

W.A(MD) No.484 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 20.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

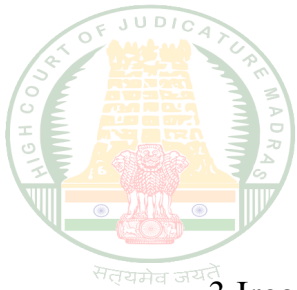
**W.A(MD) No.484 of 2020
and
C.M.P.(MD)No.3522 of 2020**

Madurai Multi Functional Complex Private Limited,
Having its registered office at
30 J.L.Nehru Road, 15 A Block “C” 2nd Floor,
Kolkota-700016, West Bengal,
and Local address at
Madurai Railway Station Premises,
West Veli Street (Opp. To SBI),
Madurai-625 001.
represented by its authorized signatory.

... Appellant / Petitioner

Vs

- 1.The Madurai Corporation,
Represented by its Commissioner,
Madurai.
- 2.Rail Land Development Authority,
Represented by its General Manager /
Railway Infrastructure,
Near Safdarjung Railway Station,
Moti Bagh,
New Delhi-110021.



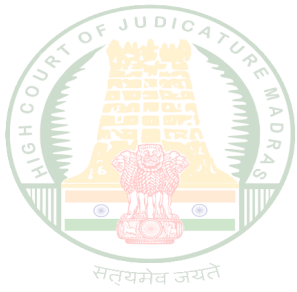
W.A(MD) No.484 of 2020

3. Ircon Infrastructure & Services Limited,
Represented by the Chief Executive Officer,
Plot C-4, Saket District Center,
New Delhi-17. ... Respondents / Respondents

4. Union of India,
Ministry of Railways,
Represented by its Secretary,
Federation of Railway Officer's
Association Office,
256-A, Rail Bhavan,
Raisina Road,
New Delhi-110001.
(R4 impleaded vide order dated 01.12.2021
made in C.M.P.(MD)No.7406 of 2021
in W.A.(MD)No.484 of 2020 by
PSNJ & PVJ)

5. Joyalukkas India Limited,
Represented by its Branch Manager,
Branch Office,
Madurai Multi-Functional Complex,
Southern Block,
West Veli Street, Near Railway Station,
Madurai-625 001.
(R5 impleaded vide order dated 08.03.2023
made in C.M.P.(MD)No.11025 of 2022 in
W.A.(MD)No.484 of 2020 by RSKJ & KKRKJ) ... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying
this Court to allow this writ appeal and set aside the order in
WP(MD)No.18477 of 2018, dated 06.05.2020 and allow the same as
prayed for.



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W.A(MD) No.484 of 2020

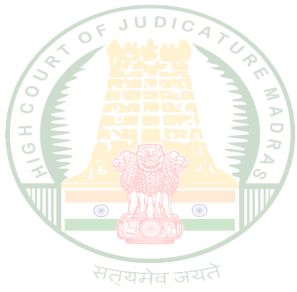
For Appellant : Mr.R.Srinivas, Senior Counsel
for Mr.N.Dilip Kumar

For Respondents : Mr.S.Vinayak, Standing Counsel for R1
: Mr.Ragatheesh Kumar
for M/s.Isaac Chambers for R2 & R3
: Mr.K.R.Laxman for R4
: Mr.T.Lajapathi Roy, Senior Counsel
for Mr.S.Rajasekar for R5

ORDER

(Order of the Court was made by G.R.SWAMINATHAN, J.)

The only question that calls for consideration is whether the petition mentioned building is assessable to property tax under Sections 120 and 121 of the Madurai City Municipal Corporation Act, 1971. When the Madurai Corporation assessed the petition mentioned building to property tax and issued demand notice dated 03.03.2018 calling upon the petitioner to pay half-yearly tax to the tune of Rs.10,07,623/-, the appellant herein filed WP.(MD)No.18477 of 2018 challenging the same. The writ petition was dismissed by the learned single Judge vide order dated 06.05.2020. Aggrieved by the same, this intra-court appeal has been filed.



W.A(MD) No.484 of 2020

2.The learned Senior Counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds of writ appeal. He contended that the Madurai Corporation has no right to demand property tax from Railways in view of Article 285(1) of the Constitution of India and submitted that the demand notice issued by the first respondent is illegal and liable to be quashed. He relied on a catena of case laws in support of his contentions.

3.Per contra, the learned Standing Counsel for the Madurai Corporation contended that the impugned judgement of the learned Single Judge is well-reasoned and does not call for interference. The learned Senior Counsel for the private respondent and the standing counsel for the Railways endorsed the stand of the appellant.

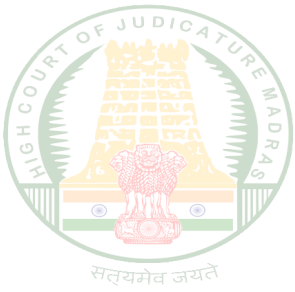
4.We carefully considered the rival contentions and went through the materials on record.

5.Admittedly, the land in question belongs to Railways. In order to develop the vacant lands owned by Railways, The Railways Act, 1989



W.A(MD) No.484 of 2020

was amended vide Act No.47 of 2005 and the Railway Land Development Authority (hereinafter referred to as “RLDA”) was constituted under Section 4A of the Act. Section 4D(2)(ii) of the Act lays down development of the railway lands for commercial use as one of the functions of the Authority. The Ministry of Railways had also incorporated Ircon Infrastructure & Services Limited as their wholly owned subsidiary under the Companies Act, 1956. Lease agreement dated 04.07.2013 was entered into between RLDA and Ircon Infrastructure & Services Limited. The said agreement envisaged development of the Railway lands throughout India. Subsequently, Ircon Infrastructure & Services Limited entered into a sub-lease agreement for a period of 30 years with the petitioner herein (Madurai Multi Functional Complex Private Limited) in respect of the subject property. The Multi Functional Complex was actually constructed by Ircon Infrastructure & Services Limited on the plot area of 2700 sqm within the premises of Railway Station in Madurai. The building in its present shape was developed by the petitioner herein.



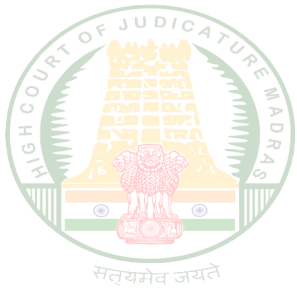
W.A(MD) No.484 of 2020

WEB COPY

6.What has to be answered is whether merely because the occupation of the building was handed over to the petitioner in their capacity as sub-lessee, Madurai Corporation will have the jurisdiction to levy property tax on the said building. The learned single Judge answered in the affirmative. The learned Judge took such a view because the building was constructed by the third respondent (Ircon Infrastructure and Services Ltd) and then leased out to a private limited company (petitioner herein) and that the building was being put to commercial use. The learned Judge was primarily guided by the principles laid down in **Electronics Corporation of India Ltd. and others Vs. Secretary Revenue Department, Govt. of Andhra Pradesh and others** reported in *(1999)4 SCC 458* and *Municipal Commr. of Dum Dum Municipality v. Indian Tourism Development Corpn., reported in (1995) 5 SCC 251*. The learned Judge further noted that the Union of India was not made a party to the writ proceedings.

7.Article 285 of the Constitution of India reads as follows:-

“285. Exemption of property of the Union from State taxation.



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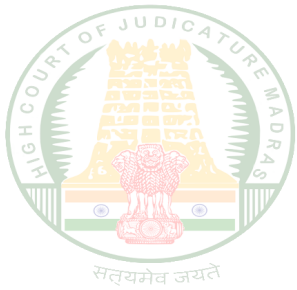


W.A(MD) No.484 of 2020

(1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.

As per Article 285(2), if the local body had been levying tax on the property in question immediately before the commencement of the Constitution, it can continue to do so until parliament by law otherwise provides. Admittedly, in the instant case, the petition mentioned building was put up only in the year 2016 and therefore, it falls outside the purview of Article 285(2). If the case on hand is brought within the scope of Article 285(1) of the Constitution of India, then, levy of property tax is clearly illegal.

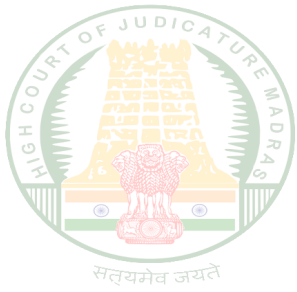


W.A(MD) No.484 of 2020

8.The learned Senior Counsel appearing for the appellant drew our attention to the Constitution Bench decision of the Hon'ble Supreme Court reported in **(1979) 2 SCC 1 (Union of India Vs. City Municipal Council, Bellary)** wherein the aforesaid provision was considered.

Paragraph No.7 of the said decision reads as follows :-

“7...The property of the Union is exempt from all taxes imposed by a State or by any authority within a State. But Parliament may by law provide otherwise and then any tax on the property of the Union can be imposed and levied in accordance with the said law. But then an exception has been carved out in clause (2). The exception is not meant for levying any tax on such property by any State; but it is merely for the benefit of any authority including the local authority like the Municipal Council in question. Clause (1) cannot prevent such authority from levying any tax on any property of the Union if such property was exigible to such tax immediately before the commencement of the Constitution. The local authority, however, can reap advantage of this exception only under two conditions namely, (1) that it is “that tax” which is being continued to be levied and no other; (2) that the local authority in “that State” is claiming to continue the levy of the tax. In other words, the nature, type and the property on which



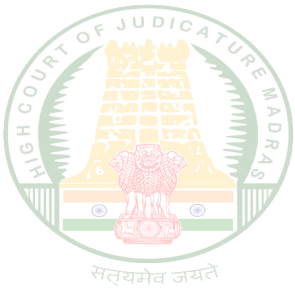
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W.A(MD) No.484 of 2020

the tax was being levied prior to the commencement of the Constitution must be the same as also the local authority must be the local authority of the same State to which it belonged before the commencement of the Constitution. On fulfilment of these two conditions it is authorised to levy the tax on the Union property under clause (2). **As in the case of clause (1) it lies within the power of Parliament to make a law withdrawing the exemption of the imposition of the tax on the property of the Union,** so in the case of clause (2) it is open to Parliament to enact a law and finish the right of the local authority within a State to claim any tax on any property of the Union, a right it derived under clause (2). That is to say, in both the cases the ultimate power lies with Parliament.

9. In the decision reported in ***(2019) 15 SCC 303 (NDMC v. Assn. of Concerned Citizens of New Delhi)***, the Hon'ble Supreme Court reiterated that the properties of Railways are outside the purview of property tax assessment in view of Articles 285 and 289 of the Constitution of India.



W.A(MD) No.484 of 2020

10.Sections 120 and 121 of the Madurai City Municipal Corporation Act, 1971 provide for assessing the lands and buildings.

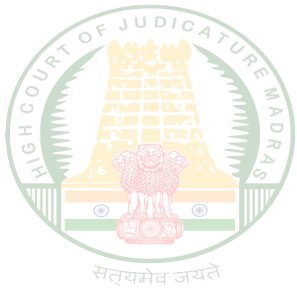
Portions of the Sections relevant to the discussion on hand read as follows:-

“120. Description of property tax.—

(1) If the council by resolution determines that a property tax for general purposes shall be levied, such tax shall be levied on all buildings and lands within the City save those exempted by or under this Act or any other law.

....

4(b) In the case of railway lands, which are not used exclusively for agricultural purposes and are not occupied by, or adjacent and appurtenant to buildings, the council shall levy property tax on the annual value of such lands at such percentages which shall not exceed seventeen and one-third per cent of their annual value and the Government shall have power make rules regarding the manner in which the person or persons by whom and the intervals at which the annual value of such lands shall be estimated or revised and they may also by such rules, restrict or modify the application of the provisions contained in Schedule II to such lands.



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121. Method of assessment of property tax.

(1) Every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises.

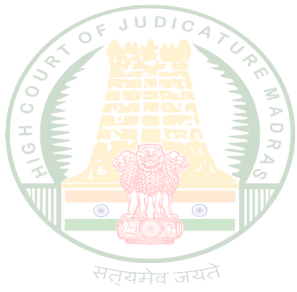
(2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year less a deduction, in the case of buildings, of ten per cent of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto; and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever:

Provided that -(a) in the case of-

(i) any Central or State Government or railway building;
or

(ii) any building of a class not ordinarily let the gross annual value of which cannot, in the opinion of the Commissioner, be estimated,

the annual value of the premises shall be deemed to be six per centum of the total of the estimated market value of the



WEB COPY



W.A(MD) No.484 of 2020

land and the estimated present cost of erecting the building after deducting for depreciation a reasonable amount which shall, in no case, be less than ten per cent of such costs;”

11. In both Section 120 as well as Section 121 of the MCMC Act, 1971, there are references to Railway properties. Section 120 talks about railway lands while Section 121 talks about railway building. We fail to understand as to how in the face of Article 285(1) of the Constitution of India, there can be levy of property tax on railway lands and buildings. That apart, in view of Section 184 of the subsequently enacted Central Act, namely, Railways Act, 1989, the aforesaid provisions of the State-law will have to give way and are of no legal consequence in view of their repugnancy with the Central enactments. Section 184 of the Railways Act is as follows:-

“184. Taxation on railways by local authorities.—

(1)Notwithstanding anything to the contrary contained in any other law, a railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Central Government, by notification, declares the railway administration to be liable to pay the



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tax specified in such notification.

.....

(4) Nothing in this section shall be construed to prevent any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering or be prepared to render to the railway administration.”

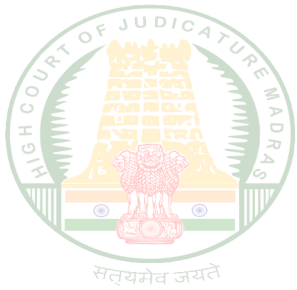
12.The stand of the local body is that they are not calling upon the railways to cough up the funds towards property tax but that they are only demanding from the petitioner herein. This argument is not sound. The assessment and levy of property tax is not on the person or the individual. It is on the land and building. Admittedly, the land belongs to the Railways. It is thus the property of Union of India. What has to be seen is to whom the building belongs. The test of belonging has been clearly laid down by the Hon'ble Supreme Court in **2020 SCC Online 1105 (Food Corporation of India Vs. Brihanmumbai Mahanagar Palika)**. In other words, if the building belongs to the petitioner or even Ircon Infrastructure Services Pvt Ltd., the local body will be justified in



W.A(MD) No.484 of 2020

levying property tax. According to the learned Single Judge, the building vests with the petitioner. The question of vesting or belonging is a question of fact.

13.Let us examine if the learned Judge was right in arriving at the aforesaid conclusion. As already noted, Railway Land Development Authority was established to develop railway lands. Chapter II A of the Railways Act, 1989 inserted vide Act 7 of 2005 does not confer any juristic status on the said Authority. Though it is a statutory creation, it is not an entity distinct and separate from railways. There is no provision in the Railways Act which says that it can sue and be sued in its own name. It does not have any perpetual succession or common seal. The usual features that are markers of a juristic personality are absent in the case of RLDA. Its mandate was to develop railway land for commercial use and enter into agreements for this purpose. Pursuant to the aforesaid statutory mandate, RLDA entered into a lease agreement with Ircon on 04.07.2013. The agreement defines the term “assets” as meaning all fixed assets constructed by the lessee but not the site itself. Clause 2.4 (b), (c) and (d) of the lease agreement read as follows :



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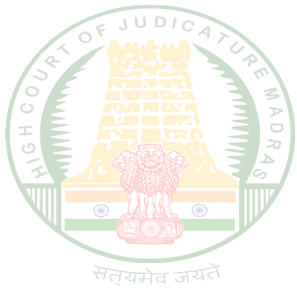
W.A(MD) No.484 of 2020

“b) The Parties expressly agree that the ownership of the Project assets so created from time to time on the sites shall vest with RLDA and IRCON shall not at any time during and after the term asset any ownership right over the assets developed on the sites.”

c) IRCON shall not sell, lease, assign, underlet or sublet or part with the possession of the Site(s) or any part thereof or interest therein without the previous written consent of RLDA....

d) Nothing contained in the lease agreement shall be combined to constitute a transfer of title in the site(s) or MFCs developed thereon in favour of IRCONISL. IRCONISL shall not have any ownership rights on the site(s)...

Thus, even a plain reading of the clauses of the lease agreement entered into between RLDA and Ircon would show that RLDA had retained title over the land (site) as well as the buildings that may be constructed on the leased land (described as project assets) with itself. In other words, title over the land and title over the buildings that were to come up in future were not parted with at all. This is further confirmed and reinforced in Clause 16 of the agreement which reads as follows :

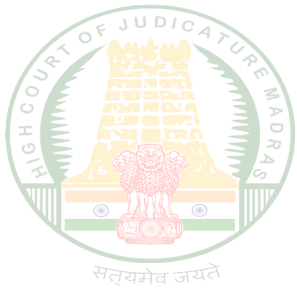


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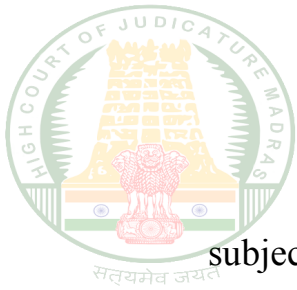
“16.Vesting provisions

16.1 Upon the expiry of the term, RLDA shall take over the possession of the sites, project assets and project utilities at the Site(s) and IrconISL shall ensure that on the date of transfer of such possession by IrconISL to RLDA all interests of IrconISL in all the project assets and project utilities at such sites(s), as existing, shall be vested in RLDA or its nominee, clear of any encumbrances if any and with good title.”

In other words, possession of the site alone was handed over. Title remained only with the Railways/lessor. If lessor retained the title, the lessee could not have passed on a better title to the sub-lessee, the petitioner herein. The MoU entered into between RLDA and Ircon on 21.08.2009 makes it clear that the buildings constructed at the project site shall get transferred to RLDA after the lease period (clause 4.2 of the MoU). From the communication bearing No.2008LML213 dated 26.07.2012 issued by the Railway Board, buildings developed as Multifunctional Complexes (MFCs) such as the petition mentioned building are to be considered as operational buildings of railways.

W.A(MD) No.484 of 2020

14. When lands belonging to Electronics Corporation of India Ltd, (a government company) were assessed to tax under the Andhrapradesh Non-agricultural Lands Assessment Act, 1963, the Hon'ble Supreme Court upheld the same and held that the assessee was not entitled to protection under Article 285(1) r/w. Article 289 of the Constitution of India (vide **Electronics Corporation of India Ltd. and others Vs. Secretary Revenue Department, Govt. of Andhra Pradesh and others (1999) 4 SCC 458**). The reason for so holding was that a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares. An incorporated company has a separate existence and the law recognizes it as a juristic person, separate and distinct from its members. Elcot and the Central Government were not one and the same. On the same lines was rendered an earlier decision in **Municipal Commissioner of Dum Dum Municipality and ors v. Indian Tourism Development Corporation and ors (1995) 5 SCC 251**. International Airport Authority of India constituted by 1971 statute is a distinct juristic entity having its own properties, fund and employees. It is a statutory corporation distinct from the Central Government. The property vested in the Authority is

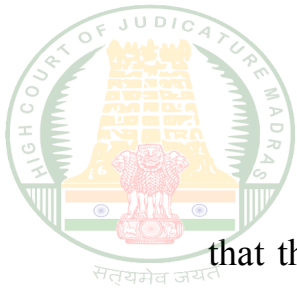


W.A(MD) No.484 of 2020

subject to municipal taxation and the authority cannot invoke the immunity created by Article 285(1) of the Constitution.

Vishakapattinam Port Trust also received a similar treatment (1999) 6 SCC 78.

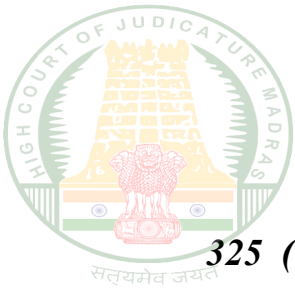
15.The learned Single Judge took the view that the aforesaid decisions will govern the case on hand. With utmost respect, we are unable to agree. RLDA is not a separate entity at all. It is an alter-ego of Railways. RLDA cannot hold properties in its own name. At no point of time, the title over the site was transferred from Railways to RLDA or from RLDA to Ircon or from Ircon to the MMFC (the petitioner herein). Merely because Ircon was permitted to construct the building or the petitioner herein was permitted to develop it further would not result in vesting of the title over the building either in Ircon or in the petitioner. The expression “vesting” has a technical meaning. In P.Ramanatha Ayyar's Advanced Law Lexicon, “vesting” has been defined as obtaining an absolute and indefeasible right and one used for transfer or conveyance. A look at the clauses in the lease agreement and Memorandum of Understanding between RLDA and Ircon would show



W.A(MD) No.484 of 2020

that there was no transfer of title in favour of Ircon either in respect of the site or the buildings to be put up thereon. On the other hand, the land as well as the buildings were to be handed over to RLDA free of any encumbrance on the expiry of the lease period. Therefore, we hold that the petition mentioned building belongs to Railways. The title over the building vests with the Railways.

16. Merely because the property in question has been put to commercial use, that would not make any difference. The plain language of Article 285(1) of the Constitution of India indicates that the property of the Union shall be exempt from all taxes imposed by a State or by any authority within a State. The expression “property” is not qualified. We, therefore, have to understand it in its absolute sense. Property whether vacant or constructed or whether used for public interest or for commercial purpose would equally be entitled to the protective sweep and immunity conferred by Article 285(1) of the Constitution. Article 285(1) stands as an Iron dome which cannot be breached. Property of the Union of all kinds and hues can take shelter within it. The Hon'ble High Court of Karnataka had taken the same view in **1999 SCC OnLine Kar**



W.A(MD) No.484 of 2020

325 (Union of India v. City Municipal Council, Rani Bennur). Of

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course, this immunity will hold good till the parliament makes a law providing otherwise. Admittedly, till date, the parliament has not made any law holding that the Railway lands can be assessed to property tax.

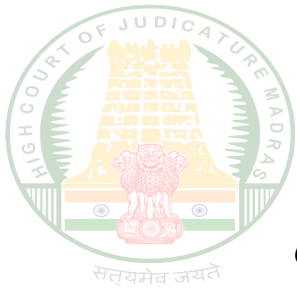
17.To reiterate, RLDA is a statutory authority set up for development of vacant Railway land for commercial use. Section 4E of the Act states that subject to such directions as may be given to it by the Central Government, the Authority shall be empowered to **enter into agreements on behalf of the Central Government** and execute contracts. Relevant Regulations under Chapter III of The Rail Land Development Authority (Development of land and other works) Regulations, 2012 read as follows:

"8.No Transfer of Ownership of Railway Land.

(1)The ownership or title of the railway land shall continue to vest with the Railway Administration at all times and only the lease rights for the use of the land or the structures built on it shall be transferred by the Authority.

(2)...

(3)The transfer of ownership of railway land shall not be allowed at any time unless it is specifically instructed by the



Central Government.

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9.Possession of Railway land until Transfer to the Developer.

The Railway land entrusted to the Authority shall continue to be in the possession and control of the Railway Administration until the Authority decides to give possession of land to any Developer after concluding of a contract for developing the railway land.

13.Return of Railway land to Railway Administration.

Unless the Authority decides to offer the railway land and the buildings or structures existing on it on a fresh lease, on expiry or termination of the lease period, as the case may be, the entire railway land together With the buildings or structures existing thereon shall revert and vests upon the Railway Administration."

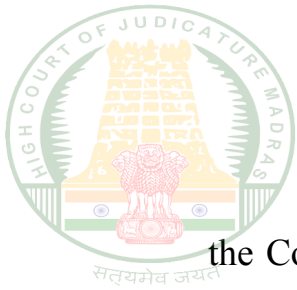
18.A careful reading of the terms of the lease agreement as well as the sub-lease agreement and other materials on record extracted above clearly lead us to only one conclusion ie., not only the land but the building in question also belongs to the Railways. It is true that the construction was carried out by the Ircon Infrastructure & Services Limited. The Division Bench of the High Court of Madhya Pradesh in ***2020 0 AIR (MP) 85 (Gwalior Hotels Private Limited v. UOI)*** held that since the lessee (Ircon) constructed the building on the Railway land, it cannot be said that the constructed building housing a private hotel is a



W.A(MD) No.484 of 2020

central government property. We respectfully disagree with the said approach. Construction of the building alone cannot be the determinative of the issue of title. If the lessor hands over possession of a vacant land to the lessee and permits the lessee to put up construction with a specific condition that the land together with the building handed over back to the lessor at the end of the lease period, there is no transfer of title either in the land or in the building. The terms of the agreements between the parties would clinch the issue and not who put up the construction (*D.S.Krishna v. Digvijay Industries, 1997 (3) ALT 756*). Though the construction of the building over the railway land was made by the lessee ie., Ircon, the title over the building remains only with the Railways. It is relevant to note here such a stand has been explicitly taken by the Railways themselves. It is not our inference. Railway has asserted its title over the site as well as the building before us also. In these circumstances, the question of levying property tax by the local body does not arise.

19.In this view of the matter, we hold that the levy of property tax over the petition mentioned building would fall foul of Article 285(1) of



W.A(MD) No.484 of 2020

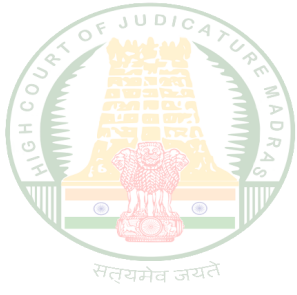
the Constitution of India. The order passed by the learned single Judge is set aside. The demand notice impugned in the writ petition is set aside. We however make it clear that since the petitioner is enjoying certain facilities offered by the Madurai Corporation, it is open to the Madurai Corporation to enter into a special agreement with the petitioner so as to enable the petitioner to continue to enjoy those facilities. Since the petition mentioned building forms a class by itself, it is open to the Madurai Corporation to charge a higher drainage tax. The local body ie., Madurai Corporation will issue notice to the petitioner and other occupiers of the building to come for negotiation and enter into an appropriate agreement in this regard.

20.The writ appeal is allowed accordingly. No costs.
Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) (M.J.R., J.)
20.02.2025

Index : Yes / No
Internet : Yes / No
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23/24



WEB COPY



W.A(MD) No.484 of 2020

G.R.SWAMINATHAN, J.
AND
M.JOTHIRAMAN, J.

rmi/SKM

W.A.(MD) No.484 of 2020

20.02.2025