A KRISHNA MOHAN PVT. LTD.

v.

MUNICIPAL CORPORATION OF DELHI AND ORS.

JULY 28, 2003

B [RUMA PAL AND B.N. SRIKRISHNA, JJ.]

Delhi Municipal Corporation Act, 1957; Sections 2(3), 2(24), 2(38), 2(47), 116(3), 169 and 171 and Bye-Laws thereunder: Property tax—Levy of—Rateable value—Inclusion of cost of the Plant/machinery affixed therein—
C *Vesting of arbitrary and uncanalised discretion with the authority under Section 116(3) of the Act—Constitutionality of—Held: In the absence of any provision of law for an appeal against inclusion of any plant/machinery within land/building by the authority for determination of rateable value, such discretion vested with the authority under Section 116(3) invalid—Cost*
D *of such machinery not liable to be included for determination of rateable value—Assessing authority directed to assess rateable value afresh—Directions issued—Interpretation of Statutes—Transfer of Property Act—Section 3.*

Words and Phrases:

E *'Rateable value'—Meaning and scope of in the context of Delhi Municipal Corporation Act.*

In these appeals, the assessees challenged the correctness of the judgment of the Full Bench of the Delhi High Court upholding the levy of property tax by the respondent-Corporation. The common questions of law
F **which arose for consideration of the Court in these appeals were:**

1. **Whether the cost of the plant and machinery installed in or upon a building is includible for the purpose of arriving at the rateable value of the building; and**

G 2. **Whether Section 116(3) of the Delhi Municipal Corporation Act, 1957 vests arbitrary and uncanalised discretion in the Commissioner and is, therefore, invalid for excessive delegation of legislative powers.**

It was contended for the appellant-assessees that the Corporation had

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no power to levy property tax by including the cost of machinery installed in or upon a building within the rateable value of the property, since it was expressly excluded under the Act; and that the reasons enunciated by this Court in *New Manek Chowk* Case striking down Rule 7(2) under the Bombay Provincial Municipal Corporation Act due to excessive delgation of power of legislature, were equally applicable to sub-section (3) of Section 116 of the DMC Act. A B

On behalf of the respondents, it was submitted that the Municipal Legislation must be interpreted progressively; that the rateable value of a building/premises must be taken to be the letting return inclusive of all plant/ machinery affixed therein since it is for the enjoyment of the tenant; that since guidelines for exercise of delegated power are discernible in the Statute, it could not be held unconstitutional. C

Allowing the appeals, the Court

HELD: 1.1. The distinction drawn between the Delhi Municipal Corporation Act and Bombay Provincial Municipal Corporation Act is hardly valid. While in the case of the DMC Act, the Commissioner is required to obtain the approval of the Standing Committee before notifying any plant or machinery under sub-section (3) of Section 116, under the BPMC Act, the Commissioner has to do it with the approval of the Corporation, which means almost the same thing. If the delegated power was treated as wholly unguided and uncanalised under BPMC Act, it should be so under the DMC Act also. However, it cannot be said that Section 116(3) is beyond the legislative competence of the Legislature for the reason that the DMC Act is not the result of exercise of the legislative powers relatable to List II of the VIIth Schedule of the Constitution by the State Government, but is enacted by Parliament in exercise of its powers referable to List I of VIIth Schedule of the Constitution. [865-G-H; 866-A-B] D E F

New Manek Chowk Spg. And Wvg. Mills Co. Ltd. etc. v. *Municipal Corporation of the City of Ahmedabad and Ors.*, AIR (1967) SC 801, referred to. G

1.2. The Full Bench of the High Court fell into error in not keeping in mind the respective functional roles of the definitions of "land", "building" and "premises" and conceptually allowing them to overlap. In any event, Section 116 itself indicates, in terms, how the rateable value of land and building assessable to the property taxes is to be determined. [868-B-C] H

A *Hindustan Lever Ltd.* v. *Municipal Corporation of Greater Bombay and Ors.*, [1995] 3 SCC 716, relied on.

Poona Municipal Corporation v. *Shankar Ramakrishna Jabade,* (1957) LX Bombay Law Reporter 25, approved.

B *Municipal Corporation of Delhi* v. *Pragati Builders and Ors.,* (1991) 45 D.L.T. 264, overruled.

1.3. Legislative practice, which was noticed by this Court in *New Manek Chowk** case, showed that both in England and in India municipal legislation had uniformly tended to exclude the cost of plant and machinery for the C purpose of computation of rateable value of land or building subject to exceptions made by statute under sub-section (3) of Section 116 of DMC Act, Section 154(2) of the BMC Act, Rule 7(2) made under the BPMC Act, and similar statutory provisions. The Full Bench of the High Court laid great emphasis on the word 'premises' used in the Act and the enlarged meaning D given to the term under the 1994 bye-laws. Even assuming the contention which appealed to the High Court to be correct, the definition of the term "premises" in Section 2(38) and express words used in sub-section (3) of Section 116 of the Act must be reconciled. Appellant's contention that, whatever be the amplitude of the expression 'premises' or the expression 'fittings' used in clause (b) of Section 2(38) of the Act, it cannot include plant E or machinery, which have been expressly excluded under Section 116 (3) of the Act, except to the extent it is notified, appears justified, on principle and precedent, and deserves acceptance. [868-F-H; 869-A-C]

**New Manek Chowk Spg. And Wvg. Mills Co. Ltd. etc.* v. *Municipal Corporation of the City of Ahmedabad and Ors.,* AIR (1967) SC 801, relied F on.

1.4. The legislation must be interpreted by reading the words in the statute. Section 116(3) takes care of the progressive concepts by vesting the Commissioner with the power to issue the requisite notification to include G newer machinery within the ambit of 'land' or 'building'. The High Court also seems to have lost sight of the fact that the Explanation II of 1994 bye-laws was struck down by the High Court earlier and its invalidity was upheld by this Court. Thus, Explanation II to Section 3(1)(c) of 1994 bye-laws is no longer alive and has been set aside by this Court. Hence, cost of plant and machinery situate in or upon any land or building cannot be included in the H computation of the rateable value of land and building unless a valid

notification contemplated by sub-section (3) of Section 116 of the Act has been issued. [870-B-C] A

1.5. Lifts and air-conditions are neither fittings, nor fixtures, but are 'plant' and 'machinery'. The concept of rateable value, as generally understood, does not admit the inclusion of the cost of such plant or machinery in the computation of the rateable value of the building. The legislature has, B therefore, made a specific provision that if their cost has to be included, a previous notification has to be issued. This was purportedly done by issuance of the notification by the concerned authority and, if at all valid, it would become operative from the issuing date and not from any date earlier. [869-D-E]

1.6. The contention of the respondent that the statute indicates the C guidelines, namely, that the Commissioner's power to notify under Section 116(3) is only in respect of things which are of the same nature as would fall within the ambit of expression "land", as defined under Section 2(24), appears to be a classic case of *post hoc ergo* propter hoc. Obviously, the power given to the Commissioner is intended to be exercised only in a case where the D plant or machinery does not fall within the ambit of the expression 'land' or 'building' as defined in the Act. It is only in such cases that the question of exercise of the discretion on the part of the Commissioner arises. Hence, the so called guideline is wholly chimerical. [871-B-C]

1.7. The reasoning on which this Court in *New Manek Chowk* case E struck down delegated legislative power of the Commissioner under Rule 7(2) of the BPMC Act, is equally true for Section 116(3) of the DMC Act. Apart from there being no guidelines in the statute, the exercise of discretion by the Commissioner is not subject to any appeal to a higher authority. The respondent pointed out two circumstances, namely, that the discretion can be F exercised only with the approval of the Standing Committee and, secondly, that the rateable value is subject to an appeal under the statute. Both these facets are present in the impugned statute. But both these facets were also extant, considered and held inconsequential in New Manek Chowk* case. There also the discretion of the Commissioner was exercisable with the approval of the Corporation and the rateable value was subject to an appeal. In G any event, although there may be an appeal provided against the determination of the rateable value, there is no provision in the statute for an appeal against inclusion of any plant or machinery within "land" or "building" for determination of the rateable value. [871-E-G]

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A **New Manek Chowk Spg. and Wvg. Mills Co. Ltd. etc.* **v.** *Municipal Corporation of the City of Ahmedabad and Ors.,* **AIR (1967) SC 801, relied on.**

1.8. The observations made in the judgment of this Court in *Patel Gordhandas Hargovindas** **case and the legislative practice highlighted**
B **therein become very relevant in the context of interpretation of the provisions of the statute impugned. Applying the test laid down in** *J. Jayalalitha and Kishan Prakash Sharma* **cases, no legislative guidelines are found in the instant case upon which the Commissioner's power under Section 116(3) could be exercised. The vice discovered by this Court in Rule 7(2) of the**
C **BPMC Act, 1949 in** *New Manek Chowk* **case equally invalidates Section 116(3) of the D.M.C. Act. Hence, Section 116(3) is declared invalid as it delegates unguided and uncanalised legislative powers to the Commissioner to declare any plant or machinery as part of land or building for the purpose of determination of the rateable value thereof. The impugned assessment orders are set aside and remitted to the assessing authority under the DMC**
D **Act for passing orders afresh in accordance with law and the observations made in the judgment. [873-A-C; 870-D]**

New Manek Chowk Spg. and Wvg. Mills Co. Ltd. etc. **v.** *Municipal Corporation of the City of Ahmedabad and Ors.,* **AIR (1967) SC 801;** *Patel Gordhandas Hargovindas* **v.** *Municipal Commissioner, Ahmedabad,* **(1964) 2**
E **SCR 608;** *J. Jayalalitha* **v.** *Union of India and Anr.,* **AIR (1999) SC 1912 and** *Kishan Prakash Sharma and Ors.* **v.** *Union of India and Ors.,* **[2001] 5 SCC 212, relied on.**

Municipal Corporation of Delhi **v.** *Pragati Builders and Ors.,* **[1991]**
F **45 D.L.T. 264, overruled.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.. 3312 of 2000.

From the Judgment and Order dated 19.2.99 of Delhi High Court in C.W.P. No. 1420 of 1995.

G WITH

C.A. Nos. 3313-3333, 3334, 3335/2000 and 8570-8573 of 2002.

M.L. Verma, B.B. Jain, Virendra Rawat and Sudhir Nandrajog for the Appellant.

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Ms. Indira Sawhney and Ms. Karnika Sawhney for the Appellant in C.A. No. 3335/2000. A

Ashwani Kumar, Ms. Bindu Tamta and Mrs. Amita Gutpa for the Respondents.

The Judgment of the Court was delivered by B

SRIKRISHNA, J. These appeals, though arising under different factual backgrounds, raise a common question of law and challenge the correctness of a judgment of the Full Bench of the Delhi High Court. The questions involved in all these appeals are :-

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"Whether the cost of the plant and machinery installed in or upon a building is includible for the purpose of arriving at the rateable value of the building? and

Whether Section 116 (3) of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as "the DMC Act") vests arbitrary and uncanalised D discretion in Commissioner and is, therefore, invalid for excessive delegation of legislative powers?"

Civil Appeals Nos. 3313-3333/2000 & 3335/2000

The appellant company owned land in Delhi on which it constructed a E cinema complex known as Delite Cinema Complex. The construction was completed in or about the year 1954. The company had installed certain plant and machinery, furniture and fixtures in the said construction of cinema house. By an order made on 30th May, 1988 the first respondent Municipal Corporation of Delhi revised the rateable value of the appellant's property to F Rs. 2,16,970 w.e.f. 1.4. 1968, Rs. 2,18,150 w.e.f. 1.4.1970 and Rs. 2,20,510 w.e.f. 1.7.1970. For the purpose of arriving at the rateable value the assessing authority added the cost incurred by the appellant towards installation of plant and machinery, furniture and fixtures to the cost of the building. The appellant challenged the assessment order by a statutory appeal under Section 169 of the DMC Act contending that the costs incurred towards plant and G machinery, furniture and fixtures could not be added to the cost of the building for the purpose of rateable value as they are moveable items and not part and parcel of the building. It was also contended that there was no specific notification issued by the Commissioner of the Municipal Corporation for including the value of moveable items, plant and machinery for arriving H

A at a rateable value. The appeals filed by the appellant were allowed by the appellate court by a judgment dated 1.6.1991. The appellate court upheld the contention of the appellant and directed the Municipal Corporation to work out rateable value by deleting the cost of plant and machinery, furniture and fixtures from the cost of the building. Aggrieved by the aforesaid judgment the respondent Municipal Corporation challenged the judgment by a batch
B of writ petitions before the High Court of Delhi. The writ petitions together with other writ petitions challenging similar orders was disposed of by a common judgment dated 19.02.1999. The High Court relying upon its own judgment in *Municipal Corporation of Delhi* v. *Pragati Builders and Ors.*, 45 (1991) D.L.T. 264 and the judgment of this Court in *Hindustan Lever Ltd.*
C v. *Municipal Corporation of Greater Bombay and Ors.*, [1995] 3 SCC 716 took the view that the matter had to be remitted back to the accessing authority to determine the rateable value in accordance with law as pronounced in the aforesaid judgments. Although, it was specifically contended by the appellant before the High Court that a notification under Section 16 (3) of the DMC Act declaring that the lift shall be deemed to form part of land and building, was
D published in the Newspaper on 23.10.1989 and 24.10.1989 and therefore, could have only prospective effect, the High Court did not decide the said issue. After setting aside the Judgment of the appellate authority, the issues were remitted back to the assessing authority with a direction to determine the rateable value in accordance with law leaving open all contentions to be
E urged before the assessing authority. This judgment is challenged by these appeals.

Civil Appeal No. 3312 & 3334 of 2000

In these two appeals the facts are almost same as in the previous group except that here an additional contention as to the constitutional validity of Section 116(3) of the D.M.C. Act was raised before the High Court while challenging the order of the Joint Assessor and Collector fixing the rateable value for different years. The writ petitions were disposed of by the High Court by two separate judgment dated 19.2.1999. The High Court negatived the challenge to the validity of Section 116(3) of the D.M.C. Act by holding that is only an enabling provision and that the judgment of this Court in *New Manek Chowk Spg. and Wvg. Mills Co. Ltd. etc.* v. *Municipal Corporation of the City of Ahmedabad and Ors.*, AIR (1967) SC 801 was distinguishable. The High Court also relied on its own judgment in *Municipal Corporation of Delhi* v. *Pragati Builders and Ors.*, (supra) and the judgment of this Court in *Hindustan Lever Ltd.* v. *Municipal Corporation of Greater Bombay and*

Ors., (supra), set aside the judgment of the appellate authority and remitted the assessment to the assessing authority for making afresh assessment orders. The appellants are in appeal before this Court. A

Civil Appeals Nos. 8570-73 of 2002

The appellants in these cases are owners of certain premises in which either lifts or air-conditioners or both have been installed. The Commissioner of Municipal Corporation of Delhi exercising his powers under Section 116(3) of the Act issued a notification dated 23.10.1989/24.10.1989 to the following effect :- B

"Municipal Corporation of Delhi C

Public Notice :

Lift containing or situated in or upon any building form an integral part of such building for its more beneficial enjoyment and is not plant or machinery contained or situated in or upon any land or building. However, to put this matter beyond any point of doubt, with the approval of Standing Committee, it is hereby notified under sub-section (3) of Section 116 of the Delhi Municipal Corporation Act, 1957 that lift shall be deemed to form part of land and building for the purpose of determining the rateable value of such land and building under sub-section (1) of Section 116 of the Delhi Municipal Corporation Act, 1957." D E

Although the notification applied to the lifts installed in the building, admittedly, no notification was issued in respect of air-conditioners. This group of writ petitions was filed by the assessees contending that Section 116(3) of the DMC Act confers unguided, uncontrolled and arbitrary powers in the Commissioner without laying down any guidelines whatsoever and was consequently invalid. When the assessees were faced with the judgment of the Division Bench in *Pragati Builders* (surpa), the assessees urged that *Pragati Builders* be reconsidered as it was in conflict with the judgments of this Court in *New Manek Chowk,* (surpa) and the judgment of this Court in *Hindustan Lever Ltd.* (supra). The writ petitions were therefore placed before a Full Bench to consider the correctness of the *Pragati Builders* (supra). The Full Bench of the High Court by the judgment impugned before us took the view that *Pragati Builders* (supra) has laid down the law correctly and the writ petitions were dismissed. Aggrieved thereby the appellants challenge the judgment of the Full Bench. F G H

The DMC Act

The DMC Act, 1957 was enacted to consolidate and amend the laws relating to the Municipal Government of Delhi. By virtue of section 516 of the Act the enactments specified in Schedule XIII to the Act ceased to have effect within Delhi. The DMC Act sets up a Municipal Corporation under chapter II, defines the function of the Corporation under Chapter III and those of the Municipal Authorities under Chapter IV. Chapter VIII deals with taxation. Section 113 of the Act, *inter-alia*, provides for levy of a tax known as property tax. Section 114 indicates that the property taxes to be levied on lands and buildings in Delhi shall consist of a general tax which is to be levied at a prescribed percentage of rateable value of lands and buildings with in the urban area. There are certain other details and powers of exemption which are not material for our purpose. Section 115 provides that general tax shall be levied in respect of all lands and buildings in Delhi. There are certain exceptions made in this section which are again not relevant for us. Section 116 is the crucial section which has generated considerable debate at the bar and bears reproduction.

> "116. Determination of rateable value of lands and buildings assessable to property taxes - (1) the rateable value of any land or building assessable to property taxes shall be the annual rent at which such land or building might reasonably by expected to let from year to year less -
>
> (a) a sum equal to ten percent of the said annual rent which shall be in lieu of all allowances for costs of repairs and insurance, and other - expenses, if any, necessary to maintain the land or building in a state to command that rent, and
>
> (b) the water tax or the scavenging tax or both, if the rent is inclusive of either or both of the said taxes :-
>
> Provided that if the rent is inclusive of charges for water supplied by measurement, then, for the purpose of this section the rent shall be treated as inclusive of water tax on rateable value and the deduction of the water tax shall be made as provided therein :
>
> Provided further that in respect of any land or building the standard rent of which has been fixed under the Delhi and Ajmer Rent Control Act, 1952 (38 of 1952), the rateable value thereof shall not exceed the annual amount of the standard rent so fixed.

Explanation - The expression "water tax" and "scavenging tax" shall mean such taxes of that nature as may be levied by an appropriate authority.

(2) The rateable value of any land which is not built upon but is capable of being built upon and of any land on which a building is in process of erection shall be fixed at five percent of the estimated capital value of such land.

(3) All plant and machinery contained or situate in or upon any land or building and belonging to any of the classes specified from time to time by public notice by the Commissioner with the approval of the Standing Committee, shall be deemed to form part of such land or building for the purpose of determining the rateable value thereof under sub-section (1) but save as aforesaid no account shall be taken of the value of any plant or machinery contained or situated in or upon any such land or building.

There are detailed provisions in the DMC Act with regard to the manner of incidence of the property tax, the persons on whom the incidence falls under different circumstances, manner of recovery of the tax from occupiers, manner of making, publishing and amending assessments lists and so on. Any objections to the rateable value of property as entered in the assessment list shall be made in writing to the Commissioner before the date fixed in the notice. After disposing of the objection, the revision of the rateable value is indicated as an amendment in the assessment list.

Section 169 confers a right of appeals against the assessment of any tax under the Act to the District Judge of Delhi. Section 171 provides for finality of appellate orders. The order of the appellate court confirming, setting aside or modifying an order in respect of rateable value or assessment or liability to assessment or taxation is declared to be final.

The expression "building" is defined in sections 2(3) as under :

"2(3) "building" means a house, out-house, stable, latrine, urinal, shed, hut, wall (other than a boundary wall) or any other structure, whether of masonry, bricks, wood, mud, metal or other material but does not include any portable shelter."

"Land has been defined in section 2(24) as follows :-

"2(24) "Land" includes benefits to arise out of land, things attached

A to the earth of permanently fastened to anything attached to the earth and rights created by law over any street."

"Rateable value" is defined in section 2(47) as follows :

"2(47) "Rateable value" means a regulation made by the Corporation under this Act, by notification in the Official Gazette."

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The 1994 Bye-Laws

Section 481 empowers the Corporation, subject to the provisions of the Act, to make bye-laws to provide for all or any of the matters dealt with in the section. Paragraph A deals with bye-laws relating to taxation. After C enumerating a number of topics on which bye-laws could be made, in entries 1 to 8, entry 9 gives power to the Corporation as under :-

"Entry 9 : Any other matter relating to the levy, assessment, collection, refund or remission of taxes, under this Act."

D In exercise of its power to make bye-laws, the Delhi Municipal Corporation has made a set of bye-laws styled as "DMC determination of Rateable Value Bye-Laws 1994", which were brought into force w.e.f. 24.10.1994. These bye-laws are purportedly made in exercise of the powers under section 2(47) read with Section 116, 481 and 483 of the DMC Act, after previous publication and E in accordance with the procedure prescribed thereunder.

Bye-law No. 2(e), defines "premises" as having the same meaning as under Section 2(38) of the DMC Act. Bye-law 2(f) defines "rent", particularly clause (ii) thereof. Our attention was also drawn to bye-law no. 3 which, "for the purposes of sub-section (1) of section 116 of the DMC Act", indicates F the manner of determination of the annual rent. Of particular interest to us are clauses 3(1)(c) (ii) and 3(1)(d) (e) explanation (ii) which read as under :-

"3 Determination of rateable value of lands and buildings :-

(1) For the purposes of sub-section (1) of section 116 of the Act, the G annual rent shall be determined as under :-

(a) xx xxx xx

(b) xx xxx xx

(a) in case premises are used and occupied or are lying vacant for use and occupation by the owner himself - H

(i) xxx xxx xxx

(ii) Where the building or part thereof, is used or to be used as a banquet hall, cinema hall, club, guest house, hotel, nursing home or as house for marriage and such other functions, the annual rent shall be the amount calculated at ten per cent of the market price of land in the year of assessment and the cost of construction of the building, cost of fixtures and fittings and cost of addition, alterations and improvements, or the prevalent rent, whichever is higher;

Explanation II - For the purposes of this bye-law, the annual rent of the premises includes the annual rent of the land and building thereon, and such other fixtures and fittings as are considered necessary for the use and enjoyment of the land and building purpose for which they are intended to be used and shall include lifts, elevators, storage tanks, pipe-lines, railway lines, runways, underground cables, air-conditioning plant in centrally air-conditioned buildings, swimming pools, chairs and screen in cinema halls, theatres and auditoria, cost of insulations and racks in cold storage buildings, but, save as aforesaid, no account shall be taken of the value of any fixtures and fittings contained or situated in or upon any land or building."

We may mention here that these bye-laws were challenged as *ultra-vires* the delegated powers of legislation of the Corporation. By a judgment in *Delhi Urban House Owner's Welfare Association and Anr.* v. *Union of India and Ors.*, 60 (1995) DLT 644 a Division Bench of the Delhi High Court held that the explanation to bye-law 3(1)(a), bye-law 3(1)(c)(ii) and bye-law 3(1)(e) were bad and they were struck-down. The Delhi Municipal Corporation carried an appeal to this Court and by a judgment in *MCD* v. *Delhi Urban House Owner's Welfare Association,* [1997] 8 SCC 335 this Court reversed the judgment of the Division Bench of the Delhi High Court except to the extent the challenge was given up by the Corporation. Consequently, the judgment of the High Court declaring the provisions of bye-law 3(1)(c)(ii) and 3(1)(e) of the rateable value bye-laws as invalid remains unaltered.

Rateable Value

The Concept of a "rate" has to be kept in focus in order to understand the meaning of the expression "rateable value", as generally understood in law, subjects to changes made in any local enactments.

A In *Patel Gordhandas Hargovindas* v. *Municipal Commissioner, Ahmedabad,* [1964] 2 SCR 608 this Court examined the history and practice of rates in England and under Indian legislation and noticed that the word "rate" was used as meaning a tax for local purposes imposed by local authorities. The basis of the tax was annual value of the land or building on or in connection with which it was imposed, arrived at in one of the three B ways indicated in the judgment. Legislatures being creatures of habit, the use of the word "rate or equitable value" in municipal laws definitely suggests that it was that particular kind of tax which in legislative history and practice was known as a "rate" which the municipality could impose and not any other kind of tax. After referring to a number of English authorities, it was emphasized C that "rate" could be levied only for beneficial occupation-and the rateable value had to be arrived at by one of the three modes namely :-

(a) actual rent fetched by land or building where it is actually let,

(b) where it is not let, rent based on hypothetical tenancy, particularly in the case of buildings, and

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(c) where either of these two modes is not available, by valuation based on capital value form which annual value has to be found by applying a suitable percentage which may not be same for lands and buildings.

E This Court also examined the legislative history and practice in India by referring to be a number of municipal legislations and concluded that the "rateable value" contemplated in the municipal legislations was based on the same concept.

Contentions

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The first contention of the appellants before us is that the Corporation has no power to levy property tax by including within the rateable value anything other than what is expressly permitted by the Act and must, in doing so, exclude what is expressly excluded by the Act.

G In *Haji Dawood* v. *Municipal Commissioner, City of Bombay,* AIR (1922) Bom. 386 the question had arisen before the Bombay High Court as to whether, in the case of a building fitted with electric fittings and fans, bath tubs and lavatories, deduction could be allowed for the reasonable cost of bath tubs and lavatories and electric lights and fans for working out the H rateable value. The High Court was of the opinion that the baths and lavatories

were undoubtedly annexed to be freehold, as also electric fittings, except perhaps such fittings as are attached with plugs in the wall. It was also held that without these conveniences the premises would be not let unless perhaps a tenant were found to take the premises on a long lease on favourable terms on the understanding that he should put up such fitting himself. With regard to the electric fittings and fans it was urged that they should be treated as "machinery" under section 154(2) of the Bombay Municipal Corporation Act, 1888 (hereinafter referred to as "the BMC Act") and their cost was liable to be excluded for rateable value of the building. This contention was summarily rejected by the High Court by observing :-

> "But we have not been referred to any authority under which it is said that electric fittings in a residence come within the term "machinery". It seems to me that when electric fittings are installed by a landlord they become part of the premises and so are necessary for the user of the premises by the tenant."

On this reasoning, the reference was answered against the owner of the building by holding that no deductions could be allowed for the aforesaid items while computing the rateable value.

In *Poona Municipal Corporation* v. *Shankar Ramakrishna Jabade,* (1957) LX Bombay Law Reporter 25, the questions arose once again before the Bombay High Court. This time it was the case of a cinema theatre which was fitted with articles of furniture, mostly chairs, intended to be used by the audience. Considering the case under the provisions of the Bombay Provincial Municipal Corporations Act, 1949, (for short "the BPMC Act") the Bombay High Court considered the definitions of "rateable value", "land" and "building" under the Act. The contention urged was that furniture in the theatre falls either within the definition of "building" or within the definition of "land". Particularly, it was urged that if anything was attached to the earth and something was fastened to that thing, then that thing clearly become "land" looking to the language used. "Land" was defined in section 2(30) of the Act as including which is being built upon or is built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street.

Rejecting the contention as untenable the High Court held that if such a contention were to be accepted, then the expression "building" would

A become completely superfluous. In the Act the legislature had drawn a distinction between "land" and "building" and defined the two expressions separately, which went to show that different connotations were intended to be given to these expressions. The Court also explained the purpose of these two definitions by saying "when you are dealing with a structure, you must turn to the definition of "building" in order to find out whether that structure B or anything in that structure falls within the definition of building. When there is no building or no structure, then undoubtedly you turn to the definition of "land" and even when you have a building and land, the Legislature has distinguished between a structure standing on the land and the land under structure." It was held that these definitions are material for various purposes C and the taxing authority cannot turn to the definition of "land", if it falls to bring the case within the definition of "building", when it is dealing with a structure, and what is contained in that structure. The High Court laid down two tests, namely, (1) the nature and extent or degree of annexation to the property and (2) the object, intention or purpose of the annexation. Since the facts were not clear, the case was remanded back to the lower appellate court D for deciding the factual matrix.

In *Pragati Builders* (supra) it was held as under :-

"21. We can cull from the above discussion the following points which are to be kept in mind while determining the rateable value of E a building :

(a) Has the machinery installed in a building become part of the said building on account of some degree of annexation?

(b) Is the said machinery so annexed to the building for its better F enjoyment and enhancement of its utility?

(c) Whether any hypothetical tenant would be ready to occupy the said building with all its available facilities and amenities?

(d) What reasonable return a tenant would be called upon to pay on the total investment of the owner for raising such a building G along-with all its annexures and fixtures so as not to exceed its standard rent?

22. It can be safely concluded from above that in case a machinery is so annexed to the building that it has become a part thereof, and it is therefore its better enjoyment, in that eventually it is to be taken

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into account for the determination of its rateable value. We are thus of the view, from the conspectus...of the above authorities that a lift is very much a part of the building and thus is to be taken into account for fixing the rateable value." A

The appellants urged before the Full Bench of the High Court that *Pragati Builders* (supra) has not bestowed sufficient and requisite attention to the judgment of this Court in *New Manek Chowk* (supra) and *Hindustan Lever Ltd.* (supra). The Full Bench dismissed the contention by taking the view that, because the legislative provisions considered in the said two judgments were different, the ratio of those two cases has no application. Counsel for appellants have contended that this reasoning of the Full Bench is incorrect. They urged that the Legislative provisions considered by this Court in the aforesaid judgments were in effect *pari materia* and there is no reason why the law laid down by this Court in the said two judgments should not apply. B C

New Manek Chowk (supra) arose under the provisions of the BPMC Act. The Corporation was entitled under Section 249 to levy a property tax which was defined as "tax on the buildings and lands" in the said Act. Section 254 thereof defines "rateable value" as the value of any building or land fixed under the provisions of the Act for the purposes of assessment of the property taxes. Under Section 453 of the Act the rules in the schedule as amended from time to time shall be deemed to be part of the Act. The relevant taxation rules were prescribed in Chapter VIII of the Rules. Under Rule 7(2) all plant and machinery contained or situated in or upon any building or land and belonging to any of the classes specified from time to time by public notice by the Commissioner, with the approval of the Corporation, shall be deemed to form part of such building or land for the purpose of fixing the rateable value thereof under sub-rule (1). But save as aforesaid, no account shall be taken of the value of any plant or machinery contained or situated in or upon any such building or land. D E F

In our judgment, the language of sub-section (3) of section 116 of DMC Act is *pari-materia* with rule 7(2) under the BPMC Act, 1949. The contention was that sub-rule (2) of Rule 7 was beyond the legislative competence of the State as the State could not levy a property tax on plant and machinery in the guise of levying taxes on lands and buildings. It was also urged that the power given to the Commissioner to notify and machinery or class of machinery upon which it would be treated as part of the building was uncanalised, G H

A arbitrary and invalid on account of excessive delegation of power. With regard to the first contentions, this Court held that Courts can look into legislative practice (see in this connection *Ralla Ram* v. *The Province of East Punjab* - (1948) FCR 207. The Court then referred to a large number of municipal Acts passed by different Legislatures after 1935 to show that plant and machinery were excluded from the purview of such taxes. The different municipal
B legislations noticed were :-

Punjab Municipal Act, 1911, s.3(1);

The Madras Act IV of 1884, s.65(2);

C Madras District Municipalities Act, 1920 s. 82(2) proviso (b);

The Patna Municipal Corporation Act, 1951, s.130(3)

The Bombay District Municipalities Act, 1911, s.3(11);

D The Bombay Municipal Boroughs Act, s.3(1);

The Bombay Municipal Corporations Act, 1888, s.154(2);

The Calcutta Municipal Act, 1899, s.151 proviso; and

E The Central Provinces and Berar Municipalities Act, 1922 s.73 proviso.

This Court also noticed the English Rating and Valuation Act, 1925 in which Section 2(1) gives the power to levy a consolidated rate and sub-section (3) thereof states that the rate shall be at a uniform amount per Pound on the rateable value of each hereditament of the area. Section 24(1) of that
F Act provides that plant and machinery in or on the hereditament as belongs to any of the classes specified in the Third Schedule to the Act shall be deemed to be a part of hereditament.

This Court's attention was also drawn to a number of sections of BMC Act which went to show that "land" in those sections was clearly not meant
G to include the plant and machinery situate thereupon. Though it was contended for the Corporation that the distinction had been practically eliminated in England, this contention was rejected by this Court observing "It will therefore be noticed that the rateability of the plant and machinery depended on judicial decisions as to the meaning of the word "land". There is no reason why we
H should accept those decisions as to what was comprehended by the term

"land" when we find in our statutes plant and machinery being excluded there- from." A

It was held that Rule 7(2) framed under the BPMC Act, 1949 was beyond the legislative competence of the State. The Court also accepted the second contention that the rules suffers from another defect that is does not lay down any principle on which machinery is to be specified by public notice B by the Commissioner to be deemed to form part of the building for the purpose of fixing the rateable value. It was pointed out that the specifications of the classes was done time to time by the Commissioner with the approval of the Corporation irrespective of the question as to where they are to be found. It, therefore, depended on the arbitrary will of the Commissioner as to C what machinery he would specify and what he would not. Moreover, he was the only person who could examine this question. There was no right of appeal from any specification made under sub-rule (3) of rule 7 except that the Commissioner was to act under the directions of the Standing Committee. For all these reasons it was held that sub-rule (3) of rule 7 was invalid on account of excessive delegation of power by legislature. D

The Full Bench of the Delhi High Court has brushed aside the judgment in *New Manek Chowk* (surpa) by the following observation :-

> "23. However, in the instant case the Commissioner is not the only person who can determine, as to whether any plant and machinery E contained or situated in or upon any land or building and belonging to any of the classes specified from time to time by public notice shall be deemed to form part of the land or building but therefore he was required to obtain the approval of the Standing Committee. Thus, it cannot be said that wholly unguided and uncanalized power was F conferred upon a statutory authority."

In our considered view, the distinction drawn is hardly valid. While in the case of the DMC Act, the Commissioner is required to obtain the approval of the Standing Committee before notifying any plant or machinery under sub-section (3) of section 116, under the BPMC Act, the Commissioner has G to do it with the approval of the Corporation, which means almost the same thing. If the delegated power was treated as wholly unguided and uncanalized under BPMC Act, we fail to see why it should not be so under the DMC Act also. We are, however, not inclined to accept the contention of learned counsel for the appellant that section 116(3) is beyond the legislative

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A competence of the Legislature for the reason that the DMC Act is not result of exercise of the legislative powers relatable to List II of the VIIth Schedule of the Constitution by the State Government, but is enacted by Parliament in exercise of its powers referrable to List I, of Seventh Schedule of the Constitution.

B Turning to *Hindustan Lever* (supra) it appears to us that the reasons given by the Full Bench of the High Court for holding that this judgment does not apply, are also not valid. *Hindustan Lever* (supra) was a case under BMC Act, 1888. The dispute was with regard to the rateable value of a building which was centrally air conditioned. The AC Plant was so designed as to C have the whole of the building centrally air-conditioned. For this purpose a provision was made for concrete cooling towers on the terrace and steel pipes had been laid tio ensure the circulation of the cooling water from the tower to ground floor and then back to the tower. The Corporation was of the view, and the High Court held, that the cost of air conditioning machinery and the cost of false ceiling had to be included as cost of construction for arriving D at the rateable value. This court made a categorical finding that there was no manner of doubt that the air-conditioning machinery had been installed for the purpose of better enjoyment of the building itself, increasing its utility.

Section 154(1) and (2) of the BMC Act, 1888 read as under :-

E "154(1) In order to fix rateable value of any building or land assessable to a property-tax there shall be deducted from the amount of the annual rent for which land or building might reasonably be expected to let from year to year a sum equal to ten percent of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatsoever.

F

(2) The value of any machinery contained or situated in or upon any building or land shall not be included in the rateable value of such building or land."

The appellant there contended that the value of the air-conditioning G machinery including the cost of false ceiling had to be excluded from the cost of the building computation of rateable value in accordance with sub-section (2) of Section 154 of the BMC Act. It was contended specifically by the Corporation that as machinery had been embedded in the building it became an integral part of the building and that its cost should not be excluded under H sub-section (2) of Section 154. A large number of authorities as well as the

provisions of Section 3 of the Transfer of Property Act were relied upon by the Corporation. This Court, after noticing *Poona Municipal Corporation* (supra), (vide para 9) observed :-

> "When the legislature sought to exclude the value of machinery of the type mentioned in sub-section (2) from forming a part of rateable value, some meaning has to be ascribed to the provision, otherwise the intention of the legislature would get frustrated. We therefore, state that the fact that a machinery gets embedded to a building or becomes an integral part or it has no relevance while deciding the question of applicability of the exemption provision."

Again (para 11) it was observed :-

> "According to us, this dischotomy may not be applied to Section in 154(2), as it could not have been intended by the legislature that, say, only unembedded air-conditioners used for cooling a building would get the exemption, but not if the apparatus gets embedded and central air-conditioning is provided in the building. In any case, as we are concerned with a taxing provision, an interpretation beneficial to the assessees, in case two interpretations be reasonably possible, has to be given. This is a well-settled position in law."

Finally, this Court held that the High Court erred in law in not excluding the cost incurred on the air-conditioners and false ceiling and directed exclusion of the same for the purpose of working out the rateable value.

This judgment too has been given short shrift by the Full Bench of the Delhi High Court. The High Court side stepped *Hindustan Lever Limited* (supra) by observing :

> "The said decision, therefore, again has no application in the instant case having regard to the fact the interpretation of the expression "land" building etc. of the DMC Act and BMC Act were different."

We regret we are unable to subscribe to the view of the Full Bench of the High Court. As to the construction of Section 116(3), the reasoning given by Chief Justice Chhagla in *Poona Municipal Corporation* (supra) and the reasoning in *Hindustan Lever* (supra) appeals to us. The Full Bench has laid great emphasis on the definition of 'land' under section 2(24) of the Act while approving the reasoning given in *Pragati Builders* (supra). As pointed out by the Bombay High Court, in *Poona Municipal Corporation* (supra), if such

A a wide meaning were to be given to "land" defined in Section 2(24) of the Act, Section 2(3) defining "building" would be wholly rendered otiose. We agree with the reasoning of Chhagla, C.J., as to the respective functions of the two definitions, and the observations made in this regard, which we have quoted earlier.

B In our judgment, the Full Bench of the High Court fell into error in not keeping in mind the respective functional roles of the definitions of "land", "building" and "premises" and conceptually allowing them to overlap.

In any event, it cannot be forgotten that Section 116 itself indicates, in terms, how the rateable value of land and building assessable to the property C taxes is to be determined. Sub-section (3) of Section 116 lays down the general rule that no account shall be taken of the value of any plant or machinery in or upon any land or building subject only to the one exception namely that if such plant or machinery has been notified by a public notice by the Commissioner, with the previous approval of the Standing Committee, D then it shall be deemed to form a part of such land or building for the purpose of determination of the rateable value. The words used in sub-Section (3) of Section 116 of the DMC Act are "land" or "building". Hence, the principle of interpretation evolved in *Poona Municipal Corporation* (supra) was very much relevant and applicable. In any event, the definition of "premises" was wholly irrelevant for interpretation of sub-Section (3) of Section 116.

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The legislative history unmistakably points towards out to this manner of interpretation. Legislation, like history, has the habit of repeating itself. Legislative practice, which was noticed by this Court in *New Manek Chowk* (supra), showed that both in England and in India municipal legislation had F uniformly tended to exclude the cost of plant and machinery for the purpose of computation of rateable value of land or building subject tio exceptions made by statute, examples being sub-sections (3) of Section 116 of DMC Act, Section 154 (2) of the BMC Act, Rule 7 (2) made under the BPMC Act, 1949 and similar statutory provisions. The Full Bench laid great emphasis on the word "premises" used in the Act and the enlarged meaning given to the term G under the 1994 bye-laws. In the first place, "rateable value" is defined in Section 2(47) as the value of any "land" or "building" fixed in accordance with the provisions of the Act and the bye-laws made there under for the purposes of assessment to property tax. Section 2 (47) does not even make a reference to "premises". It is true that the expression "premises" is defined in Section 2 (38) as inclusive of any fittings affixed to a building for the more beneficial H

enjoyment thereof. Even assuming the contention which appealed to the High Court to be correct, we must reconcile the definition of the term "premises" in Section 2 (38) with the express words used in sub-section (3) of Section 116 of the Act. Learned counsel for the appellant is, therefore, right in his contention that whatever be the amplitude of the expression "premises" or the expression "fittings" used in clause (b) of Section 2 (38) of the Act, it cannot include plant or machinery which have been expressly excluded under Section 116 (3), except to the extent it is notified. This contention appears justified, on principle and precedent, and deserves acceptance.

We are unable to accept the view of the High Court that the notification dated 23.10.1989 was issued by the DMC *ex-majori cautela*, nor are we in agreement with its view that lifts and air-conditioners are not plant or machinery, but fittings and fixtures. We also cannot accept the view that a lift being permanently embedded in the "land" duly forms parts of "building" for computation of rateable value of the building. In our view, lifts and air-conditioners are neither fittings, nor fixtures, but are 'plant' and 'machinery'. The concept of rateable value, as generally understood, does not admit the inclusion of the cost of such plant or machinery in the computation of the rateable value of the building. The legislature has, therefore, made a specific provision that if their cost has to be included, a previous notification has to be issued under sub-section (3) of Section 116. This was purportedly done by the notification dated 23.10.1989 and, if at all valid, it would become operative from the said date and not from any date earlier.

The High Court also seems to have lost sight of the fact that the Explanation II of 1994 bye-laws was struck down by the High Court and its invalidity was upheld by this Court.

The learned counsel for the respondent advanced before us the same arguments which appealed to the Full Bench. He contends that whatever might have been the situation in 1888, Municipal Legislation must be progressively interpreted. With the concept of 'plant' and 'machinery' undergoing changes, as a result of series of rapidly advancing technology, the rateable value of a 'building' or 'premises' to the owner must be taken to be letting return inclusive of all plant or machinery contained therein, since ultimately such plant or machinery is intended for the beneficial enjoyment of the tenant. Learned counsel also contended that the common law principle, and the principle under Section 3 of the Transfer of Property Act, as to what is 'land' has been applied under the DMC Act which is highlighted by

A Explanation II to section 3 (1) (e) of 1994 bye-laws. The contentions do not appeal to us. First, we must interpret the legislation by reading the words in the statute. Secondly, Section 116 (3) takes care of the progressive concepts by vesting the Commissioner with the power to issue the requisite notification to include newer machinery within the ambit of 'land' or 'building'. Lastly, the said explanation is no longer alive and has been set aside by this court.
B

In the result, we accept the contention of the learned counsel for appellants and hold cost of plant and machinery situate in or upon any land or building cannot be included in the computation of the rateable value of land and building unless a valid notification contemplated by sub-section (3) of section 116 has been issued.
C

The next question that arises for our consideration is whether, following the reasons given by this Court in *New Manek Chowk* (supra), it can be held that sub-section (3) of Section 116 is invalid for excessive delegation of legislative powers as it vests arbitrary and unguided discretion in the
D Commissioner to declare any machinery situated in or upon a land or building to be deemed to form part of the land and building for the purpose of determining the rateable value thereof. According to learned counsel for the appellant, the reasons given by this Court in *New Manek Chowk,* (supra) for striking down Rule 7(2) framed under the BPMC Act, 1949 as invalid on account of excessive delegation of power of legislature equally apply to sub-
E section (3) of Section 116.

For the respondents, however, it is contended that as long as guidelines for exercise of delegated power are discernible in the statute, it cannot be held to be unconstitutional, however skeletal the parent legislation may be. Our
F attention was drawn to the judgments of this Court in *J. Javalalitha* v. *Union of India and Anr.,* AIR (1999) SC 1912 and *Kishan Prakash Sharma and Ors.* v. *Union of India and Ors.,* [2001] 5 SCC 212.

Learned counsel for respondents contends that reading the provision of the D.M.C. Act, particularly the definition of the expression 'land', 'building',
G 'premises', 'rateable', it is clear that the exclusion contemplated by sub-section (3) of Section 116 of the Act can only be of such item which could not normally be included in the concept of land or building. Hence, the Commissioner's power to notify plant or Machinery under Section 116(3) must be read as extending only to such things of the same nature as would fall within the definition of ''land'' as defined in Section 2(24) of the Act. He,
H therefore, contends that there is thus sufficient guideline indicated in the

statute itself and, therefore, the constitutionality of the statute must be upheld. Despite anxiously scanning the provisions of the statute, we hardly find any such guidelines therein. The contention of the learned counsel for the respondent that the statute indicates the guidelines, namely, that the Commissioner's power to notify under Section 116(3) is only in respect of things which are of the same nature as would fall within the ambit of expression "land", as defined under Section 2(24), appears to be a classic case of *post hoc ergo propter hoc* obviously, the power given to the Commissioner under sub-Section (3) of Section 116 is intended to be exercised only in a case where the plant or machinery does not fall within the ambit of the expression 'land' or 'building' as defined in the Act. It is only in such cases that the questions of exercise of the discretion on the part of the Commissioner arises. Thus, the so called guideline is wholly chimerical.

It is urged by the appellants that there is hardly any distinction between the situation envisaged by this Court in *New Manek Chowk* (supra) and the one before us. The vice discovered by this Court in Rule 7(2) framed under the BPMC Act, 1949 equally affects Section 116(3) of the D.M.C. Act.

The second reasoning on which this Court in *New Manek Chowk* (supra) struck down a similar delegated legislative power of the Commissioner under Rule 7 (2) of the BPMC Act, 1949 is equally true. Apart from there being no guidelines in the statute, the exercise of discretion by the Commissioner is not subject to any appeal to a higher authority. Learned counsel for the respondent points out two circumstances, namely, that the discretion can be exercised only with the approval of the Standing Committee and Secondly, that the rateable is subject to an appeal under the statute. True, both these facets are present in the impugned statute. Unfortunately for the respondents both these facets were also extant, considered and held inconsequential in *New Manek Chowk* (supra). There also the discretion of the Commissioner was exercisable with the approval of the Corporation and the rateable value was subject to an appeal. In any event, as this Court pointed out, although there may be an appeal provided against the determination of the rateable value, there is no provision in the statute for an appeal against inclusion of any plant or machinery within "land" or "building" for determination of the rateable value.

In the very judgment cited by the learned counsel for respondent, *Kishan Prakash Sharma and Ors.* (supra). It is observed in paragraph 18 as follows :-

A "So far as the delegated legislation is concerned, the case-law will throw light as to the manner in which the same has to be understood and in each given case we have to understand the scope of the provisions and no uniform rule could be laid down. The legislatures in India have been held to possess wide power of legislation subject, however, to certain limitations such as the legislature cannot delegate
B essential legislative functions which consist in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. The legislature cannot delegate uncanalised and uncontrolled power. The legislature must set the limits of the power delegated by declaring the policy of the law and
C by laying down standards for guidance of those on whom the power to execute the law is conferred. Thus the delegation is valid only when the legislative policy and guidelines to implement it are adequately laid down and the delegate is only empowered to carry out the policy within the guidelines laid down by the legislature. The legislature may, after laying down legislative policy, confer discretion on an
D administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of the policy. When the Constitution entrusts the duty of law making to Parliament and the legislatures of States, it impliedly prohibits them to throw away that responsibility on the shoulders of some other authority.
E An area of compromise is struck that Parliament cannot work in detail the various requirements of giving effect to the enactment and, therefore that area will be left to be filled in by the delegatee. Thus the questions is whether any particular legislation suffer from excessive delegation and in ascertaining the same, the scheme the provisions of the statute including its preamble and the facts and circumstances in
F the background of which the statute is enacted the history of the legislation, the complexity of the problems which a modern state has to face, will have to be taken note of and if, on a liberal construction given to a statute a legislative policy and guidelines for its execution are brought out, the statute, even if skeletal, will be upheld to be valid
G but this rule of liberal construction should not be carried by the court to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on the executive.

The observations made in the judgment of this Court in *Patel Gordhandas Hargovindas* (supra) and the legislative practice highlighted
H therein become very relevant in the context of interpretation of the provisions

of the statute impugned before us. Applying the test laid down in the judgments *J. Jaynalitha* (supra) and *Kishan Prakash Sharma and Ors.*, (supra) we are unable to find any legislative guidelines upon which the Commissioner's power under Section 116 (3) could be exercised. Since the High Court had not adverted to these aspects of the matter, we allowed this contention to be elaborated by the learned counsel before us. We are satisfied that the vice discovered by this Court in rule 7(2) of the BPMC Act, 1949 in *New Manek Chowk* (supra), equally invalidates Section 116(3) of the DMC Act.

In the result, we allow the appeals and hold as under :-

(1) Sections 116(3) is declared invalid as it delegates unguided and uncanalised legislative powers to the Commissioner to declare any plant or machinery as part of land or building for the purpose of determination of the rateable value thereof;

(2) The cost of plant or machinery, lifts and air conditioners fixed on the land or building of the appellant in question shall not be liable to be included for the determination of the rateable value of the land or building;

(3) The decisions in *Pragati Builders* (supra) and that of the Full Bench of the High Court under appeal do not lay down the law correctly. Consequently, they are hereby over ruled;

(4) The appeals are accordingly allowed and impugned judgments of the High Court are set aside. The impugned assessment orders are set aside and remitted to the assessing authority under the DMC Act for passing orders afresh in accordance with law and the observations made in the judgment.

In the circumstances of the case, there shall be no order as to costs.

S.K.S. Appeals allowed.