TaxGuru®
Complete tax solution

2024 INSC 135

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2878 OF 2024
(Arising out of S.L.P. (Civil) No.17402 of 2017)

LUCKNOW NAGAR NIGAM & OTHERS ...APPELLANTS

VERSUS

KOHLI BROTHERS COLOUR LAB. PVT. LTD. & OTHERS ...RESPONDENTS

J U D G M E N T

NAGARATHNA, J.

Leave granted.

2. The present Civil Appeal has been filed by the Lucknow Nagar Nigam ('Municipal Corporation') impugning the judgment of the High Court of Allahabad that has allowed the Writ Petition filed by respondent herein ('the assessee'), thereby holding that the assessee is exempt from payment of property tax under the provisions of the UP Municipal Corporation

Adhiniyam, 1959 (hereinafter referred to as “Act of 1959”, for brevity sake).

Bird’s Eye View of the Controversy:

3. Whether statutory vesting of property termed as enemy property under the provisions of the Enemy Property Act, 1968 (hereinafter referred to as “the Act” for the sake of convenience) amounts to expropriation which leads to the change of its status inasmuch as its ownership is transferred to the Union of India, is a question that has arisen in the present appeal. If there is a transfer of ownership by its statutory vesting in the Custodian for Enemy Property, whether the Union within the meaning of Article 285 of the Constitution of India would be entitled to exemption from payment of property or other local taxes to Municipal Corporation under the provision of the Act of 1959 is another question that has arisen in the present appeal. Further, despite becoming the property of the Union, whether, clause (2) of Article 285 enables the appellant herein to impose property or other local taxes on the respondent, which is the lessee of the subject property is the third question which arises in this appeal.

Relevant Facts of the Case:

4. The subject property is an Enemy Property within the meaning of the Act bearing House No.31/28/04(31/59) located on Mahatma Gandhi Marg, Lucknow, owned by the Raja of Mahmudabad, who migrated to Pakistan in the year 1947. A portion of the property is currently occupied and utilized for profit-generating purposes by the respondent-assessee, in this case.

4.1 Historically, prior to the fiscal year 1998-1999, the appellant-Municipal Corporation imposed and collected taxes in accordance with Rule No.174 'ka' of the Act of 1959 from the assessee. However, in the fiscal year 1998-1999, it came to the Municipal Corporation's attention that the assessee was operating a commercial establishment within the premises. Consequently, the appellant-Municipal Corporation conducted an assessment based on Capital Value and issued a notice to the assessee regarding the assessed Annual Value.

4.2 It is pertinent to note that respondent No.2, Office of the Custodian of Enemy Property for India (for short 'the

Custodian'), under the Ministry of Commerce, Government of India, issued a Certificate on 03.10.2002, stating that the subject property bearing premises No.53-54, Lawrie Building Hazaratganj, Lucknow, is Enemy Property vested with the Custodian. The Certificate also explicitly stated that the Custodian was obligated to pay house tax and other local taxes on behalf of this property.

4.3 The assessee, along with other tenants, *inter-alia*, contested the assessment orders issued by the Municipal Corporation and approached the High Court of Allahabad at Lucknow by filing Writ Petition being Misc. Bench No. 3979 of 2003. However, this legal action was ultimately uncontested by the tenants and was subsequently dismissed *vide* order dated 30.03.2017.

4.4 Due to outstanding dues of Rs.1,621,987.00/- under the head of House Tax concerning the Enemy Property No.31/58 Hazaratganj, the Municipal Corporation, *vide* letter dated 28.03.2005 notified the District Magistrate, Lucknow, of its

intention to proceed with attachment and sealing of the said premises under Sections 506-509 of the Act of 1959.

4.5 At this juncture, it is necessary to state that Raja Mohammed Amir Mohammad Khan, the son of the Raja of Mahmudabad, who remained in India as an Indian citizen, had been actively seeking the release of enemy properties owned by his late father. He contended that these properties should no longer be vested with the Custodian after his father's demise as they were now vested in him, an Indian citizen. While the Government had agreed to release 25% of these properties, it had not yet acted upon this commitment. In response, Raja Mohammed Amir Mohammad Khan approached the Bombay High Court by way of filing WP No.1524 of 1997. The High Court ruled in his favor, directing the Custodian to surrender possession of the properties to him. Being aggrieved with this decision, the Union of India approached this Court by way of filing SLP (C) No.22452 of 2001, which was converted to Civil Appeal No.2501 of 2002. This Court by its judgment dated 21.10.2005 reported in ***Union of India vs. Raja Mohammad Amir Mohammad Khan***, ***(2005) 8 SCC 696 ('Amir***

Mohammad Khan'), dismissed the appeal preferred by the Union of India and directed the Union of India to get the buildings (residence or offices) vacated from such officers and handover the possession to Raja Mohammed Amir Mohammad Khan within eight weeks. The Court further directed that the officers who are in occupation of buildings for their residences or for their offices shall immediately vacate and hand over the buildings or the properties to the Custodian to enable him to hand over the possession.

4.6 As a result of these orders, proceedings were initiated by various tenants, including respondent No.1. This Court, in SLP (Civil) No.14943 of 2006 *vide* order dated 08.09.2006, clarified its earlier judgment dated 21.10.2005 passed in Civil Appeal No.2501 of 2002. It was clarified by this Court that individuals who were allotted properties by the Custodian or who came into possession after 1965, i.e., following the declaration of Raja Mahmudabad's property as an enemy property and the appointment of the Custodian, were required to vacate these properties. However, persons claiming possession prior to the Custodian's appointment, based on valid tenancy agreements

established by Raja Mahmudabad or his General Power of Attorney, were exempted from this directive. The enquiry conducted in pursuance to the above orders of this Court dated 08.09.2006 resulted in a report in favour of respondent No.1 herein as well as other similarly situated tenants. Ergo, they continued to remain in possession *vide* ***Amir Mohammad Khan.***

4.7 Following these events, on 28.05.2011, the appellant No.3, issued a notice to the assessee, demanding payment of Rs. 7,57,239.00/-. The notice warned of proceedings for recovery and attachment through the District Magistrate under Section 64 if the payment was not settled within three days.

4.8 Aggrieved by the aforesaid action, the assessee approached the High Court of Allahabad at Lucknow by filing Writ Petition being Misc. Bench No.2317 of 2012 seeking the following reliefs:

> "(a) issue a writ of prohibition or a writ, order or direction in the nature of prohibition prohibiting the opposite parties no.1 & 2 not to make any assessment or raise bill for payment of House Tax or Water Tax/or

the property in the name and style of Lawrie Building situated at 50, Hazratganj, Lucknow being the property of Union of India and exempted from State taxation;

(b) issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing the impugned bills/recovery notice in respect of payment of House Tax for the year 2010-11, issued by the opposite party no.I, contained in Annexure Number 1 to the writ petition;

(c) issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing the impugned bills/recovery notice dated 28.5.2011, issued by the opposite party no.2, contained in Annexure Number 2 to the writ petition; and

(d) issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding _the respondent numbers 1 to 3 to refund the amount of Rs.7,29,7461- and Rs.2 lacs deposited by the petitioner along with interest at the rate of 18% per annum and within such time as may kindly be stipulated by this Hon'ble Court"

4.9 During the pendency of the said proceedings, appellants' counsel conceded that, as per the provisions of the Constitution of India, the appellants could not levy taxes on property belonging to the Government of India or Union properties. However, the appellants reserved the right to demand applicable fees for services rendered, such as water and sewerage charges.

4.10 By virtue of the impugned judgment and order dated 29.03.2017, the High Court allowed the writ petition and quashed the recovery notice dated 28.05.2011 on the ground that this case pertained exclusively to taxes, namely House Tax and Water Tax, which are not applicable to the respondent No.1 since the property in question is an enemy property. The High Court further directed respondent No.1 to make representations for the recovery of any amounts previously paid to the appellants.

Hence, the appellants have preferred this civil appeal.

Respondent No.2 has filed his counter affidavit which we have perused.

Submissions:

Submissions of the appellants:

5. Sri Kavin Gulati, learned senior counsel appearing on behalf of the Municipal Corporation, at the outset, submitted that the High Court erroneously held that the House Tax and Water Tax levied herein are not leviable on the assessee respondent herein in respect of property which is admittedly an enemy

property and not property of the Union or Central Government. Therefore, it was submitted:

a) that the property is merely in the custody of the Custodian as specified under the Act. That the preamble of the Act provides that this is "*An Act to provide for the continued vesting of Enemy Property*". That there is no declaration by the Union Government through any legislation declaring the properties to be the property of the Union Government. The only declaration that is contained is to vest the property in the Custodian without a further declaration that the property vests absolutely in the Union Government free from all encumbrances. That whenever the legislature desired that any property vests absolutely in the Central Government, it would be specifically provided so as in the case of Sections 16 and 17 of the Land Acquisition Act, 1984 as well as in the case of Section 269 of the Income Tax Act, 1961. But the same is conspicuous by its absence under the Act under consideration;

b) that a perusal of the scheme of the Act, more particularly, the Preamble, Section 2(c) and its proviso, Sections 15(1), 17(1)(c), and 18 read with Rule 5(1) and proviso 2, 5(2), 5(3) and 15(1) cumulatively would establish that the Custodian has certain obligations regarding Enemy Property. However, the Central Government or the Custodian is not vested with ownership of the same. Section 2(c), which defines enemy property reads that it "means any property for the time being belonging to or held or managed on behalf of an enemy…". That the expression "for the time being" would show that the nature of vesting is not permanent and that the vesting is only for the management of the enemy property;

c) that for the Union Government to claim ownership of enemy property, it must follow the tenets of Article 300-A of the Constitution of India as well as other relevant provisions of the Constitution, which allow the acquisition of private properties only on payment of a fair compensation. This constitutional right is available to all persons and not just to citizens of India. Being aware of

the aforesaid position that enemy properties do not become properties of the Union of India, the legislature has under Section 8(2)(vi) of the Act permitted the Custodian for Enemy Property to deposit Municipal Taxes *vis-à-vis* enemy property vested in him;

d) that even though the Union of India may have overarching control over Enemy Properties, the status of the Union or Central Government is not that of an owner. The Custodian is a statutory authority in whom there is vesting of enemy property, which is different from having ownership over the same. The fact that the Custodian can sell properties to third parties is akin to the powers available to a Receiver or a Liquidator who can exercise similar powers of sale [*vide* ***Delhi Administration vs. Madan Lal Nangia, (2003) 10 SCC 321 ("Madan Lal Nangia")*** Paras 14,15; ***Lieutenant Governor of Delhi vs. Matwal Chand (Dead) through LRs, (2015) 15 SCC 576 ("Matwal Chand")***, Para 14; ***Municipal Commissioner of Dum Dum Municipality vs. Indian Tourism Development Corporation, (1995) 5 SCC 251 ("Dum***

Dum Municipality"), Paras 14,18, 22 and 35 and ***State of Andhra Pradesh vs. V.Subba Rao, 2011 SCC OnLine AP 838 ("Subba Rao")***, Paras 23-25];

e) that Article 285 (1) is not attracted to the present case as the bar under Article 285 (1) is only applicable to the properties 'of the Union'. Even when the property is given on lease by the Union to a private party, then under Section 179 of the Act of 1959, tax is to be levied on the 'occupier'. Reliance was placed on the judgment of the Constitution Bench of this Court in ***Electronics Corporation of India vs. Secretary, Revenue Department, Govt. of Andhra Pradesh, (1999) 4 SCC 458 ("Electronics Corporation")*** wherein it was held that Article 285 will not be applicable in cases when the land belonging to the Government of India was leased out to a Government Company;

f) that this Court in ***Union of India vs. State of Uttar Pradesh, (2007) 11 SCC 324*** held that service charges are a fee and cannot be said to be hit by Article 285 of the Constitution;

g) that pursuant to this Court's orders dated 19.11.2009 in ***Rajkot Municipal Corporation vs. Union of India, Civil Appeal No.9458-63 of 2003 ("Rajkot Municipal Corporation")***, the Ministry of Urban Development, Government of India issued clarification/instructions dated 17.12.2009 to all Secretaries (Urban Development) of all State Governments. The relevant portion of the said clarification/instructions dated 17.12.2009 is as follows:

> "(1) The UOI & its Departments will pay service charges for the services provided by appellant Municipal Corporations. No Property Tax. will be paid by UOI but service charges calculated @ 75%, 50% or 33 1/3% of Property Tax levied on property owners will be paid, depending upon utilisation of full or partial or Nil Services. For this, purpose agreements will be entered into by UOI represented by concerned Departments with respective Municipal Corporation."

h) that due to non-payment of taxes since the year 1998-1999, Jal Sansthan Lucknow appellant No.3 herein, served final Notice under the provisions of the Land Revenue Act of the State of UP to respondent No.1 to pay the pending bills of Water Tax/Sewer Tax/Water price of Rs. 7,57,239/- by 31.03.2011;

i) that it is settled law that the exemption from state taxation of property of the Union Government is only against property taxes and not against all taxes including the commercial taxes and services by local administration/authorities. However, the High Court in its final Judgment and Order dated 29.03.2017, erroneously equated the commercial tenancy of a private person in Enemy Property with the property of the Central Government and accordingly, has quashed the recovery notice dated: 28.05.2011;

j) that the Enemy Property occupied by private persons for private business interests is not synonymous with the interest of the State and is starkly in contrast to the objectives and scheme of the Constitution. Accordingly, it was contended that the interest or property of a private person i.e. respondent No.1 is not exempted from property taxes under Article 285 of the Constitution of India;

k) that the Custodian under the Act is empowered to realize from occupants all taxes, fees and charges and pay to the local authority. In the present case, it is admitted by the

Custodian-respondent No.2 that local taxes are payable to the local authority in respect of the enemy property in question *vide* Certificate dated 03.10.2002;

l) that although the Municipal Commissioner granted a concession before the High Court, the said concession was due to a threat of summoning him to file a personal affidavit. In this regard, learned senior counsel argued that there can be no concession or estoppel against the statute. The power to levy tax is plenary. If the State is held to be bound by a concession made in one case, it would result in serious consequences for the State as such a concession is against public interest. That it was held in ***State of Uttar Pradesh vs. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti, (2008) 12 SCC 675*** that statement, assurance, or even an undertaking of any officer or counsel is irrelevant and that there can be no estoppel against the statute.

With the aforesaid submission, learned senior counsel prayed that the impugned order passed by the High Court may be set aside.

Submissions of the respondent No.1–assessee:

6. *Per contra*, learned senior counsel Sri Guru Krishna Kumar, appearing for the assessee, supported the impugned judgment and submitted that the High Court has proceeded to pass the impugned order on a sound appreciation of the facts of the matter and the applicable law and the same would not call for any interference by this Court. It was further contended as under:

a) that the appellant-Municipal Corporation has approached the court with unclean hands and has deliberately suppressed critical facts. The Municipal Corporation's reliance on the case of ***Amir Mohammad Khan*** is misleading. In this regard, it was submitted that the Municipal Corporation has conspicuously omitted to disclose that the judgment in the aforementioned case has been rendered nugatory due to the promulgation of an Ordinance and the enactment of the Enemy Property (Amendment and Validation) Act, 2017 (hereinafter referred to as, "Amendment Act, 2017"). Further, as a result of the said judgment and various tenants' claims,

respondent No.1 herein approached this Court seeking a clarification. This Court by order dated 08.09.2006, clarified that persons in possession of properties based on duly authenticated tenancy agreements before the appointment of the Custodian declaring the property as enemy property would not be covered by the judgment in ***Amir Mohammad Khan***. Accordingly, the respondent No.1 has continued to be in possession.

b) Reliance was placed on the Amendment Act, 2017 as per which the enemy property vested in the Custodian will remain vested in the Custodian regardless of change in circumstances such as the death of the enemy; the extinction of the enemy status; the winding up of business or a change in nationality of the legal heir and successor. The Act further clarifies that "enemy property vested in the Custodian" includes all rights, titles, and interests in or benefits arising from such property. It includes the right of expropriation of the enemy property, in exercise of the police powers of the State. Also, the principles of

acquisition or requisition and payment of compensation will not apply to such a legislation.

c) that the property in question unequivocally belongs to the Central Government, specifically the Custodian; Enemy Property is thus 'property of the Union.' The assessee is merely a tenant of the Custodian of the Enemy Property and therefore, no taxes can be levied on this property.

d) that Article 285 of the Constitution provides exemption from State taxation in respect of properties of the Union of India. He buttressed his submission by stating that how the property sought to be taxed is being used is irrelevant consideration as far as the interpretation of Article 285 of the Constitution of India was concerned, *vide* ***NDMC vs. State of Punjab, (1997) 7 SCC 339 ("NDMC")***. There is an absolute and emphatic ban on state taxation on the property of the Union and the use of such property is irrelevant.

e) that apart from Article 285, Section 172 of the Act of 1959 specifically provides that the Corporation may impose taxes subject to the provisions of Article 285 of the

Constitution. Likewise, Section 177 of the said Act provides exceptions in respect of the levy of tax amongst others to buildings and land vesting in the Union of India. However, Section 8(2)(vi) of the Act and/or Section 173 of the Act of 1959 cannot amount to "law" authorizing levy of property tax on Union property in terms of Article 285(1) of the Constitution.

f) that property vested in the Union was expressly excluded from the scope of general tax on land and building. In this regard, it was submitted that the impugned judgment was incorrect to the extent that it allows Union property to be taxed on the basis of an extended definition of 'owner', and is in conflict with the judgment of this Court in ***NDMC*** and therefore, not good law. The property in question is indisputably 'property of the Union' as per Article 285 of the Constitution.

g) that the declaration of a property as enemy property would be by exercise of police power of the State. In other words, Article 300-A only limits the powers of the State inasmuch as no person shall be deprived of his property save by

authority of law, implying that there can be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. It was submitted that war between two or more countries is a reason for which no compensation is payable for acquisition of enemy property. The Act as amended has not been (and cannot be) challenged by the Municipal Corporation and has to be treated as valid and be given its full effect.

h) that the joint submission of Municipal Corporation and the Union of India that Section 8(2)(vi) of the Act is a law relatable to Article 285 of the Constitution of India was neither raised before the High Court nor in any pleading before this Court and is a clear afterthought raised for the first time during oral replies;

i) in the alternative, this Court may balance the equities to make the demand prospective considering the grave hardship that the demand of entire past amount would cause to respondent No.1 in case this Court holds against respondent No.1.

With the aforesaid submissions, it was prayed that the present appeal be dismissed as being devoid of any merit and the impugned order of the High Court be affirmed.

Submissions of the respondent No.2:

7. Learned counsel Sri Rupesh Kumar, appearing on behalf of the Custodian of the subject Enemy Property, respondent No.2 herein, submitted as under:

a) that the subject property belongs to a Pakistani National namely, Raja of Mahmudabad and therefore, the property is vested in the Custodian of Enemy Property for India under the Act as amended by the Amendment Act, 2017 and is an undisputed enemy property;

b) that the property belonging to the Union Government is exempted from state taxation under article 285(1) of the Constitution of India. However, there is no such exemption in respect of fee/service charges or other charges and this position has been conclusively decided by this Court in ***Union of India vs. State of Uttar Pradesh, (2007) 11 SCC 324.*** Further, this stand has been reiterated by this Court in ***Rajkot Municipal***

Corporation. Consequently, the Ministry of Urban Development, Government of India *vide* order No.11025/ 26/2003 UCD dated 17.12.2009 issued a clarification/direction regarding the levy of taxes and service charges in light of the judgments passed by this Court.

c) that the respondent No.2 Custodian *vide* his certificate dated 03.10.2002 has already clarified that it is under an obligation to pay house tax and other local taxes as respondent No.1 is running a private business for profit from the said premises and therefore, not similar to a Central Government enterprise and accordingly is liable for taxation by the local authorities;

d) that this Court in the case of ***NDMC*** has held that private parties are not exempted from taxation. Therefore, the private person in occupancy of enemy property for personal benefit is neither synonymous with Central Government nor can he agitate it before the Court.

Learned ASG Sri Balbir Singh also made submissions in the matter later on.

With the aforesaid submissions, it was prayed for this Court to pass orders as this Court may think fit and proper.

Submissions of the respondent No.3 - State of Uttar Pradesh:

8. State of Uttar Pradesh, at the outset, adopted the contentions raised by the appellant-Municipal Corporation and further submitted as under:

a) Admittedly, respondent No.1-assessee is a private entity and a lessee of the Custodian of the enemy property in question and the demand was raised by the appellant-Municipal Corporation on the assessee and not on the Custodian or the Central Government. A private entity, that is running its business, on a property and continuing on lease under the Custodian as per the provisions of the Act cannot claim the benefit of Article 285 of the Constitution of India;

b) that the Union of India has also taken a strident stand that though the property is vested in the Custodian for the enemy property in India, the running of the business by respondent No.1 is not akin or synonymous with the

running of the business by the Central Government and that therefore tax is payable by respondent No.1 to the appellant herein;

c) that vesting, as envisaged under the Act does not make such properties as properties owned by the Central Government or Union properties. In this connection, reference was made to the observations of this Court in ***Amir Mohammad Khan***, which shall be discussed later in the judgment.

In light of the aforesaid submissions, it was urged that the view taken by the Hon'ble High Court in the impugned judgment and order needs to be set aside.

Points for consideration:

9. Having heard learned senior counsel and learned counsel for the respective parties, the following points would arise for our consideration:

1. Whether statutory vesting of enemy property including the subject property in the Custodian amounts to expropriation and transfer of ownership so as to confer ownership of such enemy property on the Custodian?

2. Consequently, if the ownership of such enemy property is conferred on the Custodian for Enemy Property, whether such property becomes Union property within the meaning of Article 285 of the Constitution and therefore, it is exempt from payment of property or other local taxes to the appellant-Municipal Corporation under the provisions of the Act of 1959?
3. Whether despite such enemy property becoming property of the Union, clause (2) of Article 285 of the Constitution enables appellant herein to impose property or other local taxes on the respondent which is lessee of the subject property?
4. Whether the High Court was right in holding in favour of the respondent?
5. What order?

Since these questions are inter-related, they shall be considered together.

Preface:

9.1 Before we proceed further, we would like to preface the discussion with a historical perspective.

9.2 Jean-Jacques Rousseau in his treatise *the Social Contract* said that *"War is constituted by a relation between things, and not between persons… War then is a relation, not between man and man, but between State and State…"* The general aim of the administration of enemy property is to eliminate enemy influence from the national economy. The mischief that such state instruments seek to cure is the provision of aid and comfort to the enemy, for instance, through the making available of funds for war financing. Enemy property can be disposed of by various means including custodianship, liquidation, expropriation, confiscation or nationalization. The means of custodianship imply a fiduciary administration. The whole *raison d'etre* of a statutory regime that seeks to administer enemy property through a custodianship is to preserve and protect the properties until the war is over. After all, the law of settlement of enemy property is governed not only by considerations of diplomatic strategy but also by fundamental principles of fair governance.

9.3 In 1962, in the wake of the Chinese aggression, the Custodian of Enemy Property for India was called upon to take charge of the Chinese assets in India with the object of vesting the movable and immovable properties of the Chinese subjects left in India under the Defence of India Rules, 1962 specifying the enemy nationals and the properties held by them. Similarly, in the wake of the Indo-Pak war of 1965 and 1971, there was migration of people from India to Pakistan. Under the Defence of India Rules framed under the Defence of India Act, 1962, the Government of India took over the properties and companies of such persons who had taken Pakistani nationality.

9.4 At this juncture, we may notice the expression 'on behalf of an enemy' occurring in the definition of enemy property in Rule 133-I of Defence of India (Amendment) Rules, 1962, and Subrule 4 of Rule 138 of Defence of India Rules, 1971 implying that the enemy property is only held and managed by the Custodian for a specific purpose. We ought to appreciate that the Statement of Objects and Reasons of the Enemy Property Act, 1968 intend to continue the vesting and maintenance of

the properties by the Custodian of Enemy Property until the Government of India arrives at a settlement with the Governments of enemy countries. The intent of the Parliament is further illuminated by the Tashkent Declaration by India and Pakistan dated January 10, 1966, which included a clause stating that the two countries would discuss the return of the properties and assets taken over by either side in connection with the conflict.

Legal framework:

Provisions of the Act:

10. The Parliament has enacted the said Act to provide for the continued vesting of enemy property vested in the Custodian of Enemy Property for India under the Defence of India Rules, 1962 and the Defence of India Rules, 1971 and for matters connected therewith.

10.1 Part IV of the Defence of India Rules, 1962 deals *inter alia* with restriction of movements and activities of persons. While Part XIV-A deals with control of trading with enemy, Part XIV-B deals with control of enemy firms. Section 133-A defines the

expression 'enemy' *inter alia* to mean any individual resident in enemy territory. In Part XIV-B, the definition of enemy subject and enemy firm have been given and also the definition of enemy property. Under the said Rules, the Controllers, Deputy Controllers or Inspectors appointed by the Central Government had to carry out the supervision of firms suspected to be enemy firms and do all other ancillary and incidental acts as delineated under the said Rules.

10.2 Similarly, under the Defence of India Act, 1971, Part IV deals with restriction of movement and activities of person. Part XVI deals with control of trading with enemy and the definition of enemy is in Rule 130 of the said Rules and similarly, Controllers or Deputy Controller were appointed for controlling the trading with enemy. Part XVII deals with control of enemy firms to carry out the business of enemy firms, etc. Rule 151 of the 1971 Rules clearly states with a view to preserving enemy property, the Central Government may appoint a Custodian of Enemy Property for India and one or more Deputy Custodians and Assistant Custodians of Enemy Property for such local areas as may be prescribed.

The Act under consideration is essentially to provide for the continued vesting of enemy property vested in the Custodian of Enemy Property for India under the Defence of India Rules, 1962, and the Defence of India Rules, 1971 and for matters connected therewith.

10.3 At this stage, we can refer to the relevant provisions of the Act. The expression "Custodian", "enemy" or "enemy subject" or "enemy firm" and "enemy property" are defined as under:

> "**2. Definitions**.- In this Act, unless the context otherwise requires,-
>
> (a) "Custodian" means the Custodian of Enemy Property for India appointed or deemed to have been appointed under section 3 and includes a Deputy Custodian and an Assistant Custodian of Enemy Property appointed or deemed to have been appointed under that section;
>
> (b) "enemy" or "enemy subject" or "enemy firm" means a person or country who or which was an enemy, an enemy subject including his legal heir and successor whether or not a citizen of India or the citizen of a country which is not an enemy or the enemy, enemy subject or his legal heir and successor who has changed his nationality or an enemy firm, including its succeeding firm whether or not partners or members of such succeeding firm are citizen of India or the citizen of a country which is not an enemy or such firm which has changed its nationality, as the case may be, under the Defence of India Act, 1962, and the Defence of India Rules, 1962 or the Defence of India Act, 1971 (42 of 1971) and the Defence of India Rules, 1971, does

not include a citizen of India other than those citizens of India, being the legal heir and successor of the "enemy" or "enemy subject" or "enemy firm";

(c) “enemy property” means any property for the time being belonging to or held or managed on behalf of an enemy, an enemy subject or an enemy firm:

Provided that where an individual enemy subject dies in the territories to which this Act extends, or dies in the territories to which the Act extends or dies in any territory outside India, any property which immediately before his death, belonged to or was held by him or was managed on his behalf, may, notwithstanding his death, continue to be regarded as enemy property for the purposes of this Act;”

10.4 Section 3 of the Act deals with appointment of Custodian of Enemy Property for India and Deputy Custodian, while Section 4 deals with appointment of Inspectors of Enemy Property. Section 5 states that property vested in the Custodian of Enemy Property for India under the Defence of India Rules, 1962 to continue to vest in the Custodian. The said provisions read as under:

“3. Appointment of Custodian of Enemy Property for India and Deputy Custodian, etc.—The Central Government may, by notification in the Official Gazette, appoint a Custodian of Enemy Property for India and one or more Deputy Custodians and Assistant Custodians of Enemy Property for such local areas as may be specified in the notification:

Provided that the Custodian of Enemy Property for India and any Deputy Custodian or Assistant

Custodian of Enemy Property appointed under the Defence of India Rules, 1962 or the Defence of India Rules, 1971, as the case may be, shall be deemed to have been appointed under this section.

4. Appointment of Inspectors of Enemy Property.— The Central Government may, either generally or for any particular area, by notification in the Official Gazette, appoint one or more Inspectors of Enemy Property for securing compliance with the provisions of this Act and may, by general or special order, provide for the distribution and allocation of the work to be performed by them for securing such compliance:

Provided that every Inspector of Enemy Firms appointed under the Defence of India Rules, 1962 or the Defence of India Rules, 1971, as the case may be, shall be deemed to be an Inspector of Enemy Property appointed under this section.

5. Property vested in the Custodian of Enemy Property for India under the Defence of India Rules, 1962 to continue to vest in Custodian.—(1) Notwithstanding the expiration of the Defence of India Act, 1962 (51 of 1962), and the Defence of India Rules, 1962, all enemy property vested before such expiration in the Custodian of Enemy Property for India appointed under the said Rules and continuing to vest in him immediately before the commencement of this Act, shall, as from such commencement, vest in the Custodian.

(2) Notwithstanding the expiration of the Defence of India Act, 1971 (42 of 1971) and the Defence of India Rules, 1971, all enemy property vested before such expiration in the Custodian of Enemy Property for India appointed under the said Rules and continuing to vest in him immediately before the commencement of the Enemy Property (Amendment) Act, 1977 (40 of 1977) shall, as from such commencement, vest in the Custodian.

(3) The enemy property vested in the Custodian shall, notwithstanding that the enemy or the enemy subject or the enemy firm has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy, continue to remain, save as otherwise provided in this Act, vested in the Custodian.

Explanation. – For the purposes of this sub-section, "enemy property vested in the Custodian" shall include and shall always be deemed to have been included all rights, titles, and interest in, or any benefit arising out of, such property vested in him under this Act."

10.5 Section 5A and Section 5B were inserted with retrospective effect from 07.01.2016 and 10.07.1968 by Act 3 of 2017. They read as under:

"5A. Issue of certificate by Custodian. —The Custodian may, after making such inquiry as he deems necessary, by order, declare that the property of the enemy or the enemy subject or the enemy firm described in the order, vests in him under this Act and issue a certificate to this effect and such certificate shall be the evidence of the facts stated therein.

5B. Law of succession or any custom or usage not to apply to enemy property.—Nothing contained in any law for the time being in force relating to succession or any custom or usage governing succession of property shall apply in relation to the enemy property under this Act and no person (including his legal heir and successor) shall have any right and shall be deemed not to have any right (including all rights, titles and interests or any benefit arising out of such property) in relation to such enemy property.

Explanation.—For the purposes of this section, the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law in the matters of succession of property."

10.6 Section 6 has been substituted by Section 6 of Act 3 of 2017 with retrospective effect from 10.07.1968. Prior to its substitution, it read as under:

"6. Prohibition to transfer any property vested in Custodian by an enemy, enemy subject or enemy firm.—(1) No enemy or enemy subject or enemy firm shall have any right and shall never be deemed to have any right to transfer any property vested in the Custodian under this Act, whether before or after the commencement of this Act and any transfer of such property shall be void and shall always be deemed to have been void.

(2) Where any property vested in the Custodian under this Act had been transferred, before the commencement of the Enemy Property (Amendment and Validation) Act, 2017, by an enemy or enemy subject or enemy firm and such transfer has been declared, by an order, made by the Central Government, to be void, and the property had been vested or deemed to have been vested in the Custodian by virtue of the said order made under section 6, as it stood before its substitution by section 6 of the Enemy Property (Amendment and Validation) Act, 2017 such property shall, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, continue to vest or be deemed to have been vested in the Custodian and no person (including an enemy or enemy subject or enemy firm) shall have

any right or deemed to have any right (including all rights, titles and interests or any benefit arising out of such property) over the said property vested or deemed to have been vested in the Custodian."

10.7 Section 7 deals with payment to Custodian of money otherwise payable to an enemy, enemy subject or enemy firm, the same reads as under:

> **"7. Payment to Custodian of money otherwise payable to an enemy, enemy subject or enemy firm. -** (1) Any sum payable by way of dividend, interest, share profits or otherwise to or for the benefit of an enemy or an enemy subject or an enemy firm shall, unless otherwise ordered by the Central Government, be paid by the person by whom such sum would have been payable but for the prohibition under the Defence of India Rules, 1962 or the Defence of India Rules, 1971, as the case may be, to the Custodian or such person as may be authorised by him in this behalf and shall be held by the Custodian or such person subject to the provisions of this Act.
>
> (2) In cases in which money would, but for the prohibition under the Defence of India Rules, 1962 or the Defence of India Rules, 1971, as the case may be, be payable in a foreign currency to or for the benefit of an enemy or an enemy subject or an enemy firm (other than cases in which money is payable under a contract in which provision is made for a specified rate of exchange), the payment shall be made to the Custodian in rupee currency at the middle official rate of exchange fixed by the Reserve Bank of India on the date on which the payment became due to that enemy, enemy subject or enemy firm.
>
> (3) The Custodian shall, subject to the provisions of section 8, deal with any money paid to him under the

Defence of India Rules, 1962 or the Defence of India Rules, 1971 as the case may be or under this Act and any property vested in him under this Act in such manner as the Central Government may direct."

10.8 The powers of Custodian in respect of enemy property vested in him as amended are delineated in Section 8 which reads as under:

> **"8. Power of Custodian in respect of enemy property vested in him.—** (1) With respect to the property vested in the Custodian under this Act, the Custodian may take or authorise the taking of such measures as he considers necessary or expedient for preserving such property till it is disposed of in accordance with the provisions of this Act.
>
> (2) Without prejudice to the generality of the foregoing provision, the Custodian or such person as may be specifically authorised by him in this behalf, may, for the said purpose,—
>
> (i) carry on the business of the enemy;
>
> (ia) fix and collect the rent, standard rent, lease rent, licence fee or usage charges, as the case may be, in respect of enemy property;
>
> (ii) take action for recovering any money due to the enemy;
>
> (iii) make any contract and execute any document in the name and on behalf of the enemy;
>
> (iv) institute, defend or continue any suit or other legal proceeding, refer any dispute to arbitration and compromise any debts, claims or liabilities;
>
> (iva) secure vacant possession of the enemy property by evicting the unauthorised or illegal occupant or

trespasser and remove unauthorised or illegal constructions, if any.

(v) raise on the security of the property such loans as may be necessary;

(vi) incur out of the property any expenditure including the payment of any taxes, duties, cesses and rates to Government or to any local authority and of any wages, salaries, pensions, provident fund contributions to, or in respect of, any employee of the enemy and the repayment of any debts due by the enemy to persons other than enemies;

(vii) transfer by way of sale, mortgage or lease or otherwise dispose of any of the properties;

(viii) invest any moneys held by him on behalf of enemies for the purchase of Treasury Bills or such other Government securities as may be approved by the Central Government for the purpose;

(ix) make payments to the enemy and his dependents;

(x) make payments on behalf of the enemy to persons other than those who are enemies, of dues outstanding on the 25th October, 1962 or on the 3rd December, 1971; and

(xi) make such other payments out of the funds of the enemy as may be directed by the Central Government."

10.9 Section 8A deals with sale of property by Custodian which has been inserted with retrospective effect from 07.01.2016 while Section 10A deals with power to issue certificate of sale. The same are extracted as under:

"8A. Sale of property by Custodian.—(1) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority

or any law for the time being in force, the Custodian may, within such time as may be specified by the Central Government in this behalf, dispose of whether by sale or otherwise, as the case may be, with prior approval of the Central Government, by general or special order, enemy properties vested in him immediately before the date of commencement of the Enemy Property (Amendment and Validation) Act, 2017 in accordance with the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2017.

(2) The Custodian may, for the purpose of disposal of enemy property under sub-section (1), make requisition of the services of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

(3) The Custodian shall, on disposal of enemy property under sub-section (1) immediately deposit the sale proceeds into the Consolidated Fund of India and intimate details thereof to the Central Government.

(4) The Custodian shall send a report to the Central Government at such intervals, as it may specify, for the enemy properties disposed of under sub-section (1), containing such details, (including the price for which such property has been sold and the particulars of the buyer to whom the properties have been sold or disposed of and the details of the proceeds of sale or disposal deposited into the Consolidated Fund of India) as it may specify.

(5) The Central Government may, by general or special order, issue such directions to the Custodian on the matters relating to disposal of enemy property under sub-section (1) and such directions shall be binding upon the Custodian and the buyer of the enemy properties referred to in that sub-section and other persons connected to such sale or disposal.

(6) The Central Government may, by general or special order, make such guidelines for disposal of enemy property under sub-section (1).

(7) Notwithstanding anything contained in this section, the Central Government may direct that disposal of enemy property under sub-section (1) shall be made by any other authority or Ministry or Department instead of Custodian and in that case all the provisions of this section shall apply to such authority or Ministry or Department in respect of disposal of enemy property under sub-section (1).

(8) Notwithstanding anything contained in sub-sections (1) to (7), the Central Government may deal with or utilise the enemy property in such manner as it may deem fit.

x x x

10A. Power to issue certificate of sale.—(1) Where the Custodian proposes to sell any enemy immovable property vested in him, to any person, he may on receipt of the sale proceeds of such property, issue a certificate of sale in favour of such person and such certificate of sale shall, notwithstanding the fact that the original title deeds of the property have not been handed over to the transferee, be valid and conclusive proof of ownership of such property by such person.

(2) Notwithstanding anything contained in any law for the time being in force, the certificate of sale, referred to in sub-section (1), issued by the Custodian shall be a valid instrument for the registration of the property in favour of the transferee and the registration in respect of enemy property for which such certificate of sale had been issued by the Custodian, shall not be refused on the ground of lack of original title deeds in respect of such property or for any such other reason."

10.10 Section 9 states that all enemy property vested in the Custodian under this Act shall be exempt from attachment, seizure or sale in execution of a decree of a civil court or orders of any other authority. The same is extracted as under:

> **"9. Exemption from attachment, etc. -** All enemy property vested in the Custodian under this Act shall be exempt from attachment, seizure or sale in execution of decree of a civil court or orders of any other authority."

10.11 Section 12 speaks of protection for complying with orders of Custodian and the same reads as under:

> **"12. Protection for complying with orders of Custodian.-** Where any order with respect to any money or property is addressed to any person by the Custodian and accompanied by a certificate of the Custodian that the money or property is money or property vested in him under this Act, the certificate shall be evidence of the facts stated therein and if that person complies with the orders of the Custodian, he shall not be liable to any suit or other legal proceeding by reason only of such compliance."

10.12 Section 13 deals with validity of action taken in pursuance of orders of Custodian while Section 14 deals with proceeding against companies whose assets vest in custodian, which read as under:

"13. Validity of action taken in pursuance of orders of Custodian.—Where under this Act,—

(a) any money is paid to the Custodian; or

(b) any property is vested in the Custodian or an order is given to any person by the Custodian in relation to any property which appears to the Custodian to be enemy property vested in him under this Act,

neither the payment, vesting nor order of the Custodian nor any proceedings in consequence thereof shall be invalidated or affected by reason only that at a material time,—

(i) some person who was or might have been interested in the money or property, and who was an enemy or an enemy firm, has died or had ceased to be an enemy or an enemy firm; or

(ii) some person who was so interested and who was believed by the Custodian to be an enemy or an enemy firm, was not an enemy or an enemy firm."

14. Proceedings against companies whose assets vest in Custodian - Where the enemy property vested in the Custodian under this Act consists of assets of a company, no proceeding, civil or criminal, shall be instituted under the Companies Act, 1956 (1 of 1956), against the company, or any director, manager or other officer thereof except with the consent in writing of the Custodian."

10.13 Section 17 pertains to levy of fees and the same reads as under:

"**17. Levy of fees.—** (1) There shall be levied by the Custodian fees equal to five per centum of—

(a) the amount of moneys paid to him;

(b) the proceeds of the sale or transfer of any property which has been vested in him under this Act; and

(c) the value of the residual property, if any, at the time of its transfer to the original owner or other person specified by the Central Government under section 18:

Provided that in the case of an enemy whose property is allowed by the Custodian to be managed by some person specially authorised in that behalf, there shall be levied a fee of five per centum of the gross income of the enemy or such less fee as may be specifically fixed by the Central Government after taking into consideration the cost of direct management incurred by that Government, the cost of superior supervision and any risks that may be incurred by that Government in respect of the management:

Provided further that the Central Government may, for reasons to be recorded in writing, reduce or remit the fees leviable under this sub-section in any special case or class of cases.

Explanation.—In this sub-section "gross income of the enemy" means income derived out of the properties of the enemy vested in the Custodian under this Act.

(2) The value of any property for the purpose of assessing the fees shall be the price which, in the opinion of the Central Government or of an authority empowered in this behalf by the Central Government, such property would fetch if sold in the open market.

(3) The fees in respect of property may be levied out of any proceeds of the sale or transfer thereof or out of any income accrued therefrom or out of any other property belonging to the same enemy and vested in the Custodian under this Act.

(4) The fees levied under this section shall be credited to the Central Government."

10.14 Section 18 deals with transfer of property vested as enemy property in certain cases and the said provision reads as under:

> **"18. Transfer of property vested as enemy property in certain cases.—**The Central Government may, on receipt of a representation from a person, aggrieved by an order vesting a property as enemy property in the Custodian within a period of thirty days from the date of receipt of such order or from the date of its publication in the Official Gazette, whichever is earlier and after giving a reasonable opportunity of being heard, if it is of the opinion that any enemy property vested in the Custodian under this Act and remaining with him was not an enemy property, it may by general or special order, direct the Custodian that such property vested as enemy property in the Custodian may be transferred to the person from whom such property was acquired and vested in the Custodian."

10.15 Section 18A, Section 18B and Section 18C though related to Section 18, however, are not relevant for the purposes of this case. Section 22 gives overriding effect to this Act and the same reads as under:

"22. Effect of laws inconsistent with the Act.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, (including any law of succession or any custom or usage in relation to succession of property)."

Section 22A is a validation clause which reads as under:

"22A. Validation.—Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—

(a) the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2017, shall have and shall always be deemed to have effect for all purposes as if the provisions of this Act, as amended by the said Act, had been in force at all material times;

(b) any enemy property divested from the Custodian to any person under the provisions of this Act, as it stood immediately before the commencement of the Enemy Property (Amendment and Validation) Act, 2017, shall stand transferred to and vest or continue to vest, free from all encumbrances, in the Custodian in the same manner as it was vested in the Custodian before such divesting of enemy property under the provisions of this Act, as if the provisions of this Act, as amended by the aforesaid Act, were in force at all material times;

(c) no suit or other proceedings shall, without prejudice to the generality of the foregoing provisions, be maintained or continued in any court or tribunal or authority for the enforcement of any decree or order or direction given by such court or tribunal or authority directing divestment of enemy property from the Custodian vested in him under section 5 of this Act, as it stood before the commencement of the Enemy Property (Amendment and Validation) Act, 2017, and such enemy property shall continue to vest in the Custodian under section 5 of this Act, as amended by

the aforesaid Act, as the said section, as amended by the aforesaid Act was in force at all material times;

(d) any transfer of any enemy property, vested in the Custodian, by virtue of any order of attachment, seizure or sale in execution of decree of a civil court or orders of any tribunal or other authority in respect of enemy property vested in the Custodian which is contrary to the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2017, shall be deemed to be null and void and notwithstanding such transfer, continue to vest in the Custodian under this Act."

10.16 Section 24 states that certain orders made under the Defence of India Rules, 1962, to continue in force and the same is extracted as under:

"24. Certain orders made under the Defence of India Rules, 1962, to continue in force. - (1) Every order which was made under the Defence of India Rules, 1962, by the Central Government or by the Custodian of Enemy Property for India appointed under those Rules, relating to enemy property and which was in force immediately before the expiration thereof shall, in so far as such order is not inconsistent with the provisions of this Act, be deemed to continue in force and to have been made under this Act.

(2) Every order which was made under the Defence of India Rules, 1971 by the Central Government or by the Custodian of Enemy Property for India appointed under those rules relating to enemy property and which was in force immediately before the expiration thereof shall, in so far as such order is not inconsistent with the provisions of this Act, be deemed to continue in force and to have been made under this Act."

The Enemy Property Rules, 2015:

10.17 The Enemy Property Rules, 2015 deal with procedure for identification of immovable property, procedure for declaration and vesting of the enemy property. While Rule 5 deals with procedure for preservation, management and control of immovable property, Rule 6 deals with procedure for taking possession of moveable property; on the other hand, Rule 7 deals with procedure for taking possession of certain moveable property. Rule 15 deals with procedure for divestment of enemy property vested in Custodian which reads as under:

> **"15. Procedure for divestment of enemy property vested in Custodian.-** (1) The Central Government may, on a reference or complaint or on its own motion, initiate process for divestment of an enemy property vested in the Custodian, to the owner thereof or to such other person.
>
> (2) An officer of the rank of Joint Secretary or above in the Government of India shall be the Chairperson of the proceedings for divestment of the enemy property under this rule.
>
> (3) The Chairperson shall give thirty days' notice to all concerned including the Custodian, requiring them to submit a reply, produce all documentary evidence and appear in person or through authorised representative:
>
> Provided that if any party fails to appear on the date fixed for hearing, then a second and final notice shall

be served through registered post and if he again fails to appear after the second notice, then the proceedings shall be heard *ex parte*:

Provided further that the Chairperson shall record the reasons for such *ex parte* proceedings.

(4) The notices shall be served on all concerned parties before each hearing.

(5) The presenting officer who has been engaged for presentation of the case on behalf of the Central Government, shall examine such witnesses and documentary evidences in respect of the property as he thinks fit.

(6) On completion of the proceedings, the details including depositions shall be furnished to the parties.

(7) The Chairperson, after examining the evidence and calling for further reports and inquiry as may be necessary, shall pass such orders thereon as it thinks fit, and a copy of the said orders shall be sent to the parties."

11. Articles 285, 289, 296 and 300-A of the Constitution of India are relevant while interpreting the Act and read as under:

"**285. Exemption of property of the Union from State taxation**.—(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.

x x x

289. Exemption of property and income of a State from Union taxation.— (1) The property and income of a State shall be exempt from Union taxation.

(2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.

(3) Nothing in clause (2) shall apply to any trade or business, or to be incidental to the ordinary functions of Government."

x x x

296. Property accruing by escheat or lapse or as bona vacantia. - Subject as hereinafter provided, any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as *bona vacantia* for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union:

Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held were purposes of the Union or of a State, vest in the Union or in that State.

Explanation: In this article, the expressions "Ruler" and "Indian State" have the same meanings as in article 363.

x x x

300-A. Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law."

12. The Uttar Pradesh Municipalities Act, 1916 (hereinafter referred to as "Act of 1916") consolidates and amends the law relating to Municipalities in the erstwhile United Provinces and presently State of Uttar Pradesh. The city of Lucknow was a municipality and later was constituted as Nagar Nigam or Corporation under the Act of 1959 and till then the Act of 1916 was applicable. Hence, the relevant provisions of the Act of 1916 are extracted as under:

"128. Taxes which may be imposed.- (1) Subject to any general rules or special order of the State Government in this behalf, the taxes which a Municipality may impose in the whole or part of a municipality are,-

(i) a tax on the annual value of building or lands or of both;
(ii) a tax on trades and callings carried on within the municipal limits and deriving special advantages from, or imposing special burdens on municipal services;
(iii) a tax on trades, callings and vocations including all employments remunerated by salary or fees;

(iii-a) a theatre tax which means a tax on amusements or entertainments;

(iv) a tax on vehicles and other conveyances plying for hire or kept within the municipality or on boats moored therein;

(v) a tax on dogs kept within the municipality;

(vi) a tax on animals used for riding, driving, draught or burden, when kept within the municipality;

(vii) [***]

(viii) [***]

(ix) a tax on inhabitants assessed according to their circumstances and property;

(x) a water tax on the annual value of buildings or lands or of both;

(x-a) a drainage tax on the annual value of buildings leviable on such buildings as are situated within a distance, to be fixed by rule in this behalf for each municipality from the nearest sewer line;

(xi) a scavenging tax;

(xii) a conservancy tax for the collection, removal and disposal of excrementious and polluted matter from privies, urinals, cesspools;

(xiii) [***]

(xiii-A) [***]

(xiii-B) a tax on deeds of transfer of immovable property situated within the limits of the municipality;

(xiv) [***]

(2) Provided that taxes under clauses (iii) and (ix) of sub-section (1) shall not be levied at the same time [***] nor shall the taxes under clauses (x-a) and (xii) of sub-section (1) be levied at the same time;

Provided further that no tax under clause (xiii-B) of sub-section (1) shall be levied on deeds of transfer of immovable property situated within such area of the municipality as forms part of the local area of any

Improvement Trust created under Section 3 of the U.P. Town Improvement Act, 1919 (UP Act No. VIII of 1919):

Provided also that no tax under clause (iv) of sub-section (1) shall be levied in respect of any motor vehicle.

(3) Nothing in this section shall authorize the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution:

Provided that a Municipality which immediately before the commencement of the Constitution was lawfully levying any such tax under this section as then in force, may continue to levy that tax until provision to the contrary is made by Parliament.

(i) A tax on the annual value of buildings or lands or both;
(ii) A water tax on the annual value of buildings or lands or both;
(iii) A drainage tax on the annual value of buildings leviable on such buildings as are situated within a distance, to be fixed by rules in this behalf for each municipality from the nearest sewer lines;
(iv) A conservancy tax for the collection, removal and disposal of excrementious and polluted matter from privies, urinals, cesspools;

(2) x x x

(3) The municipal taxes shall be assessed and levied in accordance with the provisions of this Act and the rules and bye-laws framed thereunder.

(4) Nothing in this section shall authorize the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution:

Provided that a Municipality which immediately before the commencement of the Constitution was lawfully levying any such tax under this section as then in force, may continue to levy that tax until provisions to the contrary is made by the Parliament.

x x x

129-A. Levy of tax on annual value of buildings or lands or both.- The Tax on annual value of buildings or lands or both shall be levied in respect of all buildings and lands situated in the municipal limit except,-

x x x

(e) building and land vested in the Union of India, except where provisions of clause (2) of Article 285 of the Constitution of India, apply;"

12.1 Section 140 of the said Act defines annual value.

13. The relevant provisions of the Act of 1959 are extracted as under as they are applicable to Lucknow Nagar Nigam (Municipal Corporation) – the appellant herein:

"172. Taxes to be imposed under this Act. – (1) For the purposes of this Act and subject to the provisions thereof and of Article 285 of the Constitution of India the Corporation shall impose the following taxes, namely-

(a) property taxes;

x x x

(3) The Corporation taxes shall be assessed and levied in accordance with the provisions of this Act and the rules and bye-laws framed thereunder.

(4) Nothing in this section shall authorize the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution of India:

Provided that where any tax was being lawfully levied in the area included in the City immediately before the commencement of the Constitution of India such tax may continue to be levied and applied for the purposes of this Act until provision to the contrary is made by Parliament.

173. Property taxes leviable. – (1) For the purposes of sub-section (1) of Section172 property taxes shall comprise the following taxes which shall, subject to the exceptions, limitations and conditions hereinafter provided, be levied on buildings and lands in the City -

(a) a general tax which may be levied, if the Corporation so determines, on a graduated scale;

(b) a water tax;

(c) drainage tax leviable in areas provided with sewer system by the Corporation;

(d) a conservancy tax in areas in which the Corporation undertakes, the collection; removal and disposal of excrementitious and polluted matter from privies, urinals and cesspools.

(2) Save as otherwise expressly provided in this Act or rules made thereunder, these taxes shall be levied on the annual value of buildings or land as the case may be:

Provided that the aggregate of the property taxes shall in no case be less than 15 per cent nor more than 25 per cent of the annual value of the building of land or both assessed to such taxes.

174. Definition of "Annual Value" – "Annual value" means –

(a) in the case of railway stations, colleges, schools, hostels, factories, commercial buildings, and other non-residential buildings, a proportion not below 5 per cent, to be fixed by rule made in this behalf of the sum obtained by adding the estimated present cost of erecting the building, less depreciation at a rate to be fixed by rules, to the estimated value of the land appurtenant thereto; and

(b) in the case of a building or land not falling within the provisions of clause (a), the gross annual rent for which such building exclusive of furniture or machinery therein, or such land is actually let, or where the building or land is not let or in the opinion of the assessing authority is let for a sum less than its fair letting value, might reasonably be expected to be let from year to year.

Provided that where the annual value of any building would, by reason of exceptional circumstances, in the opinion of the Corporation, be excessive if calculated in the aforesaid manner, the Corporation may fix the annual value at any less amount which appears to it equitable.

Provided further that where the Corporation so resolves, the annual value in the case of owner occupied buildings and land shall for the purposes of assessment of property taxes be deemed to be 25 per cent less than the annual value otherwise determined under this Section.

175. Restrictions on imposition of water tax.-The imposition of a tax under clause (b) of sub-section (1) of Section 173 shall be subject to the restriction that the tax shall not be imposed –

(i) on any land exclusively for agricultural purposes, unless the water is supplied by the Corporation for such purposes; or

(ii) on a plot of land or building the annual value whereof does not exceed rupees three hundred and sixty and to which no water is supplied by the Corporation; or

(iii) on any plot or building, no part of which is within the radius prescribed for the City, from the nearest stand-pipe or other waterworks whereat water is made available to the public by the Corporation.

Explanation. - For the purposes of this section –

(a) 'building' shall include the compound, if any, thereof, and, where there are several buildings in a common compound, all such buildings, and the common compound;

(b) 'a plot of land' means any piece of land held by a single occupier, or held in common by several co-occupiers, whereof no one portion is entirely separated from any other portion by the land of another occupier or of other occupiers or by public property.

x x x

177. General tax on what premises to be levied. – The general tax shall be levied in respect of all buildings and lands in the City except -

x x x

(f) buildings and lands vesting in the Union of India except where provisions of clause (2) of Article 285 of the Constitution of India apply;

x x x

179. Primary responsibility for certain property taxes on annual value. – (1) Except where otherwise prescribed, every tax (other than a drainage tax or a conservancy tax) on the annual value of buildings or lands shall be leviable primarily from the actual

occupier of the property upon which the tax is assessed, if he is the owner of the buildings or lands or holds them on a building or other lease from the Central or the State Government or from the Corporation, or on a building lease from any person.

(2) In any other case the tax shall be primarily leviable as follows, namely, -

(a) if the property is let from the lessor;

(b) if the property is sublet from the superior lessor;

(c) if the property is unlet from the person in whom the right to let the same vests.

(d) if the property is let in pursuance of an order under the Uttar Pradesh Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972, from the tenant.

(3) On failure to recover any sum due on account of such tax from the person primarily liable, the Mukhya Nagar Adhikari may recover from the occupier of any part of the buildings or lands in respect of which it is due that portion thereof which bears to the whole amount due the same ratio as the rent annually payable by such occupier bears to the aggregate amount of rent payable in respect of the whole of the said building or lands, or to the aggregate amount of the letting value thereof in the authenticated assessment list.

(4) An occupier who makes any payment for which he is not primarily liable under the foregoing provisions shall, in the absence of any contract to the contrary, be entitled to be reimbursed by the person primarily liable.

180. Liability for payment of other such taxes. – (1) A drainage tax, or a conservancy tax on the annual value of buildings or lands shall be levied from the

actual occupier of the property upon which the taxes are assessed:

Provided that, where such property is let to more occupiers than one, the Mukhya Nagar Adhikari may at his option levy the tax from the lessor instead of from the actual occupiers.

(2) A lessor from whom a tax is levied under the proviso to sub-section (1) may, in the absence of a contract to the contrary, recover the tax from any or all of the actual occupiers.

181. Property taxes to be a first charge on premises on which they are assessed. – (1) Property taxes due under this Act in respect of any building or land shall, subject to the prior payment of the land revenue, if any, due to the State Government thereupon, be a first charge, in the case of any building or land held immediately from the State, upon the interest in such building or land of the person liable for such taxes and upon the movable property, if any, found within or upon such building or land and belonging to such person; and, in the case of any other building or land, upon the said building or land and belonging to the person liable for such taxes.

Explanation. - The term "property taxes" in this section shall be deemed to include any charges payable for water supplied to any premises and the costs of recovery of property taxes as specified in the rules.

(2) In any decree in a suit for the enforcement of the charge created by subsection (1), the Court may order the payment to the Corporation of interest on the sum found to be due at such rate as the Court deems reasonable from the date of the institution of the suit until realization, and such interest and the cost of enforcing the said charge, including the costs of the suit and the cost of bringing the premises or movable

property in question to sale under the decree, shall, subject as aforesaid, be a first charge on such premises and movable property along with the amount found to be due, and the Court may direct payment thereof to be made to the Corporation out of the sale proceeds."

Legal status of the Custodian under the Act:

14. At this stage, it would be useful to dilate on the jurisprudential aspect of ownership of property and examine the nuances thereof *vis-à-vis* the status of the Custodian of Enemy Property for India under the Act.

14.1 According to Salmond on Jurisprudence, the expression 'ownership' in a generic sense, extends to all classes of rights, whether proprietary or personal, *in rem* or *in personam, in re propria or in re aliena.* Every man is the owner of the rights which he owns. Ownership in its generic sense as a relation in which a person stands to any right vested in him, is opposed to two other possible relations between a person and a right. In the first place, it is opposed to possession. A man has possessory right without owning it or secondly, he may own a right without possessing it. Thirdly, the ownership and

possession may be united as they usually are, in the context of *de jure* and the *de facto* relation being co-existent or coincident.

14.2 In the first of the above, possession is a *de facto* relationship while the second is *de jure* ownership or relationship. In the second sense, the ownership of a right is opposed to the encumbrance of it. The owner of the right is he, in whom the right itself is vested, while the encumbrancer of it is he, in whom, is vested, not the right itself, but some adverse, dominant and limiting right in respect of it. In law, there are no separate names for every distinct kind of encumbrancer. However, an encumbrance is opposite to ownership; every encumbrancer is nevertheless himself the owner of the encumbrance, that is to say, he, in whom, an encumbrance stands in a definite relation, not merely to it, but also to the right encumbered by it.

How is ownership acquired? :

14.3 Ownership is an important right *vis-à-vis* any property and more so immovable property. What are the modes of acquisition of ownership? Under the provisions of the Transfer

of Property Act, 1882, acquisition of ownership in relation to immovable property is by a transfer or conveyance. The expression "transfer" is defined with reference to the word convey which is an assurance *inter vivos* under the provisions of the said Act. Thus, the transferor must have an interest in the property before he can convey it. A person who has no interest in the property, cannot convey any interest in the property, in other words, he cannot sever himself from it and yet convey it. Further, there are various modes of transfer of immovable property known to law. Section 54 of the Transfer of Property Act defines a sale to be a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. The definition of sale itself indicates that in order to constitute a sale, there must be transfer of ownership from one person to another, i.e., all rights and interests in the property which is possessed by a person are transferred by him with his free consent to another person for a price called consideration. The conveyance has to be regarded in accordance with law. Then only the transaction of sale is complete and title in the property passes from the seller to the buyer. The transferor

cannot retain any part of his interest or right in that property or else it would not be a sale. On the other hand, any transfer by operation of law, or by or in execution of a decree or order of a court within the meaning of Section 2(d) of the Transfer of Property Act are outside the scope of Section 54, and need not be registered. Thus, where the property is sold at a court auction, a certificate of sale issued by the court is enough as the purchaser's document of title. But in order to constitute a sale, the parties must intend to transfer the ownership of the property for a price to be paid in present time or in future. Sub-section (2) of Section 55 states that the seller shall be deemed to contract with the buyer that interest which the seller professes to transfer to the buyer which subsists and he has power to transfer the same. Proviso thereto further states that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it.

14.4 Similarly, gift is the transfer of certain existing movable or immovable property made voluntarily and without

consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void. The donor is the person who gives. Any person who is *sui juris* can make a gift of his property. Therefore, it is only a person who is the owner of the property, can gift his property and according to the provisions of the Transfer of Property Act.

14.5 In the same vein, an exchange is when an exchange of immovable property takes place when two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only. A transfer of property in completion of an exchange can be made only in a manner provided for the transfer of such property by sale. In the case of an exchange also, the person must have the ownership in the property before the same can be exchanged for any immovable property.

14.6 Similarly, transfer of ownership of movable property is by sale, gift or exchange and in the case of a sale, the provisions of the Sale of Goods Act, 1930 would apply.

14.7 Transfer of ownership other than transfer *inter vivos* is by succession or inheritance under a testament or a will/codicil in which case, the provisions of the Indian Succession Act, 1925 would have to be adhered to.

14.8 In the context of acquisition of land under the power of eminent domain such as under the provisions of Land Acquisition Act, 1894 or the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, there is divesting of ownership of the owner of the property only when land "vests absolutely in the Government free from all encumbrances" such as under Section 16 of the Land Acquisition Act, 1894. This Court in ***Fruit and Vegetable Merchants Union, Subzi Mandi, Delhi vs. Delhi Improvement Trust, Regal Buildings, Cannaught Place, AIR 1957 SC 344*** has held that the property acquired becomes the property of the Government without any

conditions or limitations either as to title or possession when it vests free from all encumbrances in the Government. The word encumbrances means a burden or charge upon property or a claim or lien upon an estate or on the land. Encumber means burden of legal liability on property, and therefore, when there is encumbrance on a land, it constitutes a burden on the title which diminishes the value of the land. But where the land acquired by the State is free from all encumbrances, it vests absolutely and free from all encumbrances. In such a case, it would be an incidence of transfer of ownership from the owner of the land to the Government as there would be divesting of land from its true owner.

14.9 Amongst the distinct kinds of ownerships, a trust ownership and beneficial ownership is relevant to the case. A trust is a very important and curious instance of duplicate ownership. According to Salmond, the trust property is that which is owned by two persons at the same time, the relation between the two owners being such that one of them is under an obligation to use his ownership for the benefit of the other. The former is called the 'trustee' and his ownership is the 'trust

ownership'; the latter is called the 'beneficiary' and his is beneficial ownership.

14.10 The trustee's ownership of any property is a matter of form rather than a substance and nominal rather than real. A trustee is not effectively an owner at all but in essence a mere agent, upon whom the law has conferred the power and imposed the duty of administering the property of another person. The trustee is a person to whom the property, substantially that of someone else is technically attributed by the law on the footing that the rights and powers that it vests under him are to be used by him on behalf of the real owner. As between the trustee and beneficiary, the law recognises that the property belongs to the latter and not to the former. But as between the trustee and the third persons, the fiction prevails, inasmuch as the trustee is clothed with the rights of his beneficiary and personate or represent him in dealings with the world at large. This principle is actuated under various provisions of the Act including Section 8 thereof *vis-à-vis* an enemy who is the owner of a property and the Custodian in whom the property vests under the provisions of the Act. This

position becomes clear on a reading of the Rules under the Defence of India Rules, 1962 and 1971 as discussed above.

14.11 Thus, the trusteeship is to protect the rights and interests of persons, who, for any reason are unable effectively to protect them for themselves. The law vests those rights and interests for safe custody in a trustee, who is capable of guarding them and dealing with them and who is placed under an obligation to use it for the benefit of him to whom they in truth belong. One of the classes of persons on whose behalf the protection of the trusteeship is called is in respect of the property of those persons who are absent in the country, such as a person who has migrated to a country which is described as an enemy country by the Government of India as defined under the provisions of the Act under consideration.

14.12 Thus, under the Act, the Custodian acts as a trustee. A trust is more than an obligation to use the property for the benefit of another; it is an obligation to use it for the benefit of another in whom it is already concurrently vested. Since the beneficiary is himself the owner of the enemy property, in the

instant case, the Custodian who is the trustee appointed under the Act is therefore a statutory authority constituted for the administration of the enemy property, who is only a nominal owner of the property so administered by him *vis-à-vis* third parties. As already noted, the nominal ownership in the trustee is only for the purpose of using the rights and powers vesting with the trustee i.e., Custodian under the Act to be used by him or on behalf of the real owner of the property is absent, since he has left the country for an enemy country.

14.13 The trustee or Custodian under the Act may, in pursuance of the powers vested in him under the Act which actually creates a trust by operation of law, can lease or mortgage the property without the concurrence of the beneficiary under the provisions of the Act just as the beneficiary could have dealt in the same way with his ownership of the property independently of the trustee as there is no bar in law to do so other than the provisions of the Act. Thus, a relationship of trusteeship exists between the trustee and all persons beneficially interested in the property, either as owners or encumbrancers.

Possession:

14.14 There is another jurisprudential angle to the matter. Under the Act the Custodian takes possession of the enemy property, in as much as, the enemy property vests with the Custodian under the provisions of the Act. What does this entail?

14.15 While discussing on the jurisprudential aspects of vesting or taking possession in the instant case as per the provisions of the Act, it is necessary to reiterate and bear in mind the following aspects:

(i) That there are three possible situations: first, the possession usually exists both in law and in fact; secondly, the possession may exist in fact but not in law; thirdly, the possession may exist in law but not in fact. This is also called 'constructive possession'. In the case of the Custodian for Enemy Property, possession exists in law under the provisions of the Act but may be in fact in the hands of a third party such as a tenant or a mortgagee of the owner of such property who is declared an enemy under the Act.

(ii) Further, whatever may be owned may be possessed but whatever may be possessed may not be owned. This statement is however subject to important qualifications. For example, there can be possession of an interested person without ownership of any kind. Conversely, there are many rights, which can be owned in relation to a property but which are not capable of being possessed. There are those which may be termed 'transitory'. For example, a creditor does not possess the debt that is due to him as it is a transitory right, which in its very nature cannot survive in exercise, but a man may possess an easement over the land because it has exercise in continued existence or consistent with each other.

(iii) Moving further, while discussing the concept of possession, it is necessary to understand two elements: first is *animus possidendi*. The intent necessary to constitute possession is the intent to appropriate to oneself the exclusive use of the thing possessed. It is an exclusive claim to a material object for the purpose of using the thing oneself by excluding interference of other persons. The claim of the possessor must be exclusive, which however need not be absolute. But *animus*

possidendi need not amount to a claim or intent to use the thing as *owner.* The tenant or a pledgee may have possession no less real than that of the owner himself, just as a Custodian under the provisions of the Act in the instant case. Thus, the *animus possidendi* need not be a claim on one's own behalf. A trustee or Custodian under the Act may have possession of enemy property, though he claims an exclusive right of the thing on behalf of another than himself. This is *vis-à-vis* third parties. He definitely does not have a right of ownership over the enemy property possessed by him as the ownership of the said property continues in the enemy.

(iv) The second concept is that to constitute possession, the *animus domini* is not in itself sufficient but must be embodied in a *corpus.* There are two aspects with regard to *corpus* of possession: first is the relationship of the possessor to other persons and the second, is the relation of the possessor to the thing possessed. The necessary relation between the possessor and the thing possessed is such as to admit of his making such use of it as accords with the nature of the thing and of his claim to it. There must be a correlation between him and the thing

possessed, which is not inconsistent with the nature of the claim he makes to it.

(v) Thus, possession is acquired whenever the two elements of *corpus* and *animus* come into co-existence and it is lost as soon as either of them disappears.

(vi) The modes of acquisition of possession are two in number, namely, taking and delivery. Taking is the acquisition of possession without the consent of the previous possessor such as in the case of the Custodian *vis-à-vis* enemy property. Delivery, on the other hand is the acquisition of possession with the consent and co-operation of the previous possessor.

Relation between Possession and Ownership:

14.16 According to Rudolf von Ihering, a jurist "Possession is the objective realisation of ownership". It is in *fact* what ownership is in *right.* Ownership is the guarantee of the law, while the possession is the guarantee of the fact. Normally, ownership and possession co-exist but not always. This aspect of the case is crucial for answering the contentions raised by the respective parties.

Analysis:

Let us apply the aforesaid jurisprudential principles to the provisions of the Act under consideration.

15. Section 2 (c) of the Act defines enemy property to mean any property for the time being belonging to or held or managed on behalf of an enemy, an enemy subject or an enemy firm: That even when an enemy subject dies in the territories to which the Act extends, or dies in any territory outside India, any property which immediately before his death, belonged to or was held by him or was managed on his behalf, may, notwithstanding his death, continue to be regarded as enemy property for the purposes of the Act. The Act when enacted extended to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India outside India and to branches and agencies outside India of companies or bodies corporate registered or incorporated in India. On a combined reading of the above, it is clear that the Act applies to any property belonging to or held or managed on behalf of an enemy, an enemy subject or an enemy firm, even if, the enemy or enemy subject or enemy firm is outside India and to

branches and agencies outside India of companies or bodies corporate registered or incorporated in India. That as per Explanation (1), the definition of enemy property in clause (c) of Section 2, it is clarified that "enemy property" shall, notwithstanding that the enemy or the enemy subject or the enemy firm has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy, continue and always be deemed to be continued as an enemy property. Explanation (2) states that for the purposes of this clause, the expression enemy property shall mean and include and shall be deemed to have always meant and included all rights, titles and interest in, or any benefit arising out of, enemy property in the context of such property for the time being belonging to or held or managed on behalf of an enemy, an enemy subject or an enemy firm. The Explanation to sub-section (3) of Section 5 of the Act also states that for the purposes of this sub-section, "enemy property vested in the Custodian" shall include and shall always be deemed to have been included all rights, titles,

and interest in, or any benefit arising out of, such property vested in him under the Act.

15.1 Therefore, the moot question is, what is the nature and extent of rights, titles, and interest in or any benefit arising out of, such property which is vested in the Custodian? Does it mean vesting of the ownership of the rights, titles, and interest in, or any benefit arising out of such enemy property owned by the enemy which becomes vested in the Custodian in the sense that the Custodian becomes the owner of the property; thereby there is a divesting of the ownership or a transfer of ownership of such property from the ownership of the enemy to the Custodian.

15.2 We do not think that such an interpretation can be given for the simple reason that clause (c) of Section 2 clearly states that enemy property means any property for the time being belonging to or held or managed on behalf of an enemy, an enemy subject or an enemy firm being vested in the Custodian. Therefore, the provision of the Act recognises the ownership of the enemy *vis-à-vis* the enemy property and the enemy property

belonging to or held or managed on behalf of an enemy, an enemy subject or an enemy firm being vested in the Custodian. What exactly is vested in the Custodian? The Explanations i.e. Explanation (2) of clause (c) of Section 2 as well as Explanation (2) to sub-section (3) of Section 5 of the Act, being identical state that all rights, titles, and interest in, or any benefit arising out of such enemy property vest in the Custodian. This means that only the rights etc. *vis-à-vis* enemy property vest in the Custodian. By that, the Custodian does not acquire ownership rights in the property. It continues to vest with the enemy. This is because ownership of immovable property can be transferred from one person to another i.e. transfer *inter vivos* can only transferred in accordance with the provisions of the Transfer of Property Act.

15.3 On a conspectus reading of the aforesaid provisions, what emerges is that under Section 3 of the Act, the Custodian of Enemy Property for India is appointed by the Central Government by issuance of a notification in the official gazette so also Deputy Custodians and Assistant Custodians of Enemy Property could be appointed for certain local areas as may be

specified in the notification. Since the Act is in continuation of the Defence of India Rules, 1962 as well as Defence of India Rules, 1971, as the case may be, the Custodian of Enemy Property for India appointed under the aforesaid Rules shall be deemed to have been appointed under Section 3 of the Act. The expressions "enemy" or "enemy subject" or "enemy firm" are defined in clause (b) of Section 2; The use of the words "for the time being", "belonging to" and "held" or "managed on behalf of an enemy, an enemy subject or an enemy firm" in clause (b) of Section 2 of the Act are significant. The said provision clearly recognizes ownership of the enemy property by the enemy or property held by an enemy or managed on behalf of an enemy, an enemy subject or an enemy firm. The proviso states that where an individual subject dies in the territories to which the Act extends, any property which immediately before his death belonged to or was held by him or managed on his behalf, may, notwithstanding his death, continue to be recorded as enemy property for the purposes of this Act. This proviso clearly recognizes that the death of an enemy would not result in the enemy property ceasing to be so. Explanation (1) to Section 2(c)

also states that enemy property shall continue to remain as enemy property even on the death of the enemy or extinction, winding up of business or change of nationality to continue to remain an enemy property. This is even if the legal heir and successor is a citizen of India or a citizen of a country which is not an enemy country. Explanation (2) thereof states that enemy property shall mean and include and shall be deemed to have always meant and included all rights, titles and interests in, or any benefit arising out of such property. This Explanation gives meaning to the scope of the expressions belonging to, held or managed on behalf of an enemy, an enemy subject or enemy firm.

15.4 If a certificate is issued by the Custodian that the enemy property has vested in him under the Act, the same shall be evidence of the facts stated therein *vide* Section 5-A of the Act. Section 5-B of the Act begins with a *non obstante* clause which states that nothing contained in any law for the time being in force relating to succession or any custom or usage governing succession of property shall apply in relation to the enemy property under this Act and no person (including his legal heir

and successor) shall have any right and shall be deemed not to have any right (including all rights, titles, and interests or any benefit arising out of such property) in relation to such enemy property. This provision regarding extinction of rights, titles or interests or any benefit arising out of the enemy property is deemed to have been lost is by operation of law and by a legal fiction only in so far as a heir or successor is concerned. If any property is vested in the Custodian as enemy property, then no enemy or enemy subject or enemy firm shall have any right to transfer any such property and any such transfer shall always be deemed to have been void. Therefore, by a deeming fiction and by operation of law the right, title and interest in any property vested in the Custodian under the Act shall be extinguished *vis-à-vis* any enemy or enemy subject or enemy firm once such property is vested in the Custodian only with regard to succession to such enemy property or transfer of such property by an enemy, enemy subject or enemy firm. This would imply that the enemy, enemy subject as well as enemy firm would continue to remain the owner of such

property and would continue to vest with the Custodian on the death of the enemy.

15.5 The pertinent question which arises is, whether, vesting of any enemy property in the Custodian under the provisions of the Act which belonged or was held or managed on behalf of an enemy, an enemy subject or an enemy firm would result in "transfer of title" in the said enemy property to the Custodian and therefore to the Central Government or to the Union. In order to discern an answer to this question, it is necessary to read further the provisions of the Act from Section 7 onwards.

15.6 Section 7 states that any sum otherwise payable to an enemy, enemy subject or an enemy firm in the form of dividend, interests share profits or otherwise to or for the benefit of an enemy or an enemy subject or an enemy firm, unless otherwise ordered by the Central Government, be paid by the person by whom such sum would have been payable to the Custodian or such other person as may be authorised by him in this behalf and shall be held by the Custodian or such person subject to the provisions of the Act. This provision

indicates that the Custodian only holds in trust the sums payable by any person to an enemy subject or an enemy firm. This is because the Custodian of Enemy Property acts as a trustee of the enemy property vested in him as well as a trustee of all monetary dues payable to an enemy, enemy subject or enemy firm. The Custodian shall, subject to the provisions of Section 8, deal with any money paid to him under the Act or under the Defence of India Rules, 1962 or 1971 as the case may be. Further, any property vested in the Custodian under the Act shall be dealt with by him as the Central Government may direct.

15.7 What are the powers of the Custodian in respect of property vested in him? This is dealt with in Section 8 of the Act. The Custodian may take or authorise the taking of such measures as he considers necessary or expedient for preserving such property till it is disposed of in accordance with the provisions of the Act. Sub-section (2) of Section 8 speaks of eleven exigencies which a Custodian or such person as may be specifically authorised by him may take. The same are extracted above. A reading of the above clearly indicates

that the Custodian or his authorised person can carry on the business of the enemy; fix and collect the rent etc. in respect of enemy property; take action for recovering any money due to the enemy; make any contract and execute any document in the name and on behalf of the enemy; institute or defend any legal proceeding; secure vacant possession of the enemy property; raise on the security of the property such loans as may be necessary; incur out of the property any expenditure including payment of any taxes, duties, cesses and rates to Government, or to any local authority, pay wages, salaries, pensions, etc. to or in respect of any employee of the enemy and repayment of any debts due by the enemy to persons other than enemies; transfer or otherwise dispose of any of the enemy properties; invest any moneys held by him on behalf of the enemies for the purpose of Government securities etc.; make payments to the enemy at his dependants; make payments on behalf of the enemy to persons other that those enemies, of dues outstanding; make such other payments out of the funds of the enemy as may be directed by the Central Government.

15.8 What emerges from the above is that the activities that the Custodian or his authorised person carries out *vis-à-vis* the enemy such as the business of the enemy or in respect of managing the enemy property would also clearly indicate that the Custodian of the Enemy Property holds the said property in trust or as a trustee and not as an owner of the enemy property or by exercising rights of ownership over the enemy property. Carrying on the business of the enemy and dealing with the property of the enemy vested in the Custodian is in order to protect the business belonging to an enemy or enemy subject or enemy firm, who has left the country. The Custodian of Enemy Property for India who acts on behalf of the Enemy holds in trust the enemy property vested in him under the provisions of the Act. He does so as a trustee and therefore, the principles and legal doctrines applicable to a trustee are applicable to the Custodian accordingly.

15.9 It is trite that a trustee or Custodian in the instant case can never be the owner of the property. The vesting of property in a trustee or the Custodian which, in the instant case, is

enemy property as defined under the Act is for the purpose of managing the said property and protecting it, so that the property does not fall into the hands of trespassers, unauthorised persons or render it as being ownerless and therefore, a free for all, so to say owing to the absence of the owner. The object and purpose of the Act is to ensure that the enemy property, which vests in the Custodian, is held in trust and is looked after, protected and managed as per the provisions of the Act. The statement of objects and reasons of the Act makes this position clear.

Jurisprudential aspect of vesting:

16. A discussion on the aforesaid provisions under the Act would indicate that the Custodian takes charge of the enemy property which vests in him by operation of law. Then the following questions would arise:

(i) Does vesting of enemy property in the Custodian imply that the Custodian assumes ownership rights *vis-à-vis* enemy property vested in him?

(ii) Secondly, whether the vesting of enemy property in the Custodian would imply that it becomes the property of the Union?

These are the two crucial questions which are required to be answered in this case in order to decide the matter in all its perspectives.

16.1 The expression 'vest' or 'vesting' has no precise definition and it would depend upon the context in which the expression is used under a particular enactment. This Court has held that the expression 'vest' is of fluid or flexible content and can, if the context so dictates, bear the limited sense of "being in possession and enjoyment". (*See**: Maharaj Singh vs. State of Uttar Pradesh, (1977) 1 SCC 155)*** (Para 18)]. In ***Dr. M. Ismail Faruqui vs. Union of India, (1994) 6 SCC 360 : AIR 1995 SC 605,*** it was observed that the word 'vest' has to be understood in the different contexts in which the word occurs. In the context of acquisition of certain area under the Ayodhya Act, 1993, it was observed that the vesting of the disputed area in Central Government is limited, as a statutory receiver, with the duty of its management and administration. According to

Section 7 of the said Act, till it is handed over in terms of the adjudication made in the suit, the word 'vest' takes varying colours from the context and the situation in which the word is used in the statute.

Under the Land Acquisition Act, 1894, vesting in the State, is from the date of taking possession under Sections 16 or 17(2) which is free from all encumbrances. But under the Land Reforms Act like abolition of estates and taking over thereof, the vesting takes effect from the date of publication of the notification in the official gazette until the occupant of the land is granted the occupancy rights. This is however not the position when enemy property vests in the Custodian under the provisions of the Act. The vesting of enemy property in the Custodian is not free from encumbrances. Therefore, the expression 'vest' has no fixed connotation. It is a word of variable input and therefore has to be understood in different contexts and under different circumstances. Therefore, the context and situation in which the word is used in the statute is significant in order to interpret the said expression. Under certain statutes, the word 'vesting' would mean placing into

possession and not conferring ownership of the person who comes into possession of property. Therefore, the word 'vesting' is a word of variable input and has more than one meaning which must be discerned and the exact connotation must be found by looking into the scheme of law and the context in which it is used. The setting in which it is used would lend colour to it and divulge the legislative intent.

In ***State of Gujarat vs. The Board of Trustees of Port of Kandla, (1979) 1 GLR 732, ("Trustees of Port of Kandla")***, it was observed that the vesting of property in the Board of trustees is for the limited purpose of administration, control and management only without the Central Government having divested itself of ownership. Thus, vesting of property in a person or authority does not always mean transfer of absolute title in the property.

In ***Bibhutibhushan Datta vs. Anadinath Datta, AIR 1934 Cal 87***, ***("Bibhutibhusan Datta"),*** it was observed that mere transference of management or control of a property, when transfer of proprietary rights is not intended, the

requirements of vesting is not satisfied in terms of Section 10 of the Limitation Act.

Under the Act under consideration, the vesting of the enemy property in the Custodian is not free from encumbrances but vesting is in accordance with the status of the property as held by the enemy, enemy subject or enemy firm prior to its vesting. Therefore, only when enemy property vests in the Custodian free from all encumbrances it will be a transfer of ownership from the owner of such property to the Custodian. This is because under the Act, Custodian holds or manages the property for and on behalf of the enemy, enemy subject or enemy firm only temporarily and there is no transfer of ownership to the Custodian or the Union of India. Hence, there is no necessity of payment of compensation to the owners of such properties.

Under Section 5A of the Act under consideration, when property vests in the Custodian under the provision of the Act, he may issue a certificate to that effect and such certificate shall be evidence of the facts stated therein. Further, under Section 7 (1) of the Act, any sum payable by way of dividend,

interest, share profits or otherwise to or for the benefit of an enemy or an enemy subject or an enemy firm shall, unless otherwise ordered by the Central Government, be paid by the person by whom such sum would have been payable to the Custodian or such person as may be authorised by him in that behalf and shall be held by the Custodian or such person subject to the provisions of the Act. Under Section 7 (3) of the Act, the Custodian shall, subject to Section 8 of the Act, can deal with any money paid to him or any property vested in him under the Act in such manner as the Central Government may direct.

Section 8-A of the Act begins with a *non-obstante* clause and it states that notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority or any law for the time being in force, the Custodian may, within such time as may be specified by the Central Government in this behalf, dispose of whether by sale or otherwise, as the case may be, with prior approval of the Central Government, by general or special order, enemy properties vested in him immediately before the date of

commencement of the Amendment Act, 2017 in accordance with the provisions of this Act, as amended by the Amendment Act, 2017. The sale proceeds have to be deposited into the Consolidated Fund of India and the details thereof have to be intimated to the Central Government. The directions issued by the Central Government, by way of general or special order, *vis-à-vis* disposal of enemy property is binding upon the Custodian and the buyer of the enemy properties and the other persons connected to such sale or disposal. Further, instead of the Custodian disposing of enemy property, any Ministry or Department of the Central Government may do so as authorised and the provision of Section 8A applies to such authority or Ministry or Department. The Central Government can also deal with or utilise enemy property in such manner as it may deem fit.

The scheme of Section 8A of the Act is only to regulate the disposal of the enemy property by the Custodian bearing in mind the guidelines and/or directions issued by the Central Government and to deposit the sale proceeds into the Consolidated Fund of India. The Custodian would nevertheless

be acting as a trustee of the enemy property but under the directions of the Central Government as the Custodian is appointed under the Central Government and he, with the prior approval of the Central Government may dispose of the enemy property for valid reasons. It could be for the reasons that there is no succession to the enemy property or the said property is in a dilapidated condition or, if for any reason, there is litigation or legal or other complications arising which would make it difficult for the Custodian as the trustee of such property to manage the same. In such circumstance, there could be alienation of the said property. On such alienation, the sale proceeds would have to be deposited in the Consolidated Fund of India, as the Custodian, being an officer appointed under the provisions of the Act by the Central Government, would be discharging his duties under the Act. But the power of sale of an enemy property as envisaged under Section 8A of the Act, in our view, would also not imply that the Custodian would be acting as the owner of the property but only as a Custodian of such property. This view is further supported by Section 9 of the Act, which states that all enemy property vested in the

Custodian under the Act shall be exempt from attachment, seizure or sale in execution of a decree of a civil court or orders of any other authority. Therefore, it is the duty of the Custodian as the trustee of the enemy property to ensure that the said property is saved from attachment, seizure or sale in execution of a decree of a civil court or orders of any other authority.

Section 10 of the Act also categorically states that where the Custodian proposes to sell any security issued by a company and belonging to an enemy, the company may, with the consent of the Custodian, purchase the securities, notwithstanding anything to the contrary in any law or in any regulations of the company and any securities so purchased may be re-issued by the company as and when it thinks fit so to do. Where the Custodian executes and transfers any securities, he has to register them (securities) in the name of the transferee, notwithstanding that the regulations of the company do not permit such registration in the absence of the certificate, script or other evidence of title relating to the securities transferred. The expression securities includes

shares, stocks, bonds, debentures and debenture stock but does not include bills of exchange.

On sale of any immovable property vested in him to any person and on receipt of the sale proceeds of such property, the Custodian has to issue a certificate of sale in favour of the transferee and even in the absence of handing over the original title deeds of the property, the sale shall be valid and conclusive proof of transfer of ownership of such property to such person, who has the certificate registered in his name. Such transfer is obviously from the owner of the enemy property who is represented by the Custodian who only executes the sale and transfers the ownership of such property from the ownership of the enemy, enemy subject or enemy firm to the buyer of such property. The Custodian does not sell the enemy property as the owner of such property as no ownership rights are vested in him.

Section 15 of the Act states that the Custodian may call from persons who, in his opinion, have any interest in, or control over, any enemy property vested in him under this Act, such returns as may be prescribed. In such an event, every

person from whom a return is called for shall be bound to submit such return within the prescribed period. All such returns shall be recorded in such registers as may be prescribed, which shall be open to inspection subject to reasonable restrictions as may be imposed by the Custodian, if in the opinion of the Custodian, the person seeking inspection is interested in any particular enemy property as a creditor or otherwise.

Such being the position of a Custodian, who under the Act, acts as the trustee for the enemy property under the Act and not as the owner of the property, but as a protector of the property vested in him, the Custodian can never be an owner or having any right, title or interest in the enemy property as owner. While Section 5-B states that any law related to succession or any custom or usage governing succession of property shall not apply in relation to enemy property under the Act as no person including a legal heir and successor of an enemy or enemy subject or enemy firm shall be deemed to have any right, title or interest or any benefit arising out of such property in relation to enemy property, this provision does not

at the same time confer any right, title and interest or any benefit arising out of enemy property in the Custodian for Enemy Property. A Custodian is thus only a trustee of the enemy property. In the absence of any transfer of ownership or any benefit arising from enemy property being conferred on the Custodian, he acts merely as a trustee of the said property and not as the owner of enemy property. The Explanation to Section 5(3) states that for the purpose of that sub-section only 'enemy property vested in the Custodian' shall always be deemed to have included all rights, titles and interests in or any benefit arising out of such property vested in him under the Act. This is by a deeming provision and by a fiction only for the limited purpose of extinction of rights of succession on the death of the enemy or extinction or winding up of the business of enemy property or change of nationality of the legal heir or successor.

Thus, if no ownership rights are conferred on the Custodian and he is appointed *vis-à-vis* any enemy property as a Custodian, in law, he cannot be construed to be the owner of such property. This position is also discerned from the manner

in which the Custodian acts vis-à-vis the enemy property as a protector of such property and not as its owner. If the Custodian himself cannot be construed to be the owner of the enemy property, then much less the Central Government or Union can be considered to be the owner of such property. In our view, the Union or the Central Government cannot usurp rights of ownership and exercise all such rights of ownership *vis-à-vis* enemy property. In the absence of any provision conferring such ownership on the Custodian, the Central Government, which appoints the Custodian of Enemy Property in India by issuance of a notification in the Official Gazette to carry on his functions under the provisions of the Act, cannot assume ownership rights over such property. The same is having regard to the fact that the Act is a piece of parliamentary legislation and therefore, the State Legislatures or Governments have no competence to take steps under the Act and therefore, the Central Government appoints the Custodian of Enemy Property in India.

17. However, it was contended by Sri Balbir Singh, learned ASG appearing along with Sri Rupesh Kumar, learned counsel

for the Custodian that by the appointment of the Custodian by the Central Government, the powers of the Custodian in respect of enemy property vested in him and such other actions that he may take *vis-à-vis* enemy property, would clearly indicate that the Custodian acts at the behest of the Central Government and therefore, the enemy property becomes Union property even though the same is vested in the Custodian who, in any case, is appointed by the Central Government. In order to buttress this submission, our attention was drawn to Section 8-A which begins with a *non-obstante* clause and which states that the Custodian may, with the approval of the Central Government, dispose of enemy property by sale or otherwise, as the case may be, the enemy property vested in him immediately before the date of commencement of the Amendment Act, 2017, in accordance with the provisions of the Act as amended by the Amendment Act, 2017. Further, the Custodian, on disposal of enemy property, has to deposit the sale proceeds into the Consolidated Fund of India immediately and intimate details thereof to the Central Government. Also, the Custodian has to submit a report of the

enemy properties disposed of enclosing details of sale etc. The Central Government may also issue directions and guidelines to the Custodian in matters related to disposal of enemy property which are binding on the Custodian and the buyer. Moreover, the Central Government may deal with or utilise the enemy property in a manner as it may deem fit. On sale of any enemy property vested in the Custodian to any person he may, on receipt of the sale proceeds of such property, issue a certificate of sale notwithstanding the fact that the original title deeds of the property have not been handed over to that transferee. That once such certificate of sale is issued, the same shall be valid as conclusive proof of ownership of property by such person. Further, the certificate issued by the Custodian shall be a valid instrument for registration of the property in favour of the transferee as the registration in respect of enemy property for which such certificate has been issued by the Custodian, shall not be refused on the ground of lack of original title deeds in respect of such property or for any other matter.

17.1 In our view, although the Custodian for the Enemy Property is empowered to alienate enemy property under the provisions of the Act, he does so as a trustee of the said property and not as the owner thereof or as the Central Government being the owner. As already stated, the ownership continues to remain with the enemy but the management and the custody of the property only remain with the Custodian and in the absence of the enemy, the Custodian is empowered to sell or alienate such property and can issue a sale certificate as is expedient to do so. This is in the interest of or benefit of the enemy property. Thus, the transfer of such enemy property by sale or otherwise is for and on behalf of the enemy who is not available in the country and in order to ensure that such property is not dissipated owing to the owner of the property being absent in the country. Thus in order to protect the enemy property, the Custodian is empowered to even sell the enemy property and deposit the sale proceeds with the Central Government. The sale or transfer of ownership of the enemy property in favour of the transferee is, in fact, on behalf of the enemy who is the owner of the property through the legal and

statutory authority of the Custodian which empowers him to alienate the property for good and sound reasons and in the interest of the enemy property irrespective of whether there is any claim made by the enemy or his heirs or descendants. It is for this reason that the original title deeds may remain with the enemy or his family *vis-à-vis* the enemy property and in lieu of handing over of the title deeds of the property to the vendee or purchaser of the enemy property, a certificate of sale is issued in favour of such person by the Custodian and such certificate of sale is a valid instrument for seeking registration of the property in favour of the transferee. When the registration of the sale is made in favour of the transferee by the Custodian, the latter is acting as a trustee and not as the owner of the enemy property. Therefore, it cannot be accepted that the Custodian is acting as the owner of the property and by that logic the enemy property would become the property of the Union.

17.2 Further, since the Custodian is the trustee of the enemy property, if any monies are due to the enemy or if any order has been made with regard to enemy property vested in the

Custodian which are paid or complied with by any person, as the case may be, and a certificate is issued in that regard by the Custodian, such a person, to whom the certificate is issued, shall not be liable to any suit or other legal proceeding, by reason only of such compliance. This aspect also indicates that payment made to the Custodian is payment to the enemy, enemy subject or enemy firm who accepts the same for and on behalf of the enemy and the payer is thus absolved of all his liabilities and obligations to the enemy.

17.3 In ***Amir Mohammad Khan,*** it was observed by this Court that vesting of enemy property in the Custodian is limited to temporary possession, management and control of the property till it becomes incapable of being used by the enemy subject for carrying on business and trading therein. This does not divest the enemy subject of his right, title and interest in the property. The aforesaid two aspects are totally distinct. However, in the said case this Court observed that on the death of the enemy subject the said property would cease to be enemy property if the same is succeeded to by his heir who is a citizen of India. Hence the Custodian could not be permitted to

continue with the possession thereof and would be duty bound to release the property to the true owner. In our view, it is only in respect of succession to the enemy property on death of the enemy which has been abrogated by the Parliament by insertion of Explanations (1) and (2) to clause (b) of Section 2 which defines enemy or enemy subject or enemy firm which are with effect from 21.03.2018. Therefore, the jurisprudential position of the Custodian for Enemy Property *vis-à-vis* the enemy continues to remain as that of a trustee although the enemy property may vest in such Custodian for the protection, preservation and management thereof. Thus, such vesting of property in the Custodian does not result in the transfer of ownership from the owner of the property who is an enemy or enemy subject or enemy firm within the meaning of clause (b) of Section 2 of the Act to the Custodian. When the Custodian appointed by the Central Government in whom enemy property vests is only a trustee and does not adorn the status of an owner of such enemy property, consequently, the Central Government or the Union even within the meaning of Article

285 of the Constitution cannot usurp the ownership of such property.

17.4 That when enemy property is not the property of the Union within the meaning of Article 285 of the Constitution, there is no exemption from taxes imposed on by a State or by any authority within a State. When the aforesaid position of law was discussed during the course of submission and specifically put to Sri Balbir Singh, learned ASG by the Bench, the response was that the enemy property being the property of the Union is exempt from all taxes imposed by a State or by any authority within a State, save insofar as Parliament may by law otherwise provide. That in the instant case, Section 8(2)(vi) authorises the Custodian to make payments out of the enemy property any taxes, dues, cesses or rates to the State Government or to any local authority and therefore, the Parliament has by the said provision authorised the payment of taxes to the State Government or the local authority such as the appellant herein and hence, there is no exemption from payment of taxes in respect of enemy property which is by that reason Union property. In other words, the contention was

premised on the fact that once the enemy property vests in the Custodian, it automatically becomes the property of the Union and having regard to the saving clause in Articles 285(1) of the Constitution, and bearing in mind Section 8(2)(vi) of the Act, there is no exemption from the payment of property tax in the instant case.

17.5 Thus, while both the appellant-Municipal Corporation or Nagar Nigam and the Union of India are at *ad idem* on the legal position that the property tax is liable to be paid to the appellant in the instant case but it is for different reasons or basis.

17.6 In this context, Mr. Kavin Gulati, learned senior counsel for the appellant emphasised that the subject property in question is not Union property but it is enemy property vested with the Custodian under the Act and continues to be so and is therefore, subject to payment of taxes, etc. to the appellant-Corporation and Section 8(2)(vi) is only an enabling provision. The Custodian collects the taxes on behalf of the enemy and

pays it to the appellant and not as owner of the enemy property.

17.7 *Per contra*, Shri Guru Krishna Kumar, learned senior counsel appearing for the respondent-lessee contended that the subject property being enemy property vested with the Custodian under the Act is the property of the Union or Central Government and therefore, is exempt from any taxation under clause (1) of Article 285 of the Constitution.

17.8 Interestingly, while both learned ASG Sri Balbir Singh, appearing for the Union of India and Sri Gurukrishna Kumar, learned senior counsel appearing for the respondent-lessee have contended that the subject property is Union property, between them there is also a difference in their stand in the matter. While learned ASG contended that there is no exemption from payment of municipal taxes, on the other hand, learned senior counsel Sri Gurukrishna Kumar appearing for the respondent-lessee contended that the subject property being Union property is totally exempt from

any kind of taxes to be paid to any Government or local authority.

17.9 But in view of our above analysis, we hold that the vesting of enemy property in the Custodian does not transfer ownership of such property in the Custodian and by that process in the Union or Central Government, but since the Custodian is only a trustee of the enemy property, the same is liable to tax in accordance with law, including to the appellant herein. The Custodian is only authorised to pay the taxes on the subject enemy property by virtue of sub-section (2) of Section 8 of the Act. The Custodian while doing so is not acting on behalf of the Union Government being the owner of the enemy property, rather, the Custodian who is appointed by the Central Government under the provisions of the Act, which is a Central legislation only discharges his duties and functions under the provisions of the Parliamentary legislation i.e. the Act under consideration. Such discharge of duties and functions, including the payment of taxes *vis-à-vis* enemy property vested in him would not also by the same logic imply that the Custodian is acting as if the property vested in him

has become the Union property. We emphasise again that mere vesting of enemy property in the Custodian does not transfer ownership of the same from the enemy to the Union or to the Central Government; the ownership remains with the enemy but the Custodian only protects and manages the enemy property and in discharging his duties as the Custodian or the protector of enemy property he acts in accordance with the provision of the Act and on the instructions or guidance of the Central Government. The reason as to why the Central Government is empowered to issue guidelines or instructions to the Custodian is because the Custodian is appointed under the Act which is a Parliamentary legislation and the reason why the Parliament has passed the said law is in order to have a uniformity *vis-à-vis* all enemy properties throughout the length and breadth of the country in that the same are protected, managed and dealt with uniformly in accordance with the provisions of the Act.

18. We say so because Article 300-A of the Constitution states that no person shall be deprived of his property save by authority of law. The word "law" is with reference to an Act of

Parliament or of a State Legislature, a rule or a statutory order having the force of law. Although, to hold property is not a fundamental right, yet it is a constitutional right. The expression person in Article 300-A covers not only a legal or juristic person but also a person who is not a citizen of India. The expression property is also of a wide scope and includes not only tangible or intangible property but also all rights, title and interest in a property. Deprivation of property may take place in various ways, but where there is only control of property short of deprivation would not entail payment of compensation *vide* ***Indian Handicrafts Emporium vs. Union of India, (2003) 7 SCC 589,*** (Paras 109 and 111) and ***Chandigarh Housing Board vs. Major-General Devinder Singh (Retd.), (2007) 9 SCC 67, (Para 11)***. However, deprivation of property is to be distinguished from restriction of the rights following from ownership, which falls short of dispossession of the owner from those rights. Deprivation also takes within its nomenclature acquisition in accordance with law and not without any sanction of law. Before a person can be deprived of his right to property, the law must expressly and

explicitly state so. Thus, the expression by authority of law means by or under a law made by the competent Legislature.

18.1 In ***KT Plantation Pvt. Ltd. vs. State of Karnataka, (2011) 9 SCC 1***, it was observed that though the right to claim compensation or the obligation of the State to pay compensation to a person who is deprived of his property is not expressly included in Article 300-A of the Constitution, it is in-built in the Article. Within the scope of Article 300-A the doctrine of eminent domain could also be read inasmuch as the said doctrine states that the acquisition of property must be in the public interest and there must be payment of just and fair compensation therefor. When acquisition of property takes place either under the Land Acquisition Act, 1984 or the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, it is always for a public purpose and on payment of compensation to the owner of the said property. The State then possesses the power to take control of the property of the owner thereof for the benefit of the public and when the State so acts it is obliged to compensate the owner upon making just compensation as the

owner of the property would lose all his rights *vis-à-vis* the acquired land.

18.2 However, this position has to be distinguished *vis-à-vis* the Custodian for Enemy Property under the Act, as he takes possession of the enemy property only for the purpose of managing the same as per the provisions of the Act and does not become the owner of the property inasmuch as the ownership of the property from the enemy or enemy subject or enemy firm does not get transferred to the Custodian. On the other hand, if it is to be recognised that ownership of the property gets transferred from the enemy to the Custodian who takes possession of the property and administers it or manages it and thereby the ownership would then be that of the Union, in that event, it would be a deprivation of the property of the true owner who may be an enemy or an enemy subject or enemy firm but such deprivation of property cannot be without payment of compensation. Having regard to the salutary principles of Article 300-A of the Act, we cannot construe the taking possession of the enemy property for the purpose of administration of the same by the Custodian, as an instance of

transfer of ownership from the true owner to the Custodian and thereby to the Union. This position is totally unlike the position under the provisions of the Land Acquisition Act, 1894 or the subsequent legislation of 2013 which are expropriatory legislations under which acquisition of land would inevitably result in transfer of the ownership of the land from the owner to the State which is the acquiring authority, but the same would be subject to payment of a reasonable and fair compensation to the owner.

18.3 Further even under Article 296 of the Constitution, the manner in which ownership of certain types of property gets vested directly with the Union is stated when such property vests with the Union by virtue of the application of the doctrine of escheat or doctrine of *bona vacantia*. But under the provisions of the Act, the Custodian is appointed only to protect the property and to manage it as a trustee and not as an owner by vesting in the Custodian free from all encumbrances. By that, the Union cannot assume rights of ownership over such property through the Custodian.

19. Therefore, we see no substance in the arguments of learned ASG appearing for the Union of India as well as that of Sri Guru Krishna Kumar appearing for the respondent-lessee to the effect that enemy property vested with the Custodian becomes property of the Union.

20. There is another angle to the case which revolves around Article 285 of the Constitution. Clause (1) of Article 285 of the Constitution corresponds to the first paragraph of Section 154 and clause (2) corresponds to the proviso to Section 154 of the Government of India Act, 1935. For a more comprehensive understanding of the subject, it would also be useful to read Articles 286, 287, 288, 289 and Article 296 also.

Article 289:

21. Clause (1) of Article 289 exempts from Union taxation any income of a State, whether it is derived from governmental or non-governmental activities. However, an exception is provided in clause (2) thereof in that the income derived by a State from trade or business would be taxable, provided a law is made by Parliament in that behalf. Clause (3) is an exception to the

exception prescribed in clause (2) which states that the income derived from a particular trade or business may still be immune from Union taxation if Parliament declares that the said trade or business is incidental to the ordinary functions of Government. This Article broadly corresponds to Section 155 of the Government of India Act, 1935 but has certain other conditions thereto.

Articles 285 and 289 provide for the immunity of the property of the Union and the State from mutual taxation on the basis of the Federal principle.

NDMC is a decision of nine-Judge Bench which dealt with a question whether the properties owned and occupied by various States within the National Capital Territory of Delhi are entitled to be exempted from the levy of taxes under the provision of Delhi Municipal Corporation Act, 1957 and New Delhi Municipal Council Act, 1994 by virtue of the provisions of Article 289(1) of the Constitution. The pertinent question was, whether, by virtue of Article 289(1), the States are entitled to exemption from the levy of taxes imposed by laws made by Parliament under Article 246(4) upon their properties situated

within Union Territories. The Delhi High Court had taken the view that the properties of the States situated in the Union Territory of Delhi are exempt from property taxes levied under the municipal enactments in force in the Union Territory of Delhi. The said view was challenged in the appeals preferred by the New Delhi Municipal Council and the Delhi Municipal Corporation which are functioning under the respective parliamentary enactments.

While considering Article 285 as well as the Article 289 of the Constitution which deal with exemption of property of the Union from State taxation and exemption of property and income of State from Union taxation, respectively, by a 5:4 majority judgment speaking through B.P. Jeevan Reddy, J., it was observed that in a federation there are two coalescing units, namely, the Federal Government or the Centre and the States or the Provinces. Articles 285 and 289 deal with the concept of doctrine of immunity from taxation. While the immunity created in favour of the Union is absolute, the immunity created in favour of the States is a qualified one. Article 285 provides a complete and absolute ban on all taxes

that could be imposed by a State on Union property. There is no way in which a State Legislature can levy a tax upon the property of the Union but Article 289 is distinct. Although, the property and income of a State is exempt from Union taxation, the same is qualified inasmuch as the aforesaid ban imposed by clause (1) of Article 289 would not prevent the Union from imposition or from imposing or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of - (a) a trade or business of any kind carried on by, or on behalf of, the Government of a State, or (b) any operations connected such trade or business or (c) or any property used or occupied for the purposes of such trade or business, or (d) any income accruing or arising in connection with such trade or business.

Article 289 clause (3) empowers Parliament to declare, by law, which trade or business or any class of trades or businesses is incidental to the ordinary functions of the Government, whereupon the trades/businesses so specified go out of the purview of clause (2) of Article 289. It was held that levy of taxes on property by the Punjab Municipal Act, 1911

(as extended to Part 'C' State (Law) Act, 1950), the Delhi Municipal Corporation Act, 1957 and the New Delhi Municipal Council Act, 1994 (both parliamentary enactments) constitute "Union taxation" within the meaning of Article 289(1). That by virtue of the exemption provided by clause (1), taxes are not leviable on State properties but clauses (1) and (2) of Article 289 go together, form part of one scheme and have to be read together. Therefore, Municipal Laws of Delhi are inapplicable to the properties of State Government to the extent such properties are governed and saved by clause (1) of Article 289 and that insofar as the properties used or occupied for the purpose of a trade or business carried on by the State Government, the ban in clause (1) does not avail to them and the taxes thereon must be held to be valid and effective. It was observed that the levy of the property taxes under the three enactments, namely, the Delhi Municipal Corporation Act, 1957; the New Delhi Municipal Council Act, 1994 and the Punjab Municipal Act, 1911 are valid to the extent the provisions related to land and building owned by State Government and used or occupied for the purposes of any

trade or business carried on by the State Government. In other words, the levy is invalid and inapplicable only to the extent of those lands or buildings which are not used or occupied for the purposes of any trade or business carried on by the State Government. That it is for the authority under the said enactment to determine with notice to the affected State Government, which land or building is used or occupied for the purpose of any trade or business carried out or on behalf of that State Government. It was further observed that the said judgment was to operate prospectively commencing on 01.04.1996 onwards by invoking the Article 142 of the Constitution.

Another aspect which was argued in the said case was that the exemption provided by clause (1) of Article 289 would not apply to compensatory taxes like water tax, drainage tax and so on. However, it was contended that even in respect of a composite taxes, known as property tax, insofar as the taxes on the services are concerned, the ban under clause (1) of Article 289 would not apply. However, the Court did not express any opinion on this aspect of the matter.

Article 285:

21.1 Article 285 speaks about the doctrine of immunity restricting the taxing powers of the governments in a federation. The doctrine is based on the principle that there ought to be inter-governmental tax immunities between the Centre and the States. In a Constitution such as ours which has a federal character, where both the Union and State Governments have the powers to levy taxes even on governmental property, the immunity is intended for the smooth working of the Governments and for saving time and efforts in cross taxation. Clause (1) of Article 285 deals with immunity of the property of the Union from State taxation. Article 285 embodies a narrower aspect of the doctrine of "Immunity of Instrumentalities" as propounded in the United States inasmuch as it exempts only property and not the functions or instrumentalities of the Union.

21.2 Article 285(1) states that the property of the Union shall be exempted from all taxes imposed by the State or by any authority within a State unless so provided for by the

Parliament by law. Clause (2) of Article 285 states that nothing in clause (1) shall 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 the Constitution liable or treated as liable, so long as that tax continues to be levied in that State. Clause (2) of Article 285 is a clause which is transitional in nature and is in the nature of a saving clause intended to save all taxes levied on the property of the Union prior to the commencement of the Constitution so long as the taxes continues to be levied in that State. However, this saving clause is subject to any law that the Parliament may provide otherwise.

21.3 While applying clause (1) of Article 285, two considerations must be taken into account: firstly, whether the tax is claimed in respect of property, and secondly, whether such property is vested in the Union Government. The expression property must be given its widest meaning to include both tangible and intangible property as well as moveable and immovable property. The immunity conferred under clause (1) of the Article 285 is only in respect of a tax on

property. The rationale for providing Articles 285 and 289 of the Constitution is based on the principle that one sovereign cannot tax another sovereign. Thus, under Article 285, all property of the Union is exempted from State taxes, while Article 289 exempts all incomes and property of a State from Union taxation; no distinction is made between the Union property used for commercial purposes or used for governmental functions. Thus, irrespective of use of the Union property is put to, there is an exemption.

21.4 The expression 'vest' is not found in Article 285, though, it occurred in Section 154 of the Government of India Act, 1935. However, this does not really make a difference, so long as the owner of the property is the Union. For instance, property which is requisitioned by the Union does not affect the ownership of the requisitioned property. But, if the Union Government erects buildings on requisitioned lands, the buildings become property of the Union within the meaning of Article 285 although, the Union is not the owner of the land upon which the building stands *vide* ***The Governor-General of India in Council vs. The Corporation of Calcutta, AIR***

1948 Cal 116 affirmed by ***The Corporation of Calcutta vs. Governors of St. Thomas' School, Calcutta, AIR 1949 FC 121.***

21.5 The immunity from taxation on property of the Union therefore depends upon the factum of the ownership of the property. If a property accrues to the Union by escheat, lapse or *bona vacantia* under Article 296 of the Constitution, such property would be immune from State taxation. Thus, where the Union Government is not the owner of the property but is a lessee from a private owner, a tax on such owner is not exempted under Article 285 of the Constitution. Similarly, where the Union Government is using the property for governmental purposes or has control over its use, does not give it immunity from State taxation. Conversely, where the Government is the lessor, a tax on the interest of the private lessee is not a tax on the property of the Union. Since the immunity is confined to property vested in the Union, the same cannot be claimed by entities other than the Union. In order to ascertain this aspect i.e., whether the statutory corporation or other entities do not come within the scope and the ambit of

Article 285, the doctrine of "piercing the veil" may be pressed into service. Thus, Article 285 would not apply when the property to be taxed is not of Union of India but of a distinct and separate legal entity. Thus, the State cannot levy road tax on the vehicles owned by the Central Government or the Railway, which is a Ministry of the Union Government.

21.6 In ***Union of India vs. City Municipal Council, Bellary, AIR 1978 SC 1803 ("City Municipal Council")***, it was observed that the property of the Union is exempt from all taxes imposed by the State or by any authority within the State under Article 285(1), unless the claim can be supported and sustained within the parameters of Article 285 (2). The expression "save in so far as Parliament may by law otherwise provide" in clause (1) of Article 285 is to enable the Parliament to control Union property. Thus, the Parliament may by law permit a State or any authority or instrumentality within a State to impose tax on Union property. But if no such law is made by the Parliament the immunity would continue. Similarly, clause (2) of Article 285 which is in the nature of an exception to clause (1) thereof, has given an overriding power

to Parliament to take away any existing taxation of a State or a local authority of Union property prior to the commencement of the Constitution and which has continued to be levied in the State even after the enforcement thereof. In ***City Municipal Council,*** question arose whether the Railway (Local Authorities Taxation) Act, 1941 which created a liability on the Railways to taxation by local authorities was contrary to Article 285 (1) of the Constitution. It was held that the aforesaid Act being enacted prior to the enforcement of the Constitution was not a law which came within the scope of the expression "save in so far as Parliament may by law otherwise provide" in clause (1) of Article 285. Hence, it was observed that the said law could not be enforced after the enforcement of the Constitution, and the Railway property was immune from State taxation.

21.7 As already noted, clause (2) of Article 285 is in the nature of an exception or a proviso to clause (1) of the said Article. However, it empowers Parliament to restrict the exception. In other words, any local taxes on Union property which were saved by virtue of clause (2) of Article 285 shall cease to be

valid as soon as the Parliament by law provides to that effect. This implies that clause (2) of Article 285 which saves the existing power of the State and the local lawful bodies to tax Union property would continue and the s*tatus quo* would be maintained till Parliament would legislate otherwise. In clause (2) of Article 285, the expression "liable or treated as liable" is of significance. The conditions necessary to bring a property within clause (2) of Article 285 in order to make it liable to taxation are as under:

> "(a) Physical existence of the property immediately before the commencement of the Constitution;
>
> (b) Liability of the property to the tax on that date;
>
> (c) Physical existence of the property now, i.e., at the time when the tax is sought to be levied;
>
> (d) Liability of the property to tax now;
>
> (e) The tax in question must be the 'same tax' as that which was levied or leviable at the commencement of the Constitution;
>
> (f) The local authority seeking to levy the tax must be in the same State to which the pre-Constitution authority belonged."
>
> [Source: Shorter Constitution of India by D.D. Basu, 16th Edition]

21.8 The aforesaid conditions would mean that the nature, type and the property on which the tax is being levied prior to

the commencement of the Constitution must be the same, as also the local authority of the same State to which it belongs before the commencement of the Constitution. If the conditions of clause (2) of Article 285 are not satisfied, the pre-Constitution tax cannot be continued to be levied by a State by virtue of Article 372(1) as the latter Article states that the continuance of the existing law would be 'subject to the other provisions of the Constitution'. Hence, any law which is inconsistent with Article 285 cannot be continued by virtue of Article 372(1) of the Constitution.

21.9 The expression "immediately before the commencement of this Constitution" under clause (2) of Article 285 would mean that the property is liable or treated as liable to tax until the Union Parliament legislates to the contrary. One of the ways of interpreting this is that the property must have been liable to taxation even under the Government of India Act, 1935 in as much as if any property was not liable to be taxed under the said Act, in other words, if there was an immunity during the enforcement of the said Act then it would not have been taxed from the date of enforcement of the Constitution. It

is also necessary to understand the meaning of expression "that tax" in clause (2) of Article 285 which would have a relation to its nature and character and not its quantum or rates. So long as the taxes remains the same, the State or local authority can always increase or reduce its rate, in accordance with law. The variation of the quantum or rate would not affect its power to continue to levy the tax so long as it remains "that tax," in its nature and character. Thus, if the tax remains the same, it is only the Parliament which can prevent the continuance of levy of that tax by the State or local authority or by any law. This Court in ***City Municipal Council*** held that it does not matter whether the liability is imposed by one statute or other as long as liability is of a particular kind of tax.

21.10 Section 172 of the Act of 1959 categorically states that subject to Article 285 of the Constitution, the corporation shall impose, *inter alia,* property taxes assessed and levied in accordance with the provisions of the Act of 1959 and the rules and bye-laws framed thereunder. Sub-section (4) of Section 172 of the Act of 1959 states that nothing in the said sub-section shall authorize the imposition of any tax which the

State Legislature has no power to impose in the State under the Constitution of India provided that where any tax was being lawfully levied in the area included in the city immediately before the commencement of the Constitution of India, such tax may continue to be levied and applied for the purposes of the Act of 1959 until provision to the contrary is made by Parliament. Section 172, in fact, summarises Article 285 of the Constitution in the context of levy of property taxes imposed under the said Act by the Corporation. Section 173 deals with property tax leviable which is again subject to Section 172(1) of the Act of 1959. It includes a general tax, a water tax, drainage tax and conservancy tax. The said taxes shall be levied on the annual value of the building and land, as the case may be. However, the aggregate of the property taxes shall in no cases be less than 15 per cent nor more than 25 per cent of the annual value of the building or land or both assessed to such taxes. The definition of annual value is given under Section 174 of the Act of 1959. Restrictions on imposition of water tax are delineated under Section 175 while the primary responsibility for certain property taxes on annual

value is stated in Section 179. It states that the property tax shall be leviable primarily from the actual occupier of the property upon which the tax is assessed, if he is the owner of the buildings or lands or holds them on a building or other lease from the Central or the State Government or from the Corporation, or on a building leased from any person. In any other case, tax shall be leviable as per sub-section (2) of Section 179 of the Act of 1959. The drainage taxes are assessed. Therefore, the levy of property taxes or other taxes on land and building is subject to Article 285 of the Constitution.

21.11 We have already discussed the scope and ambit of the two clauses of Article 285 of the Constitution. Applying the same to the present case and having regard to the reasoning given by us in the earlier part of this judgment, we have held that enemy property is not the property of the Union although it may vest with the Custodian for Enemy Property in India who is a person appointed by the Central Government. If the enemy property is not the Union property in terms of clause (1) of Article 285 of the Constitution then such property cannot be

exempt from the taxes imposed by the State or by any authority within the State unless otherwise provided by the Parliament.

21.12 For the sake of completeness of the discussion assuming for a moment that the vesting of the enemy property with the Custodian becomes the property of the Union, then clause (2) of Article 285 would apply in the instant case. This is because an authority within the State is not prevented from levying any tax on any property of the Union to which such property was immediately before the commencement of the Constitution was liable or treated as liable so long as that tax continued to be levied in that State. Applying the same to the facts of the present case, it is noted that the property in question which is located in Lucknow within the State of Uttar Pradesh and in respect of which the Act of 1959 applies was earlier governed by the Act of 1916. On a perusal of the relevant provisions of the Act of 1916, it becomes clear that the property tax was leviable on the subject property. Act of 1916 is a pre-Constitution enactment and therefore immediately before the commencement of the Constitution, the subject property was liable to property tax under the Act of 1916 and therefore until

the Parliament by law provides otherwise, the appellant corporation can continue to levy municipal taxes including the property tax on the subject property as it was liable to pay such tax prior to the commencement of the Constitution under the provisions of 1916 Act. For ease of reference, the relevant provisions of the 1916 Act are also extracted above. Therefore, even as per the provisions of clause (2) of Article 285 even if the subject property is assumed to be Union property under clause (2) of Article 285, the appellant-Corporation is entitled to levy the property tax and the municipal tax on the said property even though, it vests with the Custodian under the provisions of the Act. That is why under Section 8 of the Act, Custodian is duty bound to pay the taxes, duties, cesses and rates to the municipal authority.

We wish to also make another observation. Since the year 1968, there have been lakhs of Indians who have settled overseas without giving up their Indian citizenship. They have acquired several movable and immovable properties in India. If, in an unforeseen eventuality, any of the countries in which such Indians are settled, is declared to be an enemy country

then all such Indians who are settled abroad would possibly become enemy subjects, enemy firms and enemy companies within the definition of the Act. In such an event, the Custodian will have to take possession of such properties. Vesting of such enemy properties in the Custodian is thus only for the purpose of administration and management of such properties.

In view of our discussion made above, there would be no transfer of ownership and such properties vest in the Custodian for their protection and management only. By such vesting, the Union cannot usurp ownership of such properties. In the same vein, when many persons who are resident in India left their properties and settled in enemy countries, the Custodian has taken possession of such properties which is only for the purpose of protection and maintenance and to be handed over as and when a conducive environment between the countries arises.

We also observe that it was never the intention under the Defence of India Rules, 1962 and 1971 or under the provisions of the Act that enemy subjects would lose all their right, title

and interest in the properties once the said properties vest in the Custodian and thereby become Union properties. In this regard, we also would like to emphasise that the expression "vest in the Union" is clearly mentioned in Article 296 of the Constitution. The said provision deals with properties which for want of a rightful owner or as *bona vacantia* would vest in a State if the property is in a State or vest in the Union in any other case. The Constitution has therefore clearly differentiated between vesting of properties in the Union or a State which is totally distinct from vesting of enemy properties in the Custodian for Enemy Property.

It is reiterated that the Custodian who is appointed under the provisions of the Act by the Central Government discharges his duties and carries out his functions under the provisions of the Act in terms of the directions of the Central Government. This is because the Act is a piece of Parliamentary legislation and in order to achieve a uniform policy *vis-à-vis* management and administration of enemy properties throughout the length and breadth of the country. It, therefore, cannot be held that the properties vest with the Union within the meaning of Article

285 of the Constitution. In our view, the said Article has no application to enemy properties.

22. In ***Amir Mohammad Khan*** case, the father of the respondent therein was a Raja, who had migrated to Pakistan in 1957 and became a citizen of that country. However, the respondent therein and his mother (since deceased) continued to reside in India as Indian citizen. Under the provisions of the Enemy Property (Custody and Registration) Order, 1965, the property of the respondent's father in India vested in the Custodian of Enemy Property. After the enactment of the Act under consideration, by virtue of Section 24 thereof, the property continued to be vested in the Custodian. In 1973, the Raja died in London. The respondent then sought the Government of India and the Custodian to release that property as the same stood vested in him as an Indian citizen. In 1981, the Government of India agreed to release 25% of the property to the legal heirs and successors of the late Raja in India and the Custodian of the Enemy Property asked the respondent for legal evidence regarding such heirs and successors. In 1986, at the instance of the respondent, the civil

court declared that the respondent was the sole heir and successor of his father and thereby entitled to 25% or whatever percentage it might be of the suit property. The said judgment became final. Since, the properties were not handed over to the respondent, he filed a writ petition before the Bombay High Court which was allowed by directing that the possession of the properties should be handed over to the respondent. The Union of India filed an appeal before this Court by way of a Special Leave. Dismissing the appeal, this Court held that the Act was enacted for the purpose of continued vesting of enemy property in the Custodian of Enemy Property for India under the Defence of India Rules, 1962 and the Defence of India Rules, 1971.

22.1 This Court observed that the respondent therein was the sole heir and successor of the late Raja and properties belonging to the late Raja was succeeded to by the respondent by way of succession and the properties in question could no longer be enemy property within the meaning of Section 2(c) of the Act. Therefore, the Custodian could not be permitted to continue in possession of such properties. During the

pendency of the Writ Petition before it, the High Court directed the appellant therein to place on record a copy of the note put up for release of the property of the respondent's father and the decision taken thereon by the Cabinet.

22.2 The Union of India was directed by this Court to get the buildings (residence or offices) of the subject property vacated from such officers and hand over the possession to the respondent therein within eight weeks. While holding so, this Court observed that on a conjoint reading of Sections 6, 8 and 18 of the Act, the enemy subject is not divested of his right, title and interest of the property which vest in the Custodian is limited to the extent of possession, management and control over the property temporarily. The object of the Act was to prevent a subject of an enemy State from carrying on business and trading in the property situated in India. It is, therefore, contemplated that temporary vesting of the property takes place in the Custodian so that the property till such time, as it is enemy property, cannot be used for such purpose. The question considered was, whether, after the inheritance of the property by the respondent therein who was a citizen of India,

upon the death of the original owner of the property who was declared to be an enemy, the property continued to be enemy property? It was answered in the negative. It was observed that the definition of enemy provided under Section 2 (b) of the Act excluded a citizen of India as an enemy or enemy subject or an enemy firm. Therefore, the respondent herein who was born in India and his Indian citizenship not being in question could not by any stretch of imagination be held to be enemy or enemy subject under Section 2(b). Similarly, under Section 2(c) the property belonging to enemy could not be termed as an enemy property.

22.3 It was further observed that after the death of the enemy, the right, title and interest of the enemy was succeeded to by his heirs who are Indian citizens. Therefore, the enemy property would cease to be a property belonging of the enemy, hence the Custodian could not be permitted to continue with the possession of such property. In this regard, it was observed that the reliance placed by the Union of India on Section 13 of the Act was totally misplaced. That in the said case this Court noted that Union of India - appellant therein had agreed to

release 25% of the property in favour of the respondent therein on production of proof of his having succeeded to the property of his father. That the property of an enemy could be released in favour of an Indian citizen provided he had succeeded to the estate of the deceased enemy subject. That the title of the enemy property did not vest with the Custodian but the property vested in the Custodian for the purposes of management, control and possession of the properties only. In the said case, Union of India had admitted that under the provision of the Act, title of the property of an enemy does not vest in the Custodian but the Custodian takes over the enemy property only for the purpose of possession, control and management. That an Indian citizen is excluded from the definition of an "enemy" or "enemy subject" under Section 2(b) of the Act. That on the death of the enemy subject, his successors and legal heirs being Indian citizens were entitled to succeed to the subject property as it ceased to be an enemy property. That even though a decision was taken to release only 25% of the property to the respondent therein, the same was also not implemented, for over three decades. Therefore, the

direction was issued to the appellant-Union of India therein to get the buildings (residence or offices) vacated from such officers and hand over the possession to the respondent therein within eight weeks. The appeal of the Union of India was dismissed with costs of Rs.5 lakhs. This decision was rendered on 21.10.2005.

22.4 Thereafter, on 08.09.2006 in the case of ***Kohli Brothers vs. Amir Mohammad Khan, (2012) 12 SCC 625 ("Kohli Brothers")***, this Court disposed of certain Special Leave Petitions with the clarification that persons who were inducted/allotted properties by the Custodian or who came in possession after 1965 i.e. on or after declaring the property of the Raja of Mahmudabad as enemy property and appointment of the Custodian, had to vacate the properties in their possession. But persons claiming possession prior to the appointment of the Custodian declaring the property of Raja of Mahmudabad, father of the respondent therein, as enemy property, based on duly authenticated tenancy created by the then Raja of Mahmudabad or his general power of attorney was

not to be covered by this Court's judgment passed in ***Amir Mohammad Khan***.

In this regard, it would be useful to reiterate the statement and objects of the Act wherein it has been stated that immovable property, cash balances and firms belonging to Chinese nationals in India were vested in the Custodian of Enemy Property for India appointed under the Defence of India Rules, 1962. Similarly, upon the aggression by Pakistan in 1965, enemy properties were vested in the Custodian of Enemy Property under the power derived from the Defence of India Rules, 1962. That the properties vested in the Custodian of Enemy Property in India has to continue as it has not been possible for the Government of India so far to arrive at a settlement with the respective Governments of those countries.

On a perusal of the impugned order, it is noted that the learned counsel appearing for the appellant-Lucknow Nagar Nigam had submitted before the High Court that the Nagar Nigam may not charge in respect of property of Central Government but may demand fee, if any, with respect to services provided like water charge or sewerage charge. The

present case relates to house tax and water tax. The High Court construed the said submission as an admission of the fact that the subject property is the Central Government's property and therefore, quashed the recovery sought to be made by the appellant-Nagar Nigam. In fact, the submission of the learned counsel for the appellant-Nagar Nigam has to be construed in the context of the provisions of the Act as well as the relevant provisions of the Constitution which we have now interpreted.

Therefore, whatever amount have already been deposited by the respondent herein, the same shall not be refunded to them. But, if no other demand has been made till date, such demand shall not be made. However, from the current fiscal year onwards (2024-2025), the appellant shall be entitled to levy and collect the property tax as well as water tax and sewerage charges and any other local taxes in accordance with law. We have granted a relaxation to the respondent in view of the fact that the High Court by the impugned order dated 29.03.2017, had held in favour of the respondent herein and we are now reversing the said order.

In view of the aforesaid discussion, we arrive at the following conclusions:

1) That the Custodian for Enemy Property in India, in whom the enemy properties vest including the subject property, does not acquire ownership of the said properties. The enemy properties vest in the Custodian as a trustee only for the management and administration of such properties.

2) That the Central Government may, on a reference or complaint or on its own motion initiate a process of divestment of enemy property vested in the Custodian to the owner thereof or to such other person *vide* Rule 15 of the Rules. Hence, the vesting of the enemy property in the Custodian is only as a temporary measure and he acts as a trustee of the said properties.

3) That in view of the above conclusion, Union of India cannot assume ownership of the enemy properties once the said property is vested in the Custodian. This is because, there is no transfer of ownership from the owner of the enemy property to the Custodian and

consequently, there is no ownership rights transferred to the Union of India. Therefore, the enemy properties which vest in the Custodian are not Union properties.

4) As the enemy properties are not Union properties, clause (1) of Article 285 does not apply to enemy properties. Clause (2) of Article 285 is an exception to clause (1) and would apply only if the enemy properties are Union properties and not otherwise.

5) In view of the above, the High Court was not right in holding that the respondent as occupier of the subject property, is not liable to pay any property tax or other local taxes to the appellant. In the result, the impugned order of the High Court dated 29.03.2017 passed in Misc. Bench No.2317 of 2012 is liable to be set aside and is accordingly set aside.

6) Consequently, any demand for payment of taxes under the Act of 1959 made and thereby paid by the respondent to the appellant-authority shall not be refunded. However, if no demand notices have been issued till date, the same shall not be issued but from the current fiscal

year onwards (2024-2025), the appellant shall be entitled to levy and collect the property tax as well as water tax and sewerage charges and any other local taxes in accordance with law.

In the result, the appeal is allowed in the aforesaid terms.

Parties to bear their respective costs.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
FEBRUARY 22, 2024.