R

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 30TH DAY OF AUGUST 2018

PRESENT

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

AND

THE HON'BLE Mrs.JUSTICE S.SUJATHA

W.T.A.No.1/2015
C/W
W.T.A.No.2/2015, W.T.A.No.3/2015,
W.T.A.No.4/2015, W.T.A.No.5/2015,
W.T.A.No.6/2015, W.T.A.No.3/2014,
W.T.A.No.1/2014 & W.T.A.No.2/2014

W.T.A. No.1/2015

Between:

1. The Commissioner of Income Tax
   C.R. Building, Queens Road
   Bangalore-560001.

2. Wealth Tax Officer
   Ward-7(1), Bangalore.

...Appellants

(**By Mr. E.I. Sanmathi, Advocate**)

And:

1. Smt. Meenakshi Devi Avaru
   No.56, Dreams Meadows
   Next to Ryan International School
   Brookfield, Bangalore-560066
   PAN: ABIPD 3260 G.

Since dead by legal heirs of Respondent No.1

1(a). Smt. Jayapalashri Anil
D/o Smt. Meenakshi Devi Avaru
Aged about 39 years
No.56, Dreams Meadows
Next to Ryan International School
Brookfield, Bangalore-56066.

1(b) M.L. Vacrchusvin S.S. Raje Urs
S/o Smt. Meenakshi Devi Avaru
Aged about 34 years
Residing at No.56, Dreams Meadows
Next to Ryan International School
Brookfield, Bangalore-560066.

...Respondents

(**By Mr. S. Parthasarathi, A/W**
Ms. Jinita Chatterjee, Advocates)

This W.T.A. is filed under Section 27-A of the Wealth Tax Act 1957, praying to decide the foregoing question of law and/or such other questions of law as may be formulated by the Hon'ble Court as deemed fit. Set aside the appellate order dated 01/12/2014 passed by the Income Tax Appellate Tribunal, 'B' Bench, Bangalore, in WTA No.9/Bang/2013 as sought for, in the respondent-assessee's case, in appeal proceedings WTA No.9/Bang/2013 for Assessment year 1999-2000 & etc.

W.T.A. No.2/2015

Between:

1. The Commissioner of Income Tax
C.R. Building, Queens Road
Bangalore-560001.

2. Wealth Tax Officer
Ward-7(1), Bangalore.

...Appellants

(**By Mr. E.I. Sanmathi, Advocate**)

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W.T.A. No.3/2015

Between:

1. The Commissioner of Income Tax
C.R. Building, Queens Road
Bangalore-560001.

2. Wealth Tax Officer
Ward-7(1), Bangalore.

...Appellants

(**By Mr. E.I. Sanmathi, Advocate**)

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W.T.A. No.4/2015

Between:

1. The Commissioner of Income Tax
C.R. Building, Queens Road
Bangalore-560001.

2. Wealth Tax Officer
Ward-7(1), Bangalore.

...Appellants

(**By Mr. E.I. Sanmathi, Advocate**)

And:

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W.T.A. No.5/2015

Between:

1. The Commissioner of Income Tax
C.R. Building, Queens Road
Bangalore-560001.

2. Wealth Tax Officer
Ward-7(1), Bangalore.

...Appellants

(**By Mr. E.I. Sanmathi, Advocate**)

And:

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W.T.A. No.6/2015

Between:

1. The Commissioner of Income Tax
C.R. Building, Queens Road
Bangalore-560001.

2. Wealth Tax Officer
Ward-7(1), Bangalore.

...Appellants

(**By Mr. E.I. Sanmathi, Advocate**)

And:

1. Smt. Meenakshi Devi Avaru
No.56, Dreams Meadows
Next to Ryan International School
Brookfield, Bangalore-560066
PAN: ABIPD 3260 G.

Since dead by legal heirs of Respondent No.1

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D/o Smt. Meenakshi Devi Avaru
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W.T.A. No.3/2014

Between:

1. The Commissioner of Income Tax-III
C.R. Building, Queens Road
Bangalore-560078.

2. Wealth Tax Officer
Ward-7(2), Bangalore.

...Appellants

(**By Mr. E.I. Sanmathi, Advocate**)

And:

Smt. Kamakshi Devi
No.164, 5th Main Road
Defence Colony, Bangalore-38.

...Respondent

(**By Mr. Balaram R. Rao, Advocate**)

This W.T.A. is filed under Section 27-A of the Wealth Tax Act 1957, praying to decide the foregoing question of law and/or such other questions of law as may be formulated by the Hon'ble Court as deemed fit. Set aside the appellate order dated 31/07/2014 passed by the Income Tax Appellate Tribunal, 'A' Bench, Bangalore as sought for, in the respondent-assessee's case, in appeal proceedings No. WTA No.8/Bang/2013 for Assessment year 2001-02 & etc.

W.T.A. No.1/2014

Between:

1. The Commissioner of Income Tax-III
C.R. Building, Queens Road
Bangalore-560078.

2. Wealth Tax Officer
Ward-7(2), Bangalore.

...Appellants

(**By Mr. E.I. Sanmathi, Advocate**)

And:

Smt. Kamakshi Devi
No.164, 5th Main Road
Defence Colony, Bangalore-38.

...Respondent

(**By Mr. Balaram R. Rao, Advocate**)

This W.T.A. is filed under Section 27-A of the Wealth Tax Act 1957, praying to decide the foregoing question of law and/or such other questions of law as may be formulated by the Hon'ble Court as deemed fit. Set aside the appellate order dated 31/07/2014 passed by the Income Tax Appellate Tribunal, 'A' Bench, Bangalore as sought for, in the respondent-assessee's case, in appeal proceedings No. WTA No.6/Bang/2013 for Assessment year 1999-2000 & etc.

W.T.A. No.2/2014

Between:

1. The Commissioner of Income Tax-III
C.R. Building, Queens Road
Bangalore-560078.

2. Wealth Tax Officer
Ward-7(2), Bangalore.

...Appellants

(**By Mr. E.I. Sanmathi, Advocate**)

And:

Smt. Kamakshi Devi
No.164, 5th Main Road

Defence Colony,
Bangalore-38.

...Respondent

(**By Mr. Balaram R. Rao, Advocate**)

This Wealth Tax Appeal is filed under Section 27-A of the Wealth Tax Act 1957, praying to decide the foregoing question of law and/or such other questions of law as may be formulated by the Hon'ble Court as deemed fit; to set aside the appellate order dated 31/07/2014 passed by the Income Tax Appellate Tribunal, 'A' Bench, Bangalore as sought for, in the respondent-assessee's case, in appeal proceedings No. WTA No.7/Bang/2013 for Assessment year 2000-01 & etc.

These Wealth Tax Appeals having been heard and reserved on **02-08-2018,** coming on for Pronouncement of Judgment, this day, ***Dr Vineet Kothari, J***, delivered the following:

J U D G M E N T

Mr. E.I. Sanmathi, Adv. for Appellants - Revenue
Mr. S. Parthasarathi, A/w
Ms. Jinita Chatterjee, Advs.
Mr. Balaram R. Rao, Adv. &
Mr. A. Shankar, Adv. for Respondent - Assessee

PREAMBLE:

1. **'Wealth Tax**" in India is levied under the provisions of the **Wealth Tax Act, 1957** with effect from **01/04/1957** and the main object of this Legislation was to reduce the financial inequalities and to bridge

the gap between the poor and the rich by imposing taxes on richer and wealthier people on their wealth exceeding a particular monetary limit on the net market value of the Assets held by them on the valuation date, i.e. the last date preceding the commencement of the Assessment Year. The levy of Wealth-Tax has been discontinued from the Assessment Year **2016-17,** as amended by **Finance Bill of 2015.** The **A.Y.1999-2000 to A.Y. 2004-05** involved in the present appeals are prior to its discontinuation.

2. The definition of "**Assets"** underwent a drastic amendment with effect from **01/04/1993** and the word **'Assets'** defined in **Section 2 (ea)** of the Act since **1st April 1993** comprises of six categories of Assets. This amendment was brought to encourage the Assets to be put to productive use and to levy tax under the said Act for the aforesaid avowed object of the enactment.

INTRODUCTION OF CASE:

3. The present batch of Appeals filed by the Department raise the following Substantial Question of law which is required to be answered in the present set of appeals for the various assessment years, viz. **A.Y.1999-2000** to **A.Y.2004-05** is as follows:-

> *Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the 28 Acres of '**urban land**' comes under the ambit of the exemption clause of Section 2(ea) of the Wealth Tax Act, 1957?*

4. The case pertains to urban land of the Respondent - Assessees who are sisters of Sri. Srikantadutta Narasimharaja Wodeyar, Son of the Ex-Ruler of Mysuru, and the said entire property in question known as **"Bangalore Palace and its lands appurtenant**" including these lands in question came to be acquired by the State Government by enacting the

legislation known as **"Bangalore Palace (Acquisition and Transfer) Act, 1996" ('BPAT Act')**.

5. Prior to the said enactment, the family members had partitioned the entire property in question known as **"Bangalore Palace and the lands appurtenant thereto**" measuring about **472 Acres** in the heart of the City of Bengaluru in the year **1984** and the Respondent Assessees, the five sisters, viz. Smt. Gayathri Devi, Smt. Meenakshi Devi, Smt. Kamakshi Devi, Smt. Indrakshi Devi and Smt. Vishalakshi Devi got approximately **28 Acres** of land in the hands of each one of them and the present Appeals pertain to the exigibility of Wealth Tax in respect of these parcels of '**urban lands'** in the hands of the Respondent Assessee sisters and the said Wealth Tax liability, needless to add, is vehemently opposed by the Assessees.

6. The litigative history of this property is long and chequered but the brief of which in so far as it

relates to the controversy in hand can be stated to be as under.

7. The **"Bangalore Palace"** was initially owned by the Maharaja of Mysuru and on a Partition in the year **1984**, the children of **late His Highness Jayachamarajendra Wodeyar,** the six children, viz. one brother - **Srikantadatta Narasimharaja Wodeyar** and five sisters, **Smt. M.S. Gayathri Devi, Smt. M.S. Meenakshi Devi, Smt. M.S. Kamakshi Devi, Smt.M.S.Indrakshi Devi and Smt. M.S. Vishalakshi Devi** got their respective shares in such partition in the year **1984** and each of the sisters got approximately **28 Acres** of land appurtenant to **"Bangalore Palace**", while the remaining land and the Building of the Palace itself fell in the share of the brother, **Shri. Shrikantadatta Narasimharaja Wodeyar.** There is no dispute *inter-se* between them in regard to this partition of 1984.

8. **About 45 Acres** of the remaining land came to be transferred to one **M/s. Chamundi Hotels Private**

Limited, a closely held Limited Company of the same family. While prior to enactment of **"Bangalore Palace (Acquisition and Transfer) Act, 1996"**, the litigation under the **Urban Land Ceiling law of 1976** was going on in respect of the said property, on **15/11/1996,** with the Presidential assent, the aforesaid **"Bangalore Palace (Acquisition and Transfer) Act, 1996"** was enacted by the State Government and the appointed date under the said Act was notified to be **21/11/1996**.

9. The constitutional validity and the *vires* of the said enactment came to be challenged by all the Assessees, the brother and the sisters, before this Court by **Writ Petition No.32175/1996 and connected writ petitions,** in which the interim Orders were passed by the learned Single Judge of this Court on **10/12/1996** in the first instance. However, these writ petitions came to be dismissed by the Division Bench of this Court by a detailed judgment on **31/03/1997 (M/s. Chamundi Hotel (P) Ltd., the Brother, Sri. Srikanta Datta**

Narasimharaja Wadiyar and the Assessee sisters herein Vs. The State of Karnataka and others) (reported in ILR 1997 Kar.1573) against which the appeals were preferred before the Hon'ble Supreme Court of India where also, the interim Orders were passed in favour of the Assessees and to which a little more detailed reference will be made hereinafter and the Appeals are said to be now pending adjudication before the Nine Judges' Bench of the Hon'ble Supreme Court of India, viz. **Civil Appeal No.3305/1997 [SLP (Civil) No.8650/1997 & connected appeals]**.

10. The Assessing Authority under the **Wealth Tax Act, 1957** passed the **'protective Assessments'** in the hands of the Respondent Assessee – sisters, imposing Wealth Tax on the 'Urban Land' falling in their share measuring about **28 Acres** determining its market value, however, the demand raised under the protective Assessments, as is well known, is not enforceable and recoverable from the Assessees, still,

the Assessees preferred Appeals under the provisions of the said Act before the first Appellate Authority, who decided the Appeals in favour of the Assessees and the Revenue's Appeals before the Income Tax Appellate Tribunal also came to be dismissed by the ITAT and against which the Revenue has preferred these Appeals before this Court raising the aforesaid Substantial Question of law and therefore, at the level of the Appellate Authorities under the Act, the determination of liability to pay the Wealth Tax stood decided in favour of the Assessees that the lands in question are not taxable as '**urban lands'** in their hands, but, the Revenue has challenged the said findings and the decision of the Appellate Authorities below before this Court by raising the aforementioned Substantial Question of law, but we have re-framed the following Substantial Questions of law and lengthy arguments were heard on both sides on these questions involved in these Appeals filed by the Revenue.

SUBSTANTIAL QUESTIONS OF LAW:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the 28 acres of land located within the corporation limit of Bengaluru City clearly falls within the exemption clause of Section 2(ea)(b) in the years of valuation and hence, no Wealth Tax on this land is chargeable?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the above land falls within the exemption clause of Section 2(ea)(b) without appreciating that the land was not totally prohibited for putting up any construction under Karnataka Parks, Play Fields and Open Spaces Regulation Act, 1985?"

3. Whether the learned C.I.T(Appeals) and Tribunal were justified in setting aside the protective assessment

made by the Assessing Authority for the assessment year in question?"

11. The important aspects of the controversy in hand in the four corners of the aforesaid Substantial Questions of law center round the three basic aspects of the matter. They are:-

(a) The meaning of the words **"belonging to"** as employed in the definition of 'net wealth' defined in **Section 2(m)** of the Wealth Tax Act, 1957 read with the charging provisions of Section 3 of the Act;

(b) The scope of taxability of "**urban land"** as defined in **Section 2(ea)(v)** with its Explanation and Exclusion Clause in the said Explanation; and

(c) What is the scope and purport of 'Protective Assessments' made in the hands of the Respondent Assessees and whether the character of such 'Protective Assessments' changes by determination of non-

taxability in the hands of higher Appellate Authorities under the Act deciding the Appeals on merits.

RELEVANT STATUTORY PROVISIONS:

12. Before coming to the contentions raised at the Bar by both the parties, we would like to quote certain definitions in the Act relevant for our purposes in the present case as follows:-

13. **Section 2(ea)** substituted with effect from **01/04/1993** particularly **Clause (v)** defining **"urban land"** is quoted below:-

> ***"Section 2(ea): "assets"*** *in relation to the assessment year commencing on the 1st day of April, 1993, or any subsequent assessment year, means-*
> *(i) to (iv)……*
>
> ***"(v): "urban land"***
> *(vi)……. …*
> ***Explanation 1:….***
>
> ***(****a)… … …*

(i)… … …

(ii)…… …

***(b) "urban land"** means land situate—*

*(i) **in any area which is comprised within the jurisdiction of a municipality** (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the valuation date; or*

(ii) in any area within such distance, not being more than eight kilometers from the local limits of any municipality or cantonment board referred to in sub-clause (i), as the Central Government may, having regard to the extent of and scope for, urbanization of that area and other relevant considerations, specify in

this behalf by notification in the official Gazette,

but does not include land on which construction of a building is not permissible under any law *for the time being in force in the area in which such land is situated or the land occupied by* ***any building which has been constructed with the approval of the appropriate authority*** *or any unused land held by the assessee for* ***industrial purposes*** *for a period of two years from the date of its acquisition by him [or any* ***land held by the assessee as stock-in-trade for a period of ten years*** *from the date of its acquisition by him."*

'Net Wealth' is defined in Section 2(m) of the Act as follows:-

"net wealth" *means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located,* ***belonging to the assessee***

on the valuation date, *including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee [on the valuation date which have been incurred in relation to the said assets];*

14. The relevant portion of **Chapter II - Charge of Wealth-Tax and Assets subject to such Charge** is extracted below:-

CHAPTER II

CHARGE OF WEALTH-TAX AND ASSETS SUBJECT TO SUCH CHARGE

"3. Charge of wealth-tax. *– (1) [Subject to the other provisions (including provisions for the levy of additional wealth-tax) contained in this Act], there shall be charged for every [assessment year] commencing on and from the first day of April, 1957 [but] before the 1st day of April, 1993], a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and*

company [at the rate or rates specified in Schedule-I].

(2) Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the 1st day of April, 1993, wealth-tax in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company, at the rate of one per cent. of the amount by which the net wealth exceeds fifteen lakh rupees.

***Provided that** in the case of every assessment year commencing on and from the 1st day of April 2010, the provisions of this section shall have effect as if for the words "fifteen lakh rupees", the words "thirty lakh rupees" had been substituted."*

***"4. Net wealth to include certain assets.** –*

(1) [In computing the net wealth-

*(a) of an individual, **there shall be included, as belonging to that individual, the value***

of assets which on the valuation date are held-

(i) ***by the spouse*** *of such individual to whom such assets have been transferred by the individual, directly or indirectly, otherwise than for adequate consideration or in connection with an agreement to live apart, or*

(ii) ***by a minor child****, not being [a minor child suffering from any disability of the nature specified in section 80U of the Income-tax Act or] a married daughter, of such individual, 11[***], or*

(iii).....

15. Sub-section (8) of Section 4 of the Wealth-Tax Act reads as follows:-

"(8) A person-

(a) who is allowed to take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in ***section 53A*** *of the Transfer of Property Act, 1882 (4 of 1982);*

(b) ***who acquires any rights*** *(excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building or part thereof by virtue of any such transaction as is referred to in clause (f) of section 269UA of the Income-tax Act,* ***shall be deemed to be the owner of that building or part thereof and the*** *value of such building or part shall be included in computing the net wealth of such person.*

6[c) the ***expression "property" includes any interest in any property,*** *movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale thereof and where the property is converted into any other property by any method, such other property."*

The Contentions of the Respondent - Assessees

16. Mr. A. Shankar, learned counsel, Mr. S. Parthasarathy, Senior Advocate, Ms. Jinita Chatterjee

and Mr. Balaram R. Rao, learned counsels appearing for the Respondent Assessees raised the following contentions before the Court:-

[I] That with the **Bangalore Palace (Acquisition and Transfer) Act, 1996** enacted by the State of Karnataka and the **'Appointed Date'** notified of the said Act on **21/11/1996** by virtue of **Section 4** of the said Act, the entire "**Bangalore palace and the lands appurtenant thereto"** including the lands in question held and possessed by the Respondent Assessee - Sisters, stood vested in the State Government and therefore, irrespective of the challenge to the said enactment by the Assessees before the Court of law which failed before the High Court and the matter is now pending before the Nine Judges' Bench of the Hon'ble Supreme Court of India, the said lands cannot be said to be **'owned'** or **'belonging to'** the Respondent Assessees on the respective **'Valuation Dates'** for the

Assessment Years in question and therefore, there is no question of imposition of any Wealth-Tax on them during the said Assessment Years.

17. The **Preamble**, **Sections 4, 5** and **Section 8** of **the Bangalore Palace (Acquisition and Transfer) Act, 1996** are quoted below for ready reference:-

"THE BANGALORE PALACE (ACQUISITION AND TRANSFER) ACT, 1996

(First published in the Karnataka Gazette, Extraordinary, dated 18th November, 1996)
(Received the assent of the president on the Fifteenth day of November, 1996)

An Act to provide for the acquisition and transfer of the Bangalore Palace and open space around it in the public interest and for its preservation and for matters connected therewith.

Whereas, the Palace at Bangalore popularly known as the Bangalore Palace, Karnataka's unique and historical and

architectural heritage, is singularly suited with its immediate surroundings, which no other Palace in the City of Bangalore does possess, and ***thereby deserving in its own majesty, in public interest to be preserved as a monument with the surrounding open space developed to serve public purpose, into an exclusive Botanical Museum and Horticultural Garden and Tree Part*** *and to serve also the acutely affected* ***ecological needs of Bangalore City*** *which in its course of rapid growth has become highly deficient in lung-space and park areas and therefore to provide for its acquisition and transfer by law.*

Whereas, the Competent Authority under the ***Urban Land (Ceiling and Regulation) Act, 1976*** *has held that the Bangalore Palace and surrounding land came within the regulation of the said Act and has passed an order* ***declaring substantial portion of the land surrounding Bangalore Palace as surplus land to be***

surrendered to the State Government *and the said order is upheld in appeal before the Karnataka Appellate Tribunal.*

Whereas, the legal representatives and heirs and transferors of late Jayachamarajendra Wadeyar have in some writ petitions questioned the legality of the order passed by the Appellate Authority, and these ***writ petitions are pending hearing before the High Court of Karnataka. It has become necessary to pass a law different from the provisions of the Land Acquisition Act, 1894*** *and to make provision for appointment of a Commissioner of Payment to pass appropriate orders in conformity with the final decision in the above writ petitions in determining the amount payable in respect of the entire holding and;*

Whereas, for the purpose hereinbefore stated it is expedient to provide for the acquisition and transfer of the Bangalore Palace and the open space around it by legislation.

CHAPTER II

Transfer and vesting of the Bangalore Palace

Section 4. Transfer and vesting of the palace in the State Government. – *On the appointed day, the Bangalore Palace (hereinafter referred to as the "Palace") and the right, title and interest of the legal representatives or heirs or other persons in relation to the Palace, shall by virtue of this Act* ***stand transferred to, and shall vest absolutely in the State Government.***

Section 5. General effect of vesting. – *(1) The Palace shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges and all property, moveable and immoveable, including buildings, regalia, painting, art works, sculptures and all other rights and interest in or arising out of such property, as were immediately before the appointed day in the ownership, possession, power or control of the legal representative or heirs or other interested persons and all books of accounts,*

registers and other documents of whatever nature relating thereto.

(2) All properties aforesaid, which have vested in the State Government under Section 4 shall, ***by virtue of such vesting be freed and discharged from any trust, obligation, mortgage, lease, charge, lien and all other encumbrances*** *affecting them and attachment, injunction or decree or order of any Court or authority restricting the use of such property in any manner shall be deemed to have been withdrawn.*

(3) Every legal representative, heir or other person who has, on the appointed day, any right, title or interest in relation to the Palace shall have the right to prefer his claim in the prescribed manner before the Commissioner ***for payment of amount out of the amount specified in Section 8*** *and also out of the amount determined under Section 8.*

(4) Every mortgagee of any property which has vested under this Act in the State

Government and every person holding any charge, lease, lien or other interest in, or in relation to any such property shall give, within such time and in such manner as may be prescribed, an intimation to the Commissioner of such mortgage, lease, lien or other interest.

(5) For the removal of doubts, it is hereby declared that the mortgage of any property referred to in sub-section (4) or other person holding any charge, lease, lien or other interest in or in relation, to any such property shall be entitled to claim in accordance with his rights or interest, payment of the mortgage money or other dues in whole or in part out of the amount specified in Section 8, and also out of amount determined under Section 9, but ***no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the State Government.***

(6) If, as on the appointed day, ***any suit, appeal or other proceeding of***

whatever nature, in relation to any property which has vested in the State Government under Section 4, ***instituted or preferred by or against the legal representatives or heirs*** *or other interested persons, is pending, the same* ***shall not abate, be discontinued, or in anyway prejudicially affected by reason of the transfer*** *of the Palace or anything contained in this Act, but the suit, appeal or other proceeding may be* ***continued, prosecuted and enforced by or against the State Government,*** *or, where the Palace is directed under Section 7 to vest in the Board by or against the Board.*

Section 6. ... ...

Section 7. ... ...

Section 8. Amount to be given to legal representatives or heirs or other interested persons. *– For the transfer to and vesting in the State Government, of the Palace under Section 4 and the right, title and interest in relation to the Palace, the* ***State Government shall pay an amount of rupees eleven crores*** *by depositing the same*

with the Commissioner and the said amount shall be paid to the legal representatives or heirs or such other persons entitled thereto in the manner specified in Chapter IV."

[II] That the said parcels of land of approximately **28 Acres** in the hands of each of the Respondent Assessee Sisters, these lands cannot be said to be **'urban land'** falling under **Section 2(ea)(v)** of the Act, because, the Exclusion Clause (b) of the said definition clearly excludes such lands on which construction of a Building is not permissible under any law for the time being in force.

[III] They submitted that not only the lands in question stood divested from the Respondent Assessees and vested in the State Government under **Section 4 of the Act of 1996**, with effect from **21/11/1996** but with the limited right of user given to the Assessees while maintaining the *status-quo* of their possession, by the Hon'ble Supreme Court under the interim Orders, to

let-out the said properties for the events like marriages and other public functions to earn some income out of them, to meet the expenses of maintaining the said property, such vacant lands cannot be said to be 'urban lands' on which any construction is permitted and therefore, the lands would fall outside the tax net under the definition of **'urban land'** as defined in **Section 2(ea)** of the Act with effect from **01/04/1993**.

They also referred and relied upon the provisions of the **Karnataka Parks, Play Fields and Open Places (Preservation and Regulation) Act, 1985,** under which the said land in question is notified to be protected green park area and no construction thereon is permitted under the Comprehensive Development Plan (CDP) of the Bangalore City, as would appear from the Preamble of the **BPAT Act, 1996**.

[IV] The learned counsels for the Respondent Assessees contended that merely because the

possession of the lands in question is with the Respondent Assessees under the interim Orders of the Hon'ble Supreme Court directing *status-quo* to be maintained and allowing the limited user of the land with conditions attaching thereto, namely to seek permission from Government Authority every time a public function is permitted to be held on these lands, the Respondents Assessees cannot be said to be '**owners'** of the lands or the property '**belonging to'** them so as to attract the levy of Wealth Tax.

[V] Relying on certain case laws, the learned counsels for the Respondent Assessees also urged that no 'Protective Assessments' could be made in the case of the Respondent Assessees under the Wealth Tax-Act as such 'Protective Assessments' are allowed under the Scheme of the Income Tax Act although for which there are no separate statutory provisions in the Income Tax Act or Wealth-Tax Act, but such 'Protective Assessments' are allowed to avoid failure of levy in case

there is a doubt about the levy in the hands of two such persons or Assessees and the Revenue is not sure about the 'ownership' or 'title' so as to levy tax in the particular hands of one person or assessee, then to avoid the defeating of levy by limitation or time bar, such 'Protective Assessments' are permitted in the hands of both the Assessees so that upon clarity of title and ownership coming out, the substantive assessments can be made and taxes imposed by way of substantive assessments can be recovered from one of the Assessees.

[VI] That on the aspect of Valuation of these lands, the learned counsels for the Assessees urged that without prejudice to their right to contend that no levy of Wealth-Tax can at all be made against these Assessees, if at all the Court comes to the conclusion that the lands in question are chargeable to Wealth-Tax in their hands, then the Valuation of the entire Assets and also the lands appurtenant thereto including the

smaller portions held in the hands of these five Assessee sisters, the total Valuation cannot exceed **`11.00 crores** fixed by the '**Bangalore Palace (Acquisition and Transfer) Act, 1996'** itself which does not envisage any determination of compensation on the basis of the market value of the Assets and therefore, only a proportionate Valuation accordingly can be assessed in the hands of the Assessees for **28 acres** of land in question and not at high rate of **`183.33 Crores (28 Acres x `1,500/- per sq.ft. X 43,650 Sq.ft.)** as was done by the Assessing Authority in the impugned protective assessment orders, on the basis of the Guidance Value fixed by the State Government for this area.

[VII] They further urged that in fact only a very small portion within **28 acres** is allowed to be used for such events like marriages etc., which too is hedged with several conditions imposed by the Hon'ble Apex Court in the interim Order and such income is being

regularly offered for income tax under the provisions of the Income Tax Act, 1961 and is being assessed by the Income Tax Authorities from time to time and income tax is being paid by the Assessees.

[VIII] They also relied upon the decision of the Hon'ble Supreme Court in the case of **S.N. Wadiyar (decd. through L.R.) Vs. Commissioner of Wealth-Tax [2015] 378 ITR 9 (SC),** wherein under the provisions of the Urban Land Ceiling Act, the Hon'ble Apex Court has held that the compensation fixed under Urban Land Ceiling Act earlier was only **`2.00 Lakhs** for the entire property and therefore, Valuation could not exceed **`2.00 Lakhs** for the purpose of Wealth-Tax.

[IX] The learned counsel for the Respondent Assessees further submitted that for some years, the Department has not even assessed these lands in question in the hands of some of the Assessees under the provisions of Wealth-Tax Act whereas, in the hands

of some Assessees, they have done so and therefore, such discriminatory approach on the part of the Revenue Authorities, does not entitle them to levy Wealth-Tax in the hands of the Assessees for all the years now.

18. Therefore, the learned counsels submitted that the present Appeals filed by the Revenue against the Order of the Income Tax Appellate Tribunal (ITAT) as well as the first Appellate Authority deserve to be dismissed by this Court and it deserves to be held in favour of the Respondent Assessee sisters that no Wealth-Tax is leviable in their hands on the said portions of the vacant lands for **A.Y.1999-2000 to A.Y. 2004-05** in question.

CONTENTIONS OF THE APPELLANT- REVENUE

[I] The learned counsel for the Revenue, Mr.E.I. Sanmathi, however, submitted that the lands in question are liable to be assessed under the provisions

of the Wealth-Tax Act in the hands of the Respondent Assessee sisters because, not only the Constitutional validity of the entire "**Bangalore Palace (Acquisition and Transfer) Act 1996"** is under challenge before the Hon'ble Supreme Court of India and therefore, the very fact of vesting of the lands in question with the State, divesting the same from the hands of the Assessees is in a fluid situation and the fact is that the Respondent Assessees including the Brother continue to remain in the possession of the **"Bangalore Palace and the lands appurtenant thereto"** and they are also enjoying the income by rentals from such leasing of the said lands for various public functions like marriages etc. and a huge income is earned by them out of user of that land and thus they are in full dominion and control over the 'urban lands' in question.

Therefore, all the attributes of 'ownership' of a property belonging to an Assessee are satisfied *qua* these lands in the hands of the Respondent Assessees

and therefore, there is no escape from taxability of the lands in question in the hands of the Respondent Assessees under the provisions of the Wealth-Tax Act, 1957.

[II] The learned counsel for the Revenue further urged that the litmus term "**belonging to"** is much wider term than the term **"ownership"** of the property and as construed by various judgments that such term is of wider import, the levy of tax on such assets in the hands of the assessees cannot be defeated.

[III] He submitted that the lands in question are undoubtedly 'urban lands' falling within the Municipal Corporation limits and rather the same being in the heart of the Bengaluru City, cannot be said to be excluded from the tax net merely because some conditions are imposed for user of such lands for leasing them out from time to time for functions like marriages and other public functions from which huge income is generated and therefore, the said **'urban**

lands' cannot be said to be unproductive assets and being income yielding assets in the hands of the Respondent Assessees, cannot be exempted from the taxability under the provisions of the Wealth-Tax Act.

[IV] The learned counsel for the Revenue further urged that merely because the lands in question are under the cloud of litigation which has been initiated by the Respondent Assessees themselves, they cannot claim the benefit of the said litigation by on one hand claiming that the lands stood divested from them and stood vested in the State and on the other hand, claiming to be the owners and contesting the acquisition by **BPAT Act**, tooth and nail and that though they are earning income out of them, may be subject to some conditions for such user but, they should not be asked to pay Wealth-Tax thereon. The Assessees cannot have the cake and eat it too.

[V] The learned counsel for the Revenue also urged that in any case, the Assessments in question are

'Protective Assessments' only and therefore, since no recoveries under these 'Protective Assessments' can be enforced in law against the Respondent Assessees as of now, there was no justification for the Appellate Authorities under the Act to quash and set aside such 'protective assessments' and the levy of Wealth-Tax in the hands of the Respondent Assessees *albeit* wrongly deciding the questions of law and holding that the assets in question do not belong to the Assessees in view of **the Bangalore Palace (Acquisition and Transfer) Act, 1996** which is the subject matter of challenge in its entirety before the Hon'ble Supreme Court of India.

[VI] He also urged on the aspect of Valuation that the Authorities under the Wealth-Tax Act cannot be restricted to value the Assets in question subject to over all limit of **`11.00 crores** fixed in **the Bangalore Palace (Acquisition and Transfer) Act, 1996** because, the Wealth-Tax Act permits the levy of Wealth-Tax on the

market value of Assets belonging to Assessees on the Valuation Dates which has been adopted in the 'Protective Assessments' made by the Assessing Authorities and taking the Guidance Value fixed by the State Government for the lands in question of the said area in the concerned year and if the 'Protective Assessments' have been made accordingly, no valid exception for the same can be taken.

[VII] The learned counsel for the Revenue also relied upon several case laws.

19. We will deal with the relevant case laws cited by both the sides at the relevant stage.

REASONS FOR CONCLUSIONS OF THIS COURT:

20. Having given our earnest consideration to the rival submissions and upon carefully perusing the definitions in the Act and the Scheme of the Wealth-Tax Act itself and relevant case laws, we find ourselves unable to accept the contentions raised on behalf of the Respondent Assessees and we are of the opinion that

the lands in question are assessable to Wealth-Tax as 'urban lands' in the hands of the Respondent Assessees. The ITAT and Income Tax (Appeals) have erred in holding these **"assets"** to be exempt from the Wealth-Tax in the hands of the Assessees.

21. We make it clear that we are not going into the aspect of 'Valuation' on the basis of which the Wealth-Tax can be finally imposed on the Respondent Assessees in the course of substantive assessments, because we are of the opinion that only 'Protective Assessments' have been made by the Assessing Authorities awaiting the final decision from the Hon'ble Apex Court as to whether the "**Bangalore Palace (Acquisition and Transfer) Act, 1996"** itself is constitutionally valid or not. A clear position about the **'ownership'** would then emerge for the Respondent Assessees and the cloud over the **'ownership**' of the Assets would also be removed, but the question before us as of now is in a different context about the taxability

of the Assets during this period when the question of its 'ownership' is under the cloud of litigation and that is, as to whether in the context of the term "**Assets" belonging to the Assessees on the Valuation Dates**, whether they can be taxed under the provisions of the Wealth-Tax Act or not and therefore, we proceed to decide the aforesaid Substantial Questions of law to the limited extent of 'taxability' under the provisions of the Act under the given facts and circumstances of the case.

22. We are of the considered opinion that the words **"belonging to"** which determine the basis of levy and attracts the charge of the Wealth Tax under the Wealth-Tax Act are of wider import than the narrower concept of "**ownership"** of the Assets which is more rigid and narrower in its scope than the words **"belonging to"**. The words **'belonging to'** may include within its ambit, the concept of **'ownership'** also, but *vice versa* may not be always true. The **'ownership'** of a property continues to be with the owner, even if the

property is under some charge or even litigation about the title and possession and such '**ownership'** is not lost merely because of such charge over the property like mortgage, statutory charge of unpaid taxes or cloud of litigation over the question of title or possession of said property and such property in that state of being under charge or being under cloud of litigation, will also be subject to taxation in the hands of the owner. The words **'belongs to'** make it still more so because, a person who may not be the 'owner' of the property in strict sense can still be subjected to taxation, if the property can be said to be 'belonging to' him. viz. in case of a lease for a long period.

23. We are saying so on the basis of the judgments of the Hon'ble Apex Court and also on the basis of both these terms used in the **Wealth-Tax Act of 1957** at different places.

24. We note that the word **'owner'** or '**ownership'** itself is not even defined in the definition Clause of

Wealth-Tax Act, 1957. The definition of '**net wealth**' defined in **Section 2(m)** of the Act quoted above uses the words "all the assets, wherever located, "belonging to the assessee" on the valuation date, including assets required to be included in his net wealth as on that date under Section 4 of the Act, in excess of the aggregate value of all the debts owed by the assessee will be the 'net wealth'.

25. Similarly, the definition of the word **'asset'** in **Section 2(ea)** of the Act only enumerates the six assets, viz. buildings or lands, Motor cars, jewellery, bullion etc. yachts, boats and aircrafts and urban land and cash in hand.

26. The Explanation of the term **"urban land"** with which we are presently concerned demarcates the 'urban lands' in any area which is comprised within the jurisdiction of the Municipal Corporations or in any area within **8 kms.** from the local limits of any Municipality.

The only exclusion is, where the construction of a Building is not permissible under any law for the time being in force or it is used as industrial land or is used as Stock-in-trade.

27. We are of the opinion that the lands in question belonging to the Respondent Assessees owned and possessed by them through out the period in question cannot be said to be the lands on which the construction of a Building is absolutely prohibited. The said exclusion terms **'construction of a building'** does not prohibit construction of temporary or semi-permanent structures made of wood or iron or sheds which are constructed from time to time for such public functions or some of them may be even almost permanently standing over the said lands, which are permitted to the Assessees under the interim Orders of the Hon'ble Apex Court. The lands in question are not absolutely barren vacant lands and there is also no

dispute that the lands in question lie within the Municipal limits and which is the only criteria to decide whether the lands in question are 'urban lands' or not. It is true that no permanent construction of Building is permitted by the Hon'ble Supreme Court, but the temporary or semi-permanent constructions of Sheds and other structures for public functions from which the Assessees are undoubtedly earning the regular income and which is also offered to tax under the Income Tax Act, the lands in question cannot be said to be falling in the Exclusion category in **Clause (b)** of the **Explanation (1)** to **Section 2 (ea)** of the Act.

28. We are of the further opinion that the purpose of the said exclusion of 'urban lands' in the Exclusion Clause (b) of Explanation from **1st April 1993** is to exclude from charge of Wealth-Tax only on the absolutely barren vacant 'urban lands', but the assets including 'urban lands' used for productive and income

yielding purposes are definitely "urban lands", which were not intended to be excluded from the taxable net under the Wealth Tax Act. Even though the said user of land is permitted under the conditions imposed by the Hon'ble Apex Court and subject to Government control and regulation requiring them to obtain permission from time to time for each function and such permission cannot be normally declined by the State, it is nonetheless a fact that the lands in question are high income yielding lands and therefore, the productive assets for the Assessees who are in full control and dominion over the said land and even themselves claiming to be the 'owners' of the lands in question, they are in full and peaceful possession of the lands in question, also cannot be held to be non-taxable and they cannot be said to have been *de facto* divested from the dominion and control of these properties. The learned counsel for the Revenue also brought to our notice certain Agreements entered into by one or two of

these Assessees executing further Lease Agreements, giving to the Lessees the perennial rights to use these lands in question in the best business interests and pay the fixed Lease Rents to the Assessees on yearly basis and in such Agreements, they claimed to be the "owners" of the lands in question also and such evidence of record would repel any thought of such 'urban lands' for being excluded from the tax net under the **Wealth-Tax Act, 1957.**

29. The contention of the Assessees is that they are the 'owners' of the lands and the matters are pending before the Hon'ble Apex Court, as would be clear from the Memorandum of their Appeals before the Hon'ble Supreme Court of India and they even claim that the valuation of the entire **Bangalore Palace and the appurtenant lands thereto** was around **`3,000.00 Crores** and that also shows that even though *prima facie* and without any doubt the Valuation of the assets

is much higher than the cap of `**11.00 crores** claimed by the learned counsel for the assessees. In any case, we are not expressing any opinion on the 'Valuation' aspect as already indicated, but the fact remains that highly valued 'urban lands' and the 'urban lands' yielding income subject to the regulations and conditions imposed by the Courts of law or Government Regulations are not intended to be exempted from the levy of Wealth-Tax with effect from **01/04/1993,** particularly, when the narrower concept of 'ownership' is not the crucial basis or sole determinative factor for levy in the Wealth-Tax Act but, allowing the Assessees to be covered by the tax net for the assets "belonging to the assessees on the Valuation Dates."

30. The relevant **para 6** of the Synopsis of the Special Leave Petition filed by the brother, **Sri. Srikanta Datta Narasimharaja Wadiyar** along with connected

Appeals by the Assessee Sisters against the **State Government** and the interim Orders of the Hon'ble Supreme Court dated **22/04/1997** and **30/04/1997** in **SLP (Civil) No.8801/1997 and connected matters**, the interim Order dated **14/09/1998** in **Civil Appeal No.3303/1997 (Sri Srikanta D.N. Wadiyar Vs. State of Karnataka and others)** and the interim Order dated **25/01/2001** in **Civil Appeal No.3310/1997 (Indrakshi Devi and others Vs. State of Karnataka)** as produced before us, are quoted below for ready reference to place in context the claim of the Assessees before the Apex Court.

31. **Para 6** of the Synopsis of the Special Leave Petition filed by the brother, **Sri. Srikanta Datta Narasimharaja Wadiyar** reads as under:-

> *"6. With regard to holding that compensation was not illusory, the Division Bench has erroneously based its findings on*

*the valuation of the Bangalore Palace made on **13.11.1989** by the Special Land Acquisition Officer (Railways). It is pertinent to mention that **there were no pleadings with regard to this,** nor were any objections raised by the counsel for the Respondent State when the **petitioners had estimated the value at about Rs.3000 crores.** It is imperative that opportunity ought to have been given to rebut **the assessed value at 11 crores.** The assessment at 11 crores is erroneous for 2 reasons (i) It is **based on a 1989 assessment** of the value without even associating the petitioner for determining the same. (ii) **Conclusions have been drawn without pleadings**. The value as on date of the impugned Act coming into operation that is **21.11.1996** should have been the basis. As such the Order is Ultra Vires and void as per the various decisions of this Hon'ble Court."*

32. The **Interim Order** passed by the Hon'ble Apex Court on **22/04/1997 in SLP**

(Civil)No.8801/1997 (Sri. Srikanta D.N. Wadiyar Vs. State of Karnataka and others) reads thus:-

"SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.8801/97

*(From the Judgment and order dated **31/03/97** in **WP 32175/96 of The HIGH COURT OF KARNATAKA At Bangalore**)*

SRI SRIKANTA D N WADIYAR
Petitioner (s)
VERSUS
STATE OF KARNATAKA & ORS
Respondent (s)
(With Appln(s), for ex-Parte stay)

*Date: **22/04/97** This Petition was called on for hearing toady.*

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUJATH V. MANOHAR
HON'BLE MR. JUSTICE B.N. KIRPAL

For Petitioner (s) Ms. Indu Malhotra, Adv.

For Respondent (s) Mr. P. Mahale, Adv.
Mr. N. Ganpathy, Adv.

UPON hearing counsel the Court made the following

60/113

ORDER

List the matter on ***30-4-97***

There shall be stay of dispossession till 30-4-97.

Sd/- *Sd/-*
Court Master *Court Master"*

33. The **Interim Order** passed by the Hon'ble Apex Court on **30/04/1997 in SLP (Civil)No.8801/1997 (Sri. Srikanta D.N. Wadiyar Vs. State of Karnataka and others)** reads thus:-

"SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for ***Special Leave to Appeal (Civil) No.8801/97***
(From the Judgment and order dated ***31/3/97*** *in* ***WP32175/96*** *of The* ***HIGH COURT OF KARNATAKA AT BANGALORE.***

SRI SRIKANTA D N WADIYAR
Petitioner (s)
VERSUS

STATE OF KARNATAKA & ORS
Respondent (s)
(With Appln(s). for ex-parte stay)
With

SLP (Civil) No.8850/97, SLP (Civil) No.8860/97, SLP (Civil) No.9031/97, SLP(Civil)No.9033/97, SLP (Civil) No.9125-9126/97

Date: 30/04/97 *These Petitions were called on for hearing today.*

CORAM:

HON'BLE DR. JUSTICE A.S. ANAND
HON'BLE MR. JUSTICE S.P. BHARUCHA
HON'BLE MR. JUSTICE K.S. PARIPOORNAN

For Petitioner (s): Mrs. Nalini Chidambram, Sr. adv.
in ***SLP 8801/97:*** *Ms. Shruti Pandey, adv.*
Ms. Mukti Sinha, adv.
Mr. Venkatesh, adv.
Ms. Indu Malhotra, adv.

In ***SLP 8860/97****: M/s. S. Sukumaran*
N. Naidu
N. Reddy & Ramesh Babu
M.R. advs

In ***SLP 8850/97:*** *Mr. K. Parasaran, Sr. adv.*
Mr. T.K. Seshadri, adv.
Mr. Gowda, adv.
Mr. Krishnamurthi Swami, adv.

In ***SLPs 9031 & 9033 of 1997*** *Mr. R.F. Nariman, Sr. adv.*
Mr. A.K. Ganguli, Sr. adv.

M/s. N. Naidu, N. Reddy, Srinivasan & S. Sukumaran, advs. for M/s. J.B. Dadachanji & Co. advs.

In ***SLPs.9125-26/97:*** *Mrs. Lalita Kaushik, adv.*

For Respondent (s): *Mr. Ashok Desai, Attorney General*
Mr. S. Vijayashankar, Advocate General Karnataka

UPON hearing counsel the Court made the following

ORDER

Special leave granted.

Issue notice in the stay application.

In the meanwhile, ***there shall be status-quo****, as existing today. Printing dispensed with. Additional documents, if any, shall be filed within twelve weeks.*

Sd/- *Sd/-*
Court Master *Court Master"*

34. The **Interim Order** passed by the Hon'ble Apex Court on **14/09/1998 in Civil Appeal**

No.3303/1997 (Sri. Srikanta D.N. Wadiyar Vs. State of Karnataka and others) reads thus:

"SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

IA No.2, 4, 1, 5, & 6 In Civil Appeal No.3303/97

SRI SRIKANTA D.N. WADIYAR
Appellant (s)
VERSUS

STATE OF KARNATAKA & ORS
Respondent (s)

(With Appln(s), for directions and stay and quashing And setting aside the Circular)
(With Office Report)

*Date:**14/9/1998** This Petition was called on for hearing today.*
CORAM:

HON'BLE DR. JUSTICE A.S. ANAND
HON'BLE MR. JUSTICE D.P. WADHWA

For Appellants (s) Mr. Arun Jaitley, Sr. adv.
Mrs. Nalini Chidambram, Sr. adv.
Ms. Indu Malhotra, adv.

For Respondent (s)Mr. S. Vijayashankar,

Advocate General
Mr. Sanjeev Puri, adv.
Mr. N. Ganpathy, adv.
Mr. Sanjay R. Hegde, adv.
Mr. N.D.B. Raju, adv.
Mr. Guntur Prabhakar, adv.
Mr. A.M. Khanwilkar, adv.
Mr. R.P. Wadhwani, adv.

UPON hearing counsel the Court made the following

ORDER

I.A.Nos.1/97, 4/97 and 5/97

This order will ***dispose of I.A.1/97, I.A.4/97, and I.A.5/97****. The appellants are the petitioners in I.A.1/97 and I.A.5/97. The State is the petitioner in I.A.4/97.*

We have heard learned counsel for the parties. This order may be read in continuation of our order dated ***10-8-1998.*** *Till further orders from this Court, the following interim arrangement is made:*

"1. The petitioners in I.A.1 and 5 of 1997 are permitted to ***let the Bangalore Palace premises on temporary***

leave/licence/hire basis subject to the following conditions:-

i) That the premises shall be ***let out on leave/licence basis for a fixed period only with the prior permission of the State Government;***

ii) That the premises shall be let out ***only for the purpose which are not inconsistent*** *with the object of the Acquisition Act:*

iii) That the petitioners shall ***ensure and undertake that no trees shall be cut*** *from the portion of the premises so let out nor any other damage is caused to the landscape or environment;*

iv) That the areas marked in Green in the plan, annexed hereto alone shall be so let out. The entire area marked in Green, we are informed by the petitioners, does not exceed 30 Acres;

v) That rest of the land i.e., parks and open space shall not be let out for any purpose by the petitioners;

vi) That the petitioners shall maintain an upto date account of the charges received by them in respect of letting out of the premises;

vii) That prior intimation shall be given to the State Government, while seeking permission, of the purpose for which the premises are required to be let out along with the period for which the premises are to be so let out and the particulars of the concerned parties to whom the premises would be let out;

viii) That ***the State Government shall not refuse permission to let out the premises,*** *on the aforesaid terms, so long as the purpose for letting out is not inconsistent with the object of the Act;*

ix) That the petitioners shall also be ***entitled to hire out the main Palace building also for the purpose***

of marriages etc*. after giving prior intimation to the State; and*

x) That the State Government shall be entitled to depute any of its officer, after prior intimation to the petitioners, to find out whether the order above made is being complied with in letter and spirit."

I.A.No.2/97

Xxx xxx xxx

Xxx xxx xxx

Sd/- *Sd/-*
Court Master *Court Master"*

35. The **Interim Order** passed by the Hon'ble Apex Court on **25/01/2001 in Civil Appeal No.3310/1997 (Indrakashi Devi and others Vs. State of Karnataka)** reads thus:

"SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

I.A. No.3 In C.A. No.3310/1997

Indrakshi Devi & Ors

Appellant(s)

VERSUS

State of Karnataka

Respondent(s)

(For permission to conduct the activity)

Date: ***25/01/2001*** *This petition was called on for hearing today*

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Appellant (s) : Mrs. Lalita Kaushik, Adv.

For Respondent (s) Mr. A.N. Jayaram,
Advocate General
Mr. N. Ganpathy, adv.

UPON hearing counsel the Court made the following

ORDER

We have heard learned counsel for the parties.

Learned counsel for the applicant submits that the applicant is satisfied with the proposal contained in paragraphs 9 to 17

of the reply affidavit filed on behalf of the State of Karnataka.

Those paragraphs read thus:-

9. The Appellant may make an application for the use of the "Palace property" which means the Palace and the area surrounding it of an extent of about 30 acres as delineated in the sketch and taken note of by this Hon'bel Court in its orders, to the Department of Personnel and Administrative Reforms, Government of Karnataka, with full details, including the following:

(a) The purpose for which the land/building is required.

(b) The details of the building or portion of building required for use.

(c) If it is the land, the extent required and its location, as shown in an attached sketch.

(d) Details of the activity to be carried out in the land/building for which permission is sought.

(e) An undertaking that the use proposed of land/building will not have prejudicial effect on the other structures or land and it is not of general ecological consequence of a prejudicial kind.

10. Upon Consideration of the application, the Government may call for further details in order to ensure that the use to which the portion /the property is to be put, will not result in any violations of the provisions of the Act or that it will not lead to any deleterious effect upon the other structures, land and the greenery within the Palace property.

11. The application for permission sought for, shall be made at least one month prior to the proposed date of commencement of use. After consideration of each case on merits, the Government may grant permission or to decline the same, if in its opinion, such use is not to be permitted in the interest of preserving the heritage character of the

property and ecological considerations. The Government shall be entitled to impose a condition that no tree in the Palace property shall be cut during the period of use and no other activity involving hazards to the surroundings, buildings, land and the greenery in the Palace property shall be committed.

12. Permission shall be granted only for a short term by way of a permissive license and no long term transaction shall be entered into by the appellant. The period of use shall be within the discretion of the Government of Karnataka.

13. ***The permissive use of the property granted to the licensee shall not be transferred or alienated to any one else under any condition.***

14. The Appellant shall maintain upto-date accounts of the amounts received by him in respect of the permission granted for the use of the property.

15. The State shall be entitled to depute any of its officials to ensure that none of the conditions imposed are violated by the person making use of the property.

16. All permissions and licenses granted shall without any further act or deed expire on the date of the order made by this Hon'ble Court disposing of the above appeal.

17. In respect of the land belonging to the other members of the Appellant's family (parties in Civil Appeal Nos.3309 and 3310 of 1997), any permission sough or secured, shall be governed mutatis mutandis by the same conditions as above.

The proposals, as contained in the above paragraphs and accepted by learned counsel for the applicant, are recorded and the application is disposed of accordingly.

Sd/- *Sd/-*
Court Master *Court Master"*

36. The Assessees here cannot be allowed to take a different or mutually conflicting stands before the Court of law "that they are owners of Bangalore Palace and the lands appurtenant thereto" while challenging **the Bangalore Palace (Acquisition and Transfer) Act, 1996,** before the Hon'ble Supreme Court and different plea "that they are not the owners of lands and the lands do not belong to them and the lands stood vested in the State Government with effect from **21/11/1996** and they were divested of their ownership of these lands" before this Court to contend that they are not liable to pay Wealth-Tax. Such diagonally opposite stand of assessees in Courts of law to serve their purposes is legally not permissible. They cannot *approbate and reprobate* in the same breath. Section 5(6) of BPAT Act also indicates that the Suit or other proceedings in respect of the said property shall not abate but shall be continued against the State Government. This also suggests that vesting of the said

Property in the State can remain subject to litigation and its fate would naturally depend upon the finality in the litigation.

37. We would also like to quote the meaning of both these terms **"ownership**" and "**belonging to"**, from some leading Dictionaries which are as follows:-

38. The word "**ownership**" is quoted as follows:

(1) Advanced Law Lexicon

[3rd Edition Reprint 2007]

> ***"Ownership.*** *The collection of rights allowing one to use and enjoy property, including the right to convey it to others. Ownership implies the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent and inheritable."*
>
> *"**Ownership"**, in its most comprehensive signification, denotes the relation between a person and right that is vested in him. That which a man owns is in all cases a right, when, as is often the case, we speak of the*

ownership of a material object, this is merely a convenient figure of speech. To own a piece of land means in truth to own a particular kind of right in the land, namely, the fee simple of it."

"Ownership" *consists of innumerable rights over property, for example, the rights of exclusive enjoyment, of destruction, alteration and alienation, and of maintaining and recovering possession of the property from all other persons. Such rights are conceived not as separately existing, but as merged in one general right of ownership.*

"Ownership" *means a right which avails against every one which is subject to the law conferring the right to put thing to user of indefinite nature." (Austin)*

"Ownership" *is a plenary control over an object. An owner has three kinds of powers, namely, possession, enjoyment and ownership. (Holland)*

"Ownership" *does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional powers of those who use it."*

*"**Ownership**" is the right by which a thing belongs to an individual, to the exclusion of all other persons".*

(2) Stroud's English Dictionary

"Owner" *the owner or proprietor of a property is the person in whom a (with his or her assent) it is for the time being beneficially vested and who has the occupation, or control, or usufruct of it."*

(3) Black's Law Dictionary

"Ownership"

The bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others. Ownership implies the right to possess a thing, regardless of any actual or constructive

control. Ownership rights are general, permanent, and heritable.

*"**Ownership**" does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional powers of those who use it.* ***"Marsh v. Alabama,*** *326 U.S. 501, 506, 66 S.Ct. 276, 278 (1946) (Black, J.).*

(4) New Webster's Dictionary

Own: *Distinctly and emphatically belonging to oneself: usu. used following a possessive pronoun or a noun in the possessive; as, my own idea; pertaining to oneself; as, my own niece. To hold or possess, esp. property; to acknowledge. To admit, used with to or up. -* ***hold one's own****, to maintain one's situation; to be equal to the task of the opposition.*

39. The term "**belonging to"** is quoted in the following four Dictionaries as follows:-

(1) Advanced Law Lexicon

[3rd Edition Reprint 2007]

"Belonging to": *The words '**belonging to**' in S. 4(1) Bombay Rent, Hotel and Lodging House Rates Control Act 57 of 1947 import a concept of ownership. They mean very much the same thing as 'of the ownership of' though not necessarily 'of the absolute ownership.' Laxmipat v. Larsen and Toubro Ltd., AIR 1951 Bom 205,208.*

Building erection on plot taken in auction for 999 Years lease. The lessor after the building was erected became the owner of it and all the time thereafter the demised premises which includes the building have belonged to him subject to the right of enjoyment of the lessee in terms of the lease. Bhatia Co-op housing Society Ltd. v, D.C.Patel, AIR 1953 SC 16, 21

*The word '**belonging to**', **though capable of denoting an absolute title, can also signify of even possession of an interest***

less than that of full ownership. *The words 'belonging to me' do not amount to a disclaimer of the tenancy and a repudiation of the landlord's title. Mohd. Amir v. Municipal Board. Sitapur. AIR 1965 SC 1923, 1929.*

Stroud's English Dictionary

BELONG; BELONGING. (1) Property "belonging " to a person, has two general meanings, (1) ownership, (2) the absolute right of user.

(2) A thing, or right, which is said to "belong" to a PERSON, connotes either ownership or the absolute right of user but if it is said to "belong" to some other thing or right, that connotes that it is held or used along with that other thing or right of which it is a part.

(3)….
(4) Property legally vested in a person, does not "belong" to him if he only holds it in trust for someone else, nor can it be said to be his "property" (Heritable Reversionary Co. v. Millar [1892] A.C. 598)

(5)…

(6)..

(7) ***Lands "belong" to a vicarage even though the vicar has let them*** *(Wiltshire County Valuation Committee v. Boyce [1948] 2 K.B. 125)*

(8) "Belonging to or intended for the use of the undertakers" (Rating and Valuation (Apportionment) Act 1928 (c.44), s.5(1)©: see thereon Shell-Mex and B.P. v. Clayton [1956] 1 W.L.R. 1198, where it was held ***not inappropriate to describe goods as "belonging" to undertakers although the property therein was not in the full legal sense vested in them."***

(3) Black's Law Dictionary

*"**Belong"** To be the property of a person or thing <this book belongs to the judge>. See OWNERSHIP. 2. To be connected with as a member <they belong to the state bar>.*

(4) New Webster's Dictionary

> ***"Belonging"*** *That which belongs to one, used generally in plural: qualities, endowments, property, possessions, appendages."*

40. From the above definitions also, it is clear that the words "**belonging to"** are of wider import and more flexible than the narrower term of **'ownership**'.

41. **Section 4** of the Act which mandates the assets "belonging to" other persons also to be included for the purposes of assessments in the hands of the assessees is also significant. The said provisions of **Section 4** incorporates that in computing the "net wealth" of an assessee even if the assets are held by the spouse or minor child or by a person or Association of persons to whom such Assessees' assets have been transferred/divested, such assets are liable to be taxed in the hands of the Assessees.

42. **Sub-section (8)** of **Section 4** also permits the assets to be taxed in the hands of the Assessee, even if the asset is not yet fully *de jure* transferred to him and invoking the provisions of **Section 53-A of the Transfer of Property Act, 1882,** the Assessee retains the possession of such property in part performance of the contract. **Section 8** deems such a person to be the 'owner' of that building or property and allows taxability in his hands even though the title in favour of the Assessees is not yet crystallized and only on the basis of possession and in part performance of the Contract to purchase that the asset under **Section 53-A of the T.P.Act**, the Assessee retains the possession thereof.

43. The intention of the Legislature is, therefore, obvious i.e. to throw the tax net under the provisions of the Wealth-Tax a little wider and not to cover only the 'owners' of the assets *stricto sensu*.

44. In this perspective, we find ourselves fortified in taking the view that the assets in question namely

'urban lands' belonging to Assessees for which they are not only claiming 'ownership' through litigation but are undoubtedly in possession, dominion and control but also in user of the land yielding income therefrom, they cannot be held to be outside the tax net under the Wealth-Tax Act, 1957.

45. We may add here that the words 'urban land' by definition only is required to geographically fall within the Municipal limits and there is no dispute on this issue in the present case and the issue is raised only with reference to **Clause (b)** exclusion in the Explanation on account of the so called 'no construction allowed thereon' under any law, which we find to be not totally prohibited. The temporary or even semi-permanent constructions on such lands also would take it away from the said exclusion in **Clause (b)** of the **Explanation.** As far as it being **'green park area',** under **1985** State enactment is concerned, there is no material evidence on record nor any case of its full

prohibition with the provisions of such Act is brought out in the present case.

DISCUSSION OF CASE LAWS CITED AT THE BAR:

46. Let us now refer to the relevant case laws which support the aforesaid view taken by us.

47. In the decision of the Hon'ble Supreme Court which was heavily relied upon by the learned counsel for the Respondent Assessees in the case of **Commissioner of Wealth-Tax, West Bengal Vs. Bishwanath Chatterjee and others (1976) 103 ITR 536 (SC),** the Hon'ble Apex Court held that the liability to Wealth Tax arises out of the ownership of the assets and not otherwise. Mere possession or joint possession, unaccompanied by the right to, or ownership of property would therefore not bring the property within the definition of 'net wealth' for it would not then be an asset 'belonging to' the assessee.

48. The Hon'ble Supreme Court in that case was dealing with a coparcener of a Hindu family governed by Dayabhaga School of Hindu law, wherein B's individual property devolved on his heirs according to the provisions of the Hindu Succession Act, 1956 and the coparcenary formed on his death, though had unity of possession, but not unity of ownership on the property and each coparcener therefore, took a defined share in the property and was owner of his share and each such defined share thus belonged to the coparcener and it was his 'net wealth' within the meaning of Section 2(m) of the Wealth-Tax Act.

49. The relevant extract of the said judgment is quoted below for ready reference:-

> *"The High Court of Calcutta in Gouri Shankar Bhar's case made a reference, inter alia, to the decision in Biswa Ranjan Sarvadhikary v. Income-tax Officer, F-Ward, District II (2), Calcutta and upheld the view that where property is owned by two or more persons*

governed by the Dayabhaga school and their shares are definite and ascertainable, then, although they are in joint possession, the tax will be assessed on the basis of the share of the income in the hands of the assessee and not as of a Hindu undivided family. It was held that the position was not different under the Wealth-tax Act. The matter was brought to this Court on appeal and it was conceded by the Solicitor General appearing for the Commissioner of Wealth-tax that as the property was the individual property of the deceased, it devolved on his heirs in severalty. It was held that as each of them took a definite and separate share in the property, each of them was liable, in law, to pay wealth-tax as an individual. While upholding the decision of the High Court it was however observed by this Court that it was not necessary to decide, in that case, whether a Dayabhaga family could be considered as a Hindu undivided family within the meaning of section 3 of the Act. That decision is Commissioner of Wealth-tax v. Gauri Shankar Bhar.

In the case before us, it is not in dispute that the property in question was the individual property of Bireswar Chatterjee and that it devolved on his heirs according to the provisions of the Hindu Succession Act, 1956. It will be recalled that a suit for partition was filed on June 21, 1957, and a preliminary decree was passed on July 4, 1959. For reasons already stated, the coparcenary had unity of possession but not unity of ownership on the property. Each coparcener, therefore, took a defined share in the property and was the owner of his share. ***Each such defined share thus "belonged" to the coparcener. It was his "net wealth" within the meaning of section 2(m) of the Act and was liable to wealth-tax as such under section 3.*** *The High Court was, therefore, right in answering the reframed question in the negative, and as we find no force in the argument of Mr.Desai, the appeal fails and is dismissed with costs."*

50. The said judgment in its peculiar context held that since the share of the individual coparcener stood separately defined and acquired as his individual wealth that would be included in his 'net wealth' as defined share 'belonging to' the coparcener and in that context, the Hon'ble Supreme Court held as under:-

> *"The expression "belong" has been defined as follows in the Oxford English Dictionary: - "To be the property or rightful possession of."*
>
> ***So it is the property of a person, or that which is in his possession as of right, which is liable to wealth-tax. In other words, the liability to wealth-tax arises out of ownership of the asset, and not otherwise.*** *Mere possession, or joint possession, unaccompanied by the right to, or ownership of property would therefore not bring the property within the definition of "net wealth" for it would not then be an asset "belonging "to the assessee."*

51. The facts of the aforesaid case are clearly distinguishable from the facts of the present case because in the facts before us, the family property in question stood partitioned in the year **1984** and there is no dispute that we are dealing with the defined share acquired on partition by the Respondent Assessee sisters in their individual hands and therefore by necessary implication, these assets should be deemed to be 'belonging to' the Respondent Assessees on the reasoning in the aforesaid judgment of the Hon'ble Supreme Court.

52. The term 'belonging to' in the context of definition of 'net wealth' came to be discussed by the Hon'ble Supreme Court in the case of **Nawab Sir Mir Osman Ali Khan Vs. Commissioner of Wealth-Tax, Hyderabad : 1986 162 ITR 888 (SC)** and following the aforesaid judgment of ***Bishwanath Chatterjee (supra),*** the Hon'ble Supreme Court held that the liability to Wealth-Tax arises because of the belonging of the asset

and not otherwise and mere possession, or joint possession, unaccompanied by the right to be in possession or ownership of property, would, therefore, not bring the property within the definition of 'net wealth'.

53. Quoting from the Stroud's jurisprudence, the Hon'ble Supreme Court discussed the concept of 'ownership' and 'belonging to' in the following manner:-

> *"The material expression with which we are concerned in this appeal is* ***"belonging to the assessee on the valuation date".*** *Did the assets in the circumstances mentioned herein before, namely the* ***properties in respect of which registered sale deeds had not been executed but consideration for sale of which had been received and possession in respect of which had been handed over the purchasers*** *belong to the assessee for the purpose of inclusion in his net wealth?* ***Section 53A*** *of the Transfer of Property Act gives the party in possession, in*

those circumstances, the right to retain possession. Where a contract has been executed in terms mentioned herein before and full consideration has been paid by the purchasers to the vendor and where the purchasers have been put in possession by the vendor, ***the vendees have the right to retain that possession and resist any suit for eviction.*** *The purchasers can also enforce a suit for specific performance for execution of a formal registered deed if the vendor was unwilling to do so. But, in the eye of the law, the purchasers cannot be and are not treated as legal owners of the property in question. It is not necessary, in our opinion, for the purpose of this case to be tied down with the controversy* ***whether in India there is any concept of legal ownership apart from equitable ownership or not or whether under*** *sections 9 and 10 of the Indian Income tax Act, 1922, and sections 22 to 24 of the Income-tax Act, 1961, where "owner" is spoken of in respect of house properties, the legal owner is meant and not the equitable or beneficial owner.* ***Salmond***

on Jurisprudence, *twelfth edition, discusses the* ***different ingredients of "ownership"*** *on pages 246 to 264. "Ownership", according to Salmond, denotes the relation between a person and an object forming the subject-matter of his ownership.* ***It consists of a complex of rights, all of which are rights in rem, being good against all the world and not merely against specific persons.*** ***Firstly,*** *Salmond says, the owner will have a right to possess the thing which he owns. He may not necessarily have possession.* ***Secondly,*** *the owner normally has the right to use and enjoy the thing owned: the right to manage it, i.e., the right to decide how it shall be used; and the right to the income from it.* ***Thirdly, the owner has the right to consume, destroy or alienate the thing.*** ***Fourthly,*** *ownership has the characteristic of being indeterminate in duration. The position of an owner differs from that of a non-owner in possession in that the latter's interest is subject to be determined at some future time.* ***Fifthly,*** *ownership has a residuary character. Salmond also notes the distinction*

between legal and equitable ownership. Legal ownership is that which has its origin in the rules of the common law, while equitable ownership is that which proceeds from rules of equity different from the common law. The courts of common law in England refused to recognize equitable ownership and denied that the equitable owner was an owner at all."

54. Referring to the earlier decision of the Hon'ble Supreme Court in the case of **Jodha Mal Kuthiala (R.B) Vs. Commissioner of Income Tax [1971] 82 ITR 570 (SC),** the Hon'ble Supreme Court in the same judgment of Nawab Sir Mir's case(supra) proceeded to discuss these concepts in the following manner:-

"In the instant case, as we have noticed, the position is different. We are not concerned with the expression "owner". We are concerned whether the assets, in the facts and circumstances of the case, belonged to the assessee any more.

This Court had occasion to discuss section 9 of the Indian Income-tax Act, 1922, and the meaning of the expression "owner" in the case of ***R.B.Jodha Mal Kuthiala v. CIT [1971] 82 ITR 570 (SC).*** *There it was held that for the purpose of section 9 of the Indian Income-tax Act, 1922,* ***the owner must be the person who can exercise the rights of the owner, not on behalf of the owner but his own right.*** *An assessee whose property remained vested in the Custodian of Evacuee Property was not the owner of the property. This again, as observed, dealt with the expression of section 9 of the Indian Income-tax Act, 1922. At page 575 of the report, certain observations were relied upon in order to stress the point that these observations were in consonance with the observations of the Gujarat High Court which we shall presently notice. We are, however, not concerned in this controversy at the present moment.* ***It has to be borne in mind that in interpreting the liability for wealth-tax, normally equitable considerations are irrelevant.*** *But it is well to remember*

that in the scheme of the administration of justice, ***tax law like any other laws will have to be interpreted reasonably*** *and whenever possible in consonance with equity and justice. Therefore, the fact that the* ***Legislature has deliberately and significantly not used the expression "assets owned by the assessee" but "assets belonging to the assessee"' in our opinion, is an aspect which has to be borne in mind."***

55. Another judgment relied upon by the learned counsels for the Assessees in the case of **Commissioner of Income Tax Vs. Podar Cement Pvt. Ltd. and others [1997] 226 ITR 625 (SC)** dealt with the concept of **Section 22** under which Income from the House Property is taxable under the Income Tax Act, 1961, the Hon'ble Supreme Court held that, though under the Common law, a 'owner' means a person who has got valid title legally conveyed to him after complying with the requirements of law such as the Transfer of Property

Act, the Registration Act etc., in the context of Section 22 of the Income Tax Act, 1961 having regard to the ground realities and further having regard to the object of the Income Tax Act, viz., to tax the income, 'owner' is a person who is entitled to receive the income from the property in his own right and the requirement of Registration of the Sale Deed in the context of Section 22 is not warranted.

56. The judgment of the Hon'ble Supreme Court referred to above in the case of **Jodha Mal Kuthiala (R.B) Vs. Commissioner of Income Tax (supra)** was applied in the aforesaid case.

57. The aforesaid judgments, in our opinion, support the view which we are taking rather than the view canvassed by the learned counsels for the Respondent Assessees before us.

58. This right to receive the income from the property or the assets which brings the property in the tax net under the Wealth-Tax Act because of the words

'belonging to' rather than going by the narrower concept of 'ownership' and if a wider concept of 'belonging to' relaxing the interpretation of the word 'owner' under Section 22, the Hon'ble Apex Court held in the aforesaid case of ***Podar Cement Pvt.Ltd. and others (supra)*** that income would be taxable under Section 22 even if the properties are not properly conveyed and registered in favour of the Assessees in the case before us, we cannot hold otherwise that even though the possession, dominion and control of the Asset (urban land) and income yielding continues in the hands of the Assessees and only the question of 'ownership' is open to litigation, the Assessees should not be taxed under the provisions of the **Wealth-Tax Act, 1957**.

59. The contention of the learned counsel for the Assessees is that the right of the Assessees over the said "urban lands" is only a contingency right depending upon the fate of litigation pending before the Hon'ble

Supreme Court and the Assessees have no vested right in view of the **BPAT Act, 1996** over the lands in question and therefore the taxability in their hands does not arise.

60. The contention raised is that the words "belonging to" have three facets, viz. i] vested right; ii] contingency right; and iii] *spes successionis* (hope to succeed viz. in the case of a Will becoming operative).

61. We cannot accept this submission. The words "belonging to Assessee" are referable to dominion, control and possession over the property and even when such rights of the "owner" are under a cloud of litigation, it does not render their right as contingent or *spes successionis* (hope to succeed). The Assessees may not even have a vested right in the property and even if the dominion, control and possession of the property continues to be with them during the period of litigation, the taxability under the Wealth-Tax Act is attracted and therefore, the rights over the '**urban**

lands' with the Assessees, in the present case cannot be said to be a mere *spes successionis* (hope to succeed) or a contingent right.

62. In the case of **Commissioner of Wealth-Tax Vs. H.P. Small Industries & Export Corp. [2012] 22 Taxmann.com.32(Himachal Pradesh),** the Division Bench of the Himachal Pradesh High Court in a judgment delivered by his Hon'ble Justice Deepak Gupta J. (as his Lordships then was) held that though the language of Wealth-Tax Act and the Income Tax Act may be different in as much as the words used in the Wealth-Tax are 'belonging to' and in the Income Tax Act, the words used are 'owner', there can be no dispute that 'belonging to' has to be given a much wider connotation than the word 'owner'.

63. The Court further held that the words 'belonging to' have to be read along with the Explanation of Section 4 and under this Explanation, the expression 'transfer' includes any agreement or

arrangement and the assessee in that case was allotted the land by the State Government and it constructed Sheds thereupon and rented out the same and derived income there from. The Sheds were, therefore, under the domain and control of the assessee, even if the legal ownership had not passed on to the assessee, the Court held that the property in question belonged to it and since the assessee was deriving rental income and collecting the same which itself showed that it was the assessee to whom the property belonged and therefore, the assessee was liable to be taxed under the provisions of the Wealth-Tax act.

64. The relevant paragraphs 10 and 11 of the said judgment are quoted below:-

> *"10. Though the language of the Wealth Tax Act and the Income Tax Act may be different in as much as the words used in the Wealth Tax Act are 'belonging to' and in the Income Tax Act the words used are 'owner', there can be no dispute that*

'belonging to' has to be given a much wider connotation than 'owner'. The Judgment in Podar Cement (P.) Ltd.'s case (supra) is by a Bench of three Judges and in this case the judgment of the Apex Court in Nawab Sir Mir Osman Ali Khan's case (supra) has been specifically noticed and distinguished. Therefore, we are bound to follow the judgment in Podar Cement (P.) Ltd.'s case (supra).

Furthermore, we are also in agreement with the Full Bench judgment of the Andhra Pradesh High Court that the words 'belonging to' have to be read along with the explanation of Section 4 and under this explanation the expression of 'transfer' includes any agreement or arrangement. The assessee, in the present case, was allotted the land by the State Government. It constructed shops thereupon and rented out the same and derived income there from. The sheds were therefore under the domain and control of the assessee. Even if legal ownership had not passed to the assessee the property in question belonged to it. The assessee was

deriving rental income and collecting the same which itself shows that it was the assessee to whom the property belonged."

65. The aforesaid judgment, in our opinion, also supports the view which we are taking as aforesaid and since the assessee in the present case also is in the domain and control of the 'urban lands' in question, therefore, even though the question of ownership is subject to litigation, they should be held to be liable to pay the Wealth-Tax for the Assessment Years in question.

66. The learned counsel for the assessee also relied upon the decision of the Delhi High Court in the case of **Commissioner of Wealth Tax Vs. D.C.M. Ltd. [2007] 290 ITR 0615 (Del)**, in which the Division Bench of the Delhi High Court held in peculiar facts as under:

"The first appellate authority had proceeded on the assumption that now orders

of Supreme Court dt. 1st May, 1991, qua redevelopment had been permitted of the mill area to flatted factory complex and group housing complex. Leave was also granted to demolish the existing building. It is not in dispute before us that ***till date no permission/approval has been granted by the appropriate authority to the assessee to raise the building*** *in consonance with the plans and as such the old structure existing is not in conformity with law and had not been raised with the leave of any authority. In other words, on the land in question, no construction was permitted and the authorities concerned have not granted its approval so far for raising construction on that land. In either of these cases, the land would stand excluded from the definition of "urban land" chargeable to wealth-tax. In relation to one phase, the permission was granted much subsequent to the relevant year of assessment, which as stated on record before us, had also been withdrawn and work was stopped."*

67. As per the facts before the Hon'ble Delhi High Court, it is clear that the said facts are not only distinguishable but no such facts are forthcoming in the case before us and therefore, the reliance placed by the learned counsel for the Assessee on the said case is rather misplaced.

68. The learned counsel for the Revenue, however, mainly relied upon the some case laws mainly on the scope of 'Protective Assessments' which are enumerated below:-

1. Commissioner of Income Tax Vs. Cochin Company (P) Ltd. [1976] 104 ITR 0655 (Ker.HC);

2. Commissioner of Income Tax, Agra Vs. Ram Chand Tilli Works [2013] 35 Taxmann.com 80 (Allahabad);

3. Lalji Haridas Vs. Income Tax Officer [1961] 43 ITR 387 (SC);

4. Bhagmal Saudagar Mal Vs. Commissioner of Income Tax (Allahabad HC) [2004] 267 ITR 0637;

5. New Jahangir Vakil Mills Co.Ltd. Vs. Commissioner of Income-Tax [1963] 49 ITR 137 (SC);

69. "Protective", "precautionary" or "alternate" assessment is an assessment which is made *ex-abundanti cautela* by the Assessing Authority and is therefore called protective or Precautionary Assessment or alternative assessment. When the Department has any doubt as to the person who is or will be deemed to be in receipt of the income, protective or alternative assessments are permitted. Thus, there is no double assessment if the first assessment is void.

70. It is no doubt true that the Income–Tax Act/Wealth-Tax Act nowhere provides that a protective or precautionary assessment can be raised in respect of

one and the same income/wealth on two different persons. A departmental practice that has however gained judicial recognition is that, in certain circumstances, where it appears to the Income-Tax Authorities that certain income has been received during the relevant assessment year but it is not clear who has received that income and *prima facie* it appears that the income may have been received either by A or B or by both together, it would be open to the relevant Income-Tax Authorities to determine the said question by taking appropriate proceedings both against A and B. This is done so that such income/wealth may not escape taxation altogether. This has been held to be quite sensible because the Revenue has to be protected against the bar of limitation. If the Income-Tax Authorities are precluded from making an alternative assessment, then by the time the disputes are over, the real assessment would be barred. But while “protective assessment” is permitted, protective recovery is not

allowed. It is one thing to say that the Authorities are merely making an assessment and another thing to say that at one and the same time they could not only make assessment in respect of one set of dues but proceeds to realize both.

71. Thus, until there is a final assessment in existence the raising of alternative assessment by the Revenue cannot be prevented. Besides, the assessment to tax is one of the processes open in law to adjudicate the title of the parties or the shares of the parties or in the context of Wealth-Tax, whether the asset 'belongs to' the Assessee on the Valuation Date. The powers of the Assessing Officer are also, so far as Revenue purposes are concerned, plenary in the sense he has to decide who is the owner and to whom does a particular income belong. He must, of course, decide the question in accordance with the other provisions of law. But it is for the Revenue authority to decide in accordance with

law the rights of the parties and to decide to whom the income/assets in question belong.

72. On the issue of 'Protective Assessments', we have already noted above that the demands in question have been raised under the 'Protective Assessments' only framed by the Assessing Authority and the recovery on the basis of the same is not enforceable as of now and therefore, the appellate Orders by the Appellate Tribunal and the Commissioner of Wealth-Tax (Appeals) even though decided the Questions on merits would remain in the character of the 'Protective Assessments' only, but since the Tribunal has decided the question of law also, that is why it has given rise to the aforesaid Substantial Questions of law which we are called upon to decide.

EFFECT OF LITIGATION ON WEALTH-TAX EXIGIBILITY FOR A.Y.1999-2000 TO A.Y. 2004-05:

73. Upon the final decision of the Hon'ble Apex Court, upholding the validity of **"The Bangalore Palace (Acquisition and Transfer) Act,1996",** the title of the lands may be divested from the appointed date **21/11/1996** or a later date but the levy under the Wealth-Tax Act can still hold the ground on the basis of interpretation of the key words 'belonging to' construed to be of wider import and the possession, dominion and control of the 'urban lands' having remained with the Respondent Assessees on the respective Valuation dates relevant to **A.Y.1999-2000 to A.Y. 2004-05** in question.

74. On the other hand, if the appeals of the Assessees are allowed by the Apex Court and the **BPAT Act, 1996** is struck down, the clear title and 'ownership' of the Assessees would emerge further fortifying their liability to pay Wealth-Tax on such 'urban lands' as 'owners', even though during the period

of their litigation, their Wealth-Tax liability is still enforceable upon substantive Assessments as the said 'urban land' continues to 'belong to' them, irrespective of litigation, on the respective Valuation Dates relevant to these Assessment Years.

75. Therefore on the basis of the aforesaid analysis of the facts and law, we proceed to answer the aforesaid Substantial Questions of law in favour of the Revenue and against the Respondent Assessees in the following manner:-

ANSWERS TO THE SUBSTANTIAL QUESTIONS OF LAW:

76. **Question No.1 is answered in favour of the Revenue** and against the Respondent Assessees and we hold that the Income Tax Appellate Tribunal (ITAT) was not justified in law in holding that **28 Acres** of land located within the Corporation limits of the Bangalore City does not fall within the definition of **'Assets'** in **Section 2 (ea)(b)** of the Wealth-Tax Act, 1957 and no

Wealth Tax on these lands is chargeable. We hold that the Wealth Tax would be chargeable for these Assessment Years in question in the hands of the Respondent Assessees as the "urban lands" in question 'belonged to' the Assessees on the respective 'Valuation Dates' relevant to **A.Y. 1999-2000 to A.Y. 2004-05** in question.

77. We **answer the Substantial Question of law No.2 also in favour of the Revenue** and against the Assessees and hold that there was no total prohibition against raising of any sort of construction of a Building on the lands in question either under the interim Orders of the Hon'ble Supreme Court or by virtue of **Karnataka Parks, Play Fields and Open Places (Preservation and Regulation) Act, 1985** and in view of the fact that temporary or semi-permanent constructions were raised from time to time on these lands in question, the 'urban lands' in question **'belonging to'** the Assessees could

not fall in the **Exclusion Clause (b) of Explanation** to **Section 2 (ea)** of the Wealth-Tax Act, defining the term "Assets".

78. **We also answer Substantial Question of law No.3 in favour of the Revenue** and against the Assessees and hold that the Income Tax Appellate Tribunal (ITAT) was not justified in setting aside the "Protective Assessments" made by the Assessing Authority for the Assessment Years **A.Y. 1999-2000 to A.Y. 2004-05** in question. The Assessing Authority would be free to now proceed to make substantive assessments in the hands of the Respondent Assessees.

79. Accordingly, all these Appeals filed by the Revenue are ***allowed*** in the aforesaid manner. No order as to costs.

Sd/-
JUDGE

113/113

Sd/-
JUDGE

BMV*