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RCom appeal against Gujarat move to levy property tax dismissed

In December 2016, the Supreme Court had held that municipal bodies could levy property tax on mobile towers and equipment on rooftops and building terraces.

Justice Ranjan Gogoi, while dismissing the appeal, said, “If a competent court has passed the order, you (RCom) cannot drag on for a year.”

The Supreme Court has dismissed the appeal of Reliance Communication, challenging the Gujarat government’s demand notices seeking to levy Rs 13-crore property tax on cell towers and telecom equipment installed on rooftops and building terraces in the state. A bench led by Justice Ranjan Gogoi, while dismissing the appeal, said, “If a competent court has passed the order, you (RCom) can not drag on for a year.”

Earlier, it had directed that the RCom’s appeal along with other appeals “will be listed only after deposit of the full amount of tax with the concerned authority under the Act”.

RCom in its appeal said the state government had not prescribed any rates by any order in writing and thus the demand notices were raised in contravention with the procedure prescribed under Section 145A of the Gujarat Provincial Municipal Corporations Act 1949. It further stated that the demand notices were not with respect to tax on mobile towers, rather the tax which is sought to be imposed is property tax and this cannot be levied on mobile towers as a different procedure has been prescribed under the Act for the computation of both the taxes – property tax and the tax on mobile towers. The demand notices pertained to the period of 2012-17.

Counsel Shally Bhasin on behalf of RCom sought more time to pay the tax, saying the money was supposed to come in from sale of its tower business to RJio, but the transaction has been stalled by the NCLAT and “our money is stuck”.

In December 2016, the Supreme Court had held that municipal bodies can levy property tax on mobile towers and equipment on rooftops and building terraces as “the incidence of the tax is not on the use of the plant and machinery in the mobile tower; rather it is on the use of the land or building, as may be, for purpose of the mobile tower”.

It had set aside the April 2013 order of the Gujarat High Court that held contrary to its view. According to the SC, under the relevant laws including the Gujarat Provincial Municipal Corporations Act 1949, tax on mobile towers is “levied on the yield from the land and building, calculated in terms of the rateable value of the land and building. Also the incidence of the tax is not on the use of the plant and machinery in the mobile tower; rather it is on the use of the land or building, as may be, for purpose of the mobile tower,” the judge said, adding that the tax imposed on the “person engaged in providing telecommunication services through such mobile towers" (Section 145A of the Gujarat Act) merely indicates that it is the occupier and not the owner of the land and building who is liable to pay the tax."

Cross-appeals were then filed by various companies including Reliance Communications, Idea Cellular, Viom Infra Networks and GTL Infrastructure, and various municipal bodies from Gujarat.

The companies had challenged the levy of property tax for cell towers and equipment installed on rooftops and building terraces on the grounds that telecom towers are temporarily installed for functioning and operation of a mobile telephone system.

City resources extracted from taxes, charges and fees have vast potential for municipal finance

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Urban development in India, due to its multiplier effect and value addition, coincides with the expansion of the non-farm sector. Most productivity gains (86% of GDP through structural readjustment) are noticed within and around cities. Accordingly, the city economy and resources to be extracted from taxes, charges and fees have vast potential for municipal finance. Yet the revenue-generating potential of municipal bodies is declining. Municipal-own sources as part of national GDP have declined from 0.6% in 2007 to 0.53% in 2012. During this period, despite a quantum jump in fiscal transfers (36% to 46% of municipal income) from the Centre (Rs 1,000 crore for 1990-95 to Rs 87,000 crore for 2015-16) and states (substantially from one state to another), municipal bodies have failed to sustain the size of municipal finance (declined from 1.08% to 1.03% of GDP).

Municipal revenue as part of combined intergovernmental revenue also declined from 3.71% in 1990-91 to 2.43% in 2000-01 and 1.7% in 2007-08; this is 10.2% for developing nations and 12.7% is the global average. At city level, municipal governments access around 1% of GDP, whereas the scope could be 5-6% of city economy.

The fiscal stress at municipal level adversely affects liquidity, solvency and creditworthiness of city governments to maintain services at current levels of efficiency and upgrade them as per mandate. A March 2018 survey by Janaagraha confirms that many sample cities fail to mobilise revenue to pay salaries to employees. Evidence suggests fiscal stress across the size class of cities (North and East municipal corporations in Delhi and local bodies in smaller towns). In most cases, fiscal transfers to municipalities are either dedicated or used (as untied grants) towards payment of salaries.

Municipal finance from city economy and resources by way of suitable instruments assume special significance in the light of urban sector assessment being done by XV-FC and the government to frame a national urban policy.

The reasons for municipal failure to tap city potential are (1) inadequate coverage of city region, (2) lack of powers to levy taxes, (3) weakness in financial management—i.e. accounting and budgeting, and (4) traditional management of municipal expenditure.

First, a large part of city remains outside the purview of resource base of city government. Illegal land subdivision and land use conversion minimise the revenue from property taxes (PT) and license fees. Economic Survey 2017 expressed concern on the gaps in urban centres (8,000-plus) and city governments (4,000-plus) as well as potential areas not classified as urban according to current definition of Census. Also, city region is not part of a single municipal system. Administrative city (such as NDMC and MCD), physical city (Gurugram and Noida) and city region (other adjoining towns) are different entities. There are huge variations in the income of administrative cities within a single city region. South Delhi Municipal Corporation, for example, is much better placed than East Delhi.

Second, the power to levy taxes as assigned by states as per Article 243X is limited to a few taxes with PT as a mainstay, which is underutilised to the tune of 5-20% of the potential. PT is 0.23% of GDP in India; global average is 1.04%. Also, user charges are limited to water supply; other instruments such as congestion pricing are not applied. Cities are not allowed to use instruments of value capture finance to raise funds. Land value gains captured by development authorities and housing boards within and around administrative city (such as DDA) are not shared with city governments.

Third, financial management is weak. Despite persuasion by the Centre along with municipal accounting code, double entry accounting is not fully applied by most urban local bodies. Most cities apply line item incremental budgeting, which ignores the

actual requirement and availability of funds. Innovative auditing is not taken up, leading to revenue loss and expenditure mismatch. Cities report significant difference between budgeted amount and actuals, adversely affecting regular replacement and repair in their O&M activities.
Fourth, municipal expenditure suffers from conventional system of deployment and technical know how. Time and cost overrun is common. Funds allocated by the Centre under different missions are underutilised, caused by lack of planning, manpower and implementation capacity. Cost-effective, environment-friendly, inclusive and sustainable delivery of services is not planned.

Responses to fiscal stress are emerging at the city level. Ahmedabad, Pune, Bengaluru, Hyderabad, Indore, Gurugram and NDMC have a track record of financial management, accounting, budgeting and efficiency in expenditure. They report revenue account surplus, which enables them to undergo rating for creditworthiness/ borrowing and repayment capacity, and also take up capital projects on non-market goods such as environment, poverty alleviation, tourism, etc. Pune and Hyderabad raised Rs 200 crore each from municipal bonds, which were oversubscribed by six times and two times, respectively. This welcome trend will open up replication among smart cities and other cities taking up reforms in financial management.

Hyderabad Municipal Corporation carried out reforms in the database for PT and collection of impact fee to recover value addition due to municipal investment. Ahmedabad Municipal Corporation has two SPVs—Sabarmati Riverfront Development Corporation and Janmarg BRTS. AMC has also implemented several PPP projects (such as the Kankaria Lakefront Development), enabling additional liquidity to take up non-conventional projects on health, tourism, poverty alleviation and business promotion, which are normally missing in a municipal budget.

The emerging models on correction provide a fiscal agenda to stimulate own source funds to city governments. These include: (1) As the state list of taxes, a separate list of local taxes needs to be added to Article 243X, which should cover value capture finance; (2) discretionary nature of Article 243W with regard to delegation of functions should be removed particularly in relation to remunerative and revenue generating activities; (3) Schedule XII should identify functions in the context of sectoral changes occurring since 1992; (4) state finance commissions should be synchronised with national FC to consolidate local demand for upward assessment; (5) fiscal devolution should be partly linked with municipal performance on mobilisation of own sources, and it should include pricing and cost recovery through non-conventional sources such as polluter-pay and reduce, reuse and recycle; (6) land value gains captured by development authorities or housing boards should be shared with ULBs in line with the recommendations of XIII-FC and Second Administrative Reforms Commission; (8) database on land, properties and advertisement potential should be regularly updated to widen base of value capture finance; (9) accounting system needs to be modified with double entry accounting; (10) normative budgeting should be introduced to gradually reduce the backlog and mobilise local elasticity for municipal budget; and (11) resources from private sector and community should be duly used to supplement municipal staff and assets.

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Property tax to be levied upon exempted sectors

Ludhiana: In order to generate more revenue from property tax collection, the local bodies department is planning to impose the tax even on the exempted sectors. Currently people having houses built up to 125 square yards are exempted from the tax and moreover there is no tax on vacant plots. But under the new proposed rates, the civic officials are planning to impose tax on the exempted sections as well. The local bodies department has sent a draft of proposals to officials for their suggestions.

Last year, the local bodies department had sought suggestions from the MC officials to improve the recovery of property tax in response to which officials from Ludhiana MC had given these suggestions which have been included in the draft for the property tax rates revision.

In the draft it has been suggested that currently there is no property tax on vacant plots and land despite the fact that after construction, tax is levied on covered as well as vacant areas of the plot. Therefore for vacant plots, property tax equivalent to the tax levied on the vacant area in respect of constructed property should be imposed.

Similarly, at present tax is exempted for residential houses measuring 50 square yards or less, single storey residential houses measuring 125 square yards or less, residential flats having super covered area measuring 500 square feet or less. Therefore it has been proposed to levy Rs 50 as property tax per annum for residential houses measuring 50 square yards, for single-storey residential houses measuring 125 square yards or less Rs 100 per annum and for residential flats having super covered area measuring 500 square feet or less Rs 100 per annum.

At present properties owned by freedom fighters, ex-servicemen, widows and handicapped persons are exempted. Keeping this in mind, it is proposed that only one residential property to these categories be exempted from property tax and their other properties be charged as per normal rates.

Also the government educational institutions and government-aided educational institutions are exempted from payment of property tax. Private educational institutions are being charged as under Industrial category with 50% rebate. It is proposed to bring private education institutions under commercial category with no rebate. No change for Government educational institutions and the government-aided educational institutions.

For multiplex and malls etc the present rates are Rs 15 per square feet and it is proposed to increase these rates to Rs 20 per square feet. Similarly for marriage palaces, the present rates are Rs 6 per square yard and it is proposed to increase these rates to Rs 15 per square yard. At present godowns are treated as industrial properties. Currently, tariff chargeable for below the area of 4000 square yards is Rs 5 and above 4000 square yards area, the charges are Rs 7.50 per square yard. It is proposed to treat them in commercial category.

For hotels, currently the rates are charged under commercial category where in rates of property tax for basement, first floor, other floors and vacant area is half of built up area for ground floor. However, in case of hotels there is no such floor wise impact on room rent. Hence it is proposed that rates be kept same as commercial for all floors as built up area for ground floor except basement and vacant area which is to be charged at 50%.

Meanwhile MC superintendent, Vivek Verma said they have been asked to send the suggestions for draft of proposed changes in the property tax structure so that the quality of tax collection could be improved. He said they would send their suggestions in this regard.

Only 63% of property tax covered

The draft mentions that in Punjab, the coverage of property tax is only 63% against the requirement of 90% under the guidelines of the Atal Mission for Rejuvenation and Urban Transmission (AMRUT). In the draft, the example Nellore in Andhra Pradesh has been given which has achieved 100% coverage and 93.39% collection efficiency and Guntur has achieved 90.05% and 95.68% respectively.

MahaMetro plans 13 big real estate projects in Nagpur

NAGPUR: MahaMetro will not only change the way Nagpurians commute but will also alter the real estate scenario of the city in coming years in a big way. It has already planned 13 real estate projects of which six have already been sanctioned. In addition, it will construct an international standard amusement park on Krazy Castle land.

These projects are spread all around the city. It will take some years before all of them are completed. MahaMetro is banking on easy accessibility of these projects for response from potential customers.

MahaMetro will build two tallest buildings in the city — 25-storey towers — opposite Yeshwant Stadium in Dhantoli and Kasturchand Park. It will also build a 20-storey building at Zero Mile. In addition, there are several big commercial projects in offing for the city. Combined together the 11 projects are the biggest real estate project in the city whose cost runs into thousands of crores. MahaMetro property development officials are however, yet to calculate the cost of the projects.

According to managing director Brijesh Dixit, six commercial projects have already been sanctioned by MahaMetro. “One is the traffic and transit management centre (TTMC) opposite Yeshwant Stadium. It will have a 25-storeyed tower and two 19-storeyed towers. It will be connected to Sitabuldi interchange station by an elevated skywalk. Tender for this project has already been floated. Five major players — Inorbit, Prozone, Phoenix, WTC and Zender have already sent enquiries. The pre-bid meeting will be held on April 10,” he said.

The tender for a 7-storey commercial complex at Khapri station has already been floated but is stuck up due to a minor court case. The tenders for a 25-storey tower at Kasturchand Park, 8-storey commercial complex at Prajapati Nagar station and 20-storey tower at Zero Mile will be floated this year. National Highways Authority of India (NHAI) and Jawaharlal Nehru Port Trust (JNPT) have booked three floors above airport station and all the seven floors in the station annexe.

There are two residential projects in the pipeline. They are townships at Hingna Mount View and Mihan Metro City stations. The former is spread over an area of 15 acre. Due to height restrictions imposed by Airports Authority of India (AAI), it will have 1,200 flats and bungalows having area between 600 and 1,200 square feet. Mihan Metro City will have 2,500 tenements in the same range. Reliance Retail has already expressed desire to start a big outlet in this township.

Five more commercial projects are in the offing. They are located at Cotton Market, Santra Market, Gaddigodam, Jai Prakash Nagar and Neeri. MahaMetro has sought land from various agencies but is yet to get it.