saraswati Abharansala & Anr.*[14] That was case where rate of Sales Tax was reduced from 1% to 0.5% vide SRO No. 1075/99 dated 27.12.1999, which was given retrospective effect from 1.4.1999. The respondent in that case, who had paid the sales tax @ 1% for the period 6.4.1999 to 10.12.1999, claimed refund of the excess tax paid, i.e. over and above 0.5%. This request was rejected by the Assistant Commissioner, Sales Tax. The assessee filed the writ petition challenging the order of the Assistant Commissioner, which was dismissed by the Single Judge of the High Court. However, the assessee's intra-court appeal was allowed by the Division Bench directing the authorities to refund the excess amount collected. The said decision of the Division Bench was upheld by this Court in the aforesaid judgment holding that non-refund would not only offend equality clause contained in Article 14 of the Constitution, it would also be in the teeth of Article 265 of the

10 AIR 1940 PC 183
11 (1976) 3 SCC 800
12 AIR 1964 SC 457
13 AIR 2015 SC 2397
14 (2009) 1 SCC 540

Constitution which mandates that no tax shall be levied or collected, except by authority of law. Following passages from the said judgment are worth a quote:

> "20. Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by authority of law.
>
> 21. In terms of the said provision, therefore, all acts relating to the imposition of tax providing, inter alia, for the point at which the tax is to be collected, the rate of tax as also its recovery must be carried out strictly in accordance with law.
>
> 22. If the substantive provision of a statute provides for refund, the State ordinarily by a subordinate legislation could not have laid down that the tax paid even by mistake would not be refunded. If a tax has been paid in excess of the tax specified, save and except the cases involving the principle of 'unjust enrichment', excess tax realized must be refunded. The State, furthermore, is bound to act reasonably having regard to the equality clause contained in Article 14 of the Constitution of India.
>
> 23. It is not even a case where the doctrine of unjust enrichment has any application as it is not the case of the respondent/State that the buyer has passed on the excess amount of tax collected by it to the purchasers.
>
> 24. In view of the admitted fact that tax had been collected and paid for the period 6th April, 1999 and 10th December, 1999 @ 1% of the price which having been reduced from 1st April, 1999 to 0.5%, the State, in our opinion, is bound to refund the excess amount deposited with it." "

40. Very recently, in the matter of **Tata Iron and Steel Co. Ltd. and another v. State of Bihar and others**[15], considering "levy" in the light of Article 265 of the Constitution of India, the Supreme Court has held that to support a tax, legislative action is essential and observed as under: -

> "22. This Court in *Commissioner of Income Tax, Udaipur, Rajasthan v. McDowell and Company Limited*, (2009) 10

15 2017 SCC OnLine SC 1521

SCC 755 held:

> "21. "Tax", "duty", "cess" or "fee" constituting a class denotes to various kinds of imposts by State in its sovereign power of taxation to raise revenue for the State. Within the expression of each specie each expression denotes different kind of impost depending on the purpose for which they are levied. This power can be exercised in any of its manifestation only under any law authorizing levy and collection of tax as envisaged under Article 265 which uses only the expression that no "tax" shall be levied and collected except authorised by law. It in its elementary meaning conveys that to support a tax legislative action is essential, it cannot be levied and collected in the absence of any legislative sanction by exercise of executive power of State under Article 73 by the Union or Article 162 by the State.
>
> 22. Under Article 366(28) "Taxation" has been defined to include the imposition of any tax or impost whether general or local or special and tax shall be construed accordingly. "Impost" means compulsory levy. The well-known and well-settled characteristic of "tax" in its wider sense includes all imposts. Imposts in the context have following characteristics:
>
> (i) The power to tax is an incident of sovereignty.
>
> (ii) "Law" in the context of Article 265 means an Act of legislature and cannot comprise an executive order or rule without express statutory authority.
>
> (iii) The term "tax" under Article 265 read with Article 366(28) includes imposts of every kind viz. tax, duty, cess or fees.
>
> (iv) As an incident of sovereignty and in the nature of compulsory exaction, a liability founded on principle of contract cannot be a "tax" in its technical sense as an impost, general, local or special."

41. From the principle of law flowing from the aforesaid decisions of the Supreme Court, it is quite vivid that taxing law has to be construed strictly and in order to levy a tax, the procedure for imposing liability

to pay tax has to be strictly complied with and Article 265 of the Constitution of India would be applicable even in a case where the proposed increase of existing duty is to be made.

42. Reverting to the facts of the present case in light of the aforesaid mandate flowing from Article 265 of the Constitution of India applying to the factual score of the present case, it is quite vivid that in the present case, the property tax has to be levied and collected in accordance with the annual letting value of property determined as per Section 138 of the Act of 1956 read with the Rules of 1997 framed in this behalf by the State Government and on the rate as prescribed in Section 135 of the Act of 1956. Section 133-B of the Act of 1956 carves out an exception to the aforesaid procedure and the State Government may in exercise of power conferred under Section 133-B, enhance the tax after hearing the concerned Municipal Corporation and the local public and on the conditions mentioned in the aforesaid provision by passing a specific order requiring / directing the Corporation to enhance the property tax. But, in the instant case, though the State Government issued notices to the Municipal Corporation, Bhilai – respondent No.2 proposing to enhance the annual letting value of the property of the Municipal Corporation area inviting objection to enhance the property tax upon which the Municipal Corporation, Bhilai invited objections from local public and sent the objections to the State Government, but the State Government did not pass any order on the said objections under Section 133-B of the Act of 1956 enhancing the annual letting value of the property to enhance the

property tax. Therefore, neither the annual letting value could have been enhanced only on the basis of notice under Section 133-B of the Act of 1956 nor the property tax also could have been enhanced by increasing the annual letting value of the property, as the State Government has not required by any order passed under Section 133-B. But, curiously enough, the Commissioner, on his own, misconstruing the notices of the State Government issued under Section 133-B of the Act of 1956 to be an order of the State Government passed under Section 133-B, enhanced the annual letting value of the property and thereby enhanced the property tax, passed an order on 8-9-2016 with effect from the assessment year 2016-17 and not only levied but also collected property tax at the enhanced rate which is totally in violation of the constitutional provision contained in Article 265, as no tax can be levied or collected except by authority of law, in absence of the order of the State Government under Section 133-B of the Act of 1956 enhancing the property tax which is wholly unauthorised and unsustainable in law.

43. As a fallout and consequence of the above-stated discussion, the order dated 8-9-2016 (Annexure P-6) passed by the Commissioner, Municipal Corporation, Bhilai, directing enhancement of annual letting value of property on the basis of memo dated 31-8-2015 issued by the State Government being without jurisdiction, is hereby quashed and consequently, the notification dated 8-9-2016 (Annexure P-2) issued by the Municipal Corporation, Bhilai, determining annual letting value for the assessment year 2016-17

and making classification of zones, is also quashed. The order dated 18-10-2016 (Annexure P-1) passed by the Municipal Corporation, Bhilai seeking revised return / property tax on the basis of order dated 8-9-2016 and notification dated 8-9-2016, is hereby quashed. The Municipal Corporation, Bhilai is restrained from recovering property tax on the basis of order and notification dated 8-9-2016.

44. In the present case, the act of the respondent Corporation in recovering the enhanced tax in breach of Article 265 of the Constitution of India is nothing but fraud on the Constitution of India and the Act of 1956 and it is a breach of faith of the public at large. Therefore, I consider it just and appropriate to impose exemplary cost on it. This is imperative as it would discourage the Corporation to recover property tax in future unauthorisedly. Cost imposed on the Municipal Corporation is quantified as ₹ 10,000/- (Rupees ten thousand) for indulging in illegally recovering huge property tax from the petitioner/assessee. Cost will be deposited within a period of four weeks to the Chhattisgarh High Court Legal Service Committee.

45. The writ petition is allowed to the extent outlined herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.2 of 2018

Steel Authority of India Limited

Versus

State of Chhattisgarh and others

HEAD NOTE

Enhancement of property tax by Municipal Corporation, Bhilai under Section 133-B of the Chhattisgarh Municipal Corporation Act, 1956 is unauthorised and bad in law.

नगर निगम, भिलाई द्वारा छत्तीसगढ़ नगर निगम अधिनियम, 1956 की धारा 133–ख के अन्तर्गत सम्पत्ति कर बढ़ाया जाना अनाधिकृत है तथा विधि की दृष्टि से दोषपूर्ण है।