IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1231 OF 2003

. Nagari Niwara Parishad, Goregaon .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1250 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1248 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1234 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1233 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1239 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1236 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1240 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1242 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1237 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1241 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1243 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1245 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1246 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1232 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1235 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1247 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1238 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1244 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

WITH

FIRST APPEAL NO.1249 OF 2003

. Nagari Niwara Parishad, Mumbai .. Appellant

Versus

1. Municipal Corporation of Greater Mumbai

2. Municipal Commissioner of Greater Bombay
..Respondents

...

Advocate for Appellants:
Smt. Nilima Sanglikar i/b. Ms. Sangeeta Salvi
Advocate for Respondent-BMC:
Mr. Suresh Pakale, Senior Advocate a/w. Ms. Vidya Vyavhare a/w. Mr. Pradeep M. Patil a/w. Ms. Pallavi Khale i/b. Mr. Sunil Sonawane
Mr. Rajendra Sankhe, A.A. & C P/N Ward-Present for Respondent-BMC & Ors.
...

CORAM:	ARUN R. PEDNEKER, J.

Reserved on:	01.08.2024
Pronounced on:	12.11.2024

JUDGMENT:

1. Appellants are challenging the Judgment and Order dated 29.10.2002 passed by the Additional Chief Judge of Small Causes Court in the Municipal Appeals Nos.59 of 1998 to 73 of 1998, 131 and 132 of 1998, 441, 443 and 444 of 1999 in the First Appeal Nos.1231 to 1250 of 2003.

2. As the appeals involve identical issues, all the first appeals are taken up together for consideration and the facts are taken from First Appeal No.1231 of 2003.

3. Questions involved in these appeals are:

{1} Whether the appellant on having transferred the assessed property during the pendency of the appeals looses jural relation to the assessed property and, thus, looses the locus to prosecute the appeal and the appeal can only be proceeded with by the transferee of the assessed property ?

If the answer to the above question is NO, then,

{2} Whether the rateable value of the assessed property, as determined by the Small Causes Court at the rate of Rs.300/- per sq.mtr. is excessive ?

{3} In view of the second proviso to Section 217(5) of the Mumbai Municipal Corporation Act, 1888 ***(for brevity "MMC Act")***, whether direction can be issued by the Small Causes Court or by this court in exercise of the appellate jurisdiction under Section 218-D of the MMC Act for refund of the excess amount of property taxes deposited by the appellant or has to necessarily direct adjustment of the excess property tax deposited with the corporation towards the future property taxes of the assessed property ?

FACTS:

4. The appellant is a public charitable trust registered under the Bombay Public Trusts Act, 1950. The intent and object of the Trust is to secure shelter for the poor and weaker sections of the society and also to extend legal aid to the needy persons. Trust has constructed 6213 tenements in a housing project executed on 62 acres of land.

5. On 13.10.1983, Appellants applied to the Government of Maharashtra for making available land for housing its members belonging to weaker sections of the society.

On 16.02.1991, State Government passed Resolution to allot 62 acres of land out of 130 acres under Survey No.239 part of Village Malad to Appellant as per policy of 12.05.1983 on terms and conditions stipulated in the sanction.

On 26.03.1992, State Government gave possession of 62 acres of residential area for housing 6200 members of the appellants at the rate of Rs.25/- Square Meters which was paid by the appellant.

On 19.12.1994, Layout Plan was approved by the respondent subject to appellant constructing roads, lighting, drainage, sewerage, recreation spaces, amenity etc. Respondents took registered undertaking from the appellant. The appellant was required to even out the land and construct the roads internal and DP. Appellant obtained IOD for 67 buildings and 17 CC. Construction of 15 buildings started on Plot No.53 to 62 and 64 to 68.

On 27.03.1997, Special Notice under Section 162(2), 167 was issued by the respondent proposing to assess Plot No.53 Ward No.P/N/142668 as land under construction (LUC) at Rs.1,22,010/- w.e.f. 01.04.1996. The rateable value of plot was determined at Rs.750/- per mtr.

On 10.04.1997, appellants lodge their complaint against the Rateable Value of Rs.750/- per sq.mtr.

On 12.01.1998, IO passes order fixing Rateable Valueof Rs.600/- per sq.mtr.

On 23.01.1998, appellant filed Municipal Appeal under Section 217 of the Mumbai Municipal Corporation Act before the Small Causes Court challenging the rateable value as determined by the IO.

On various dates the appellant deposited 100% of property taxes calculated on the Rateable Value fixed by the IO.

On 29.10.2002, impugned Judgments and orders passed by the Additional Cheif Judge Small Causes Court which are challenged before this court in the present first appeals. The Small Causes Court by the impugned Judgment and Order reduced the rateable value from Rs.600/- to Rs.300/- per sq.mtr. and directed adjustment of excess tax deposited in the future property tax of the assessed property and the same is challenged in these appeals.

6. The present 20 appeals pertain to the period dated 01.06.1996 to 31.03.1997 (hereinafter referred to as the '1st set of appeals').

Other 20 appeals (hereinafter referred to as the '2nd set of appeals') pertain to the period 01.04.2003 to 30.09.2003. The Small Causes Court heard and disposed off the appeal on 19.11.2011 i.e. after about 9 years of the decision in the 1st set of appeals. It is contended by the appellant that the Hon'ble Small Causes Court granted refund of the excess

taxes paid by the appellant along with interest and, thus, the orders were not challenged before this court. The appellants were facing financial crunch and was in need of money.

7. Submissions of the learned counsel **Smt. Nilima Sanglikar i/b. Ms. Sangeeta Salvi** for the Appellant – Nagri Niwara Parishad:-

(a) The assessed land is a Government allotted land and the rate at which it was allotted should have been taken into consideration for arriving at rateable value. The land was allotted to the appellant by the Government at concessional rate of Rs.25/- per sq.mtr. The same rate ought to have been taken, as the same also would have been the market rate as per proviso to Rule 4(6) of The Bombay Stamp (Determination of True Market Value of Property) Rules, 1995. Even the respondent had acquired the adjoining land for the same rate.

(b) Section 140(1)(a) to (d) stipulates that all the taxes are to be levied on the basis of the Rateable Value;

(c) Under Section 154 of the Mumbai Municipal Corporation Act, 1888 (MMC Act) Rateable Value is to be determined by calculating annual rent for which such land or building might be reasonably be expected to let from year to year after deducting 10% of the said annual rent, which shall be in lieu of allowances for repairs or any other account. The respondents have added the cost of leveling the land, construction of drains and providing infrastructure to arrive at a rateable value, which is impermissible.

(d) The respondent as well as the Small Causes Court ought to have taken the rate of Rs.25/- per sq.mtr. at which the Government had allotted the land. The respondent has erroneously taken the 12% of the price of the land and the amount spent on the land to calculate rateable value which is contrary to Section 154(1) of the MMC Act. The learned counsel relies upon following Judgments:

(i) **AIR 2003 SC 2998, Municipal Corporation of Greater Mumbai v/s. Kamala Mills**,

(ii) **AIR 1963 SC 1742 Patel Gordhandas Hargovindas & Ors. Para 34**,

(iii) **(1980) 1 SCC 685 Dewan Daulat Rai Kapoor & Ors. v/s. New Delhi Municipal Committee**.

(e). The learned counsel submits that once there is evidence by way of letter of allotment stipulating the rate of the acquired land itself, the need to look for other rates of similar properties beyond the boundary of the acquired land is obviated. **AIR ONLINE 1995 SC 855 Shakuntalabai Vs. State of Maharashtra**. Therefore it was incumbent upon the Assessor and Collector to take the same rate as market rate for the purpose of arriving at rateable value.

(f) The respondent has taken capital value, which contrary to Section 140(1) and 154(1) of MMC Act and contrary to the ratio laid down by the Hon'ble Apex Court in the above judgments. The respondent has further erred in taking 12% as the reasonable return. The reasonable return is generally 8%. The respondent is completely unjustified in (i) compelling the appellant to construct the sewers, drains, D.P.

roads which is the obligatory duty of the respondent under Section 61 of the MMC Act (ii) adding the cost of carrying out the works to the cost of the land and levy tax on the same.

(g). The rate of Rs.300/- per sq.mtr. arrived at by the Small Causes Court is also exorbitant. The Small Causes Court has proceeded on the erroneous basis that "when there is increase in price of the land and there is lapse of time from 1973 to 1995 it is necessary to consider increased price when no material was placed on record by the respondent about the increase in price. The Hon'ble Small Causes Court completely ignored the fact that it was a Government allotment and that too for the benefit of weaker sections. Proviso to Rule 4(6) of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 stipulates that *".... if a property is sold by the Government or Semi Government Body.....on the basis of pre-determined price, then value stated in such certificate (in this case the allotment letter) determined by the Government shall be true market value of the subject property."* The Small Causes Court, therefore, completely erred in fixing the rate of the subject property at Rs.300/- sq.mtrs. The evidence and judgments

produced by the appellant and well settled principle of law laid down in **(1985) 1 SCC 167 Dr. Balbir Singh & Ors. Vs. NDMC** paras 14 and 15 were completely overlooked by the Small Causes Court.

(h) **Disparity**

(i) 17 plots which were subject matter of F.A. Nos.1231 to 1247 of 2003 are assessed at Rs.600/- sq.mtr. However, opposite developable plot No.1 (F.A. No.427 OF 2005) is assessed at Rs.100/- sq.mtrs. And Plot No.2 (F.A. No.1249 OF 2003) which touching plot No.1 is assessed at Rs.600/- sq.mtr.

(ii) Developable Plot Nos.9-23, 5 and 5-1 are assessed at Rs.100/- sq. mtr. While plot No.6,7,8 which are just across the internal road are assessed at Rs.600/- sq.mtrs.

(iii) Developable Plot Nos.3 and 4 are assessed at Rs.100/- sq.mtrs. are very close to plot No.2 which is assessed at Rs.600/- sq.mtrs.

All the plots are for residential purposes.

2002 (3) Mh.L.J. 215 Municipal Corporation of City of Pune Vs. Haridas Govindas Gujrati.

(i) The argument of corporation that the potential of land has changed after the plot is made buildable (LUC) is completely misconceived and has been rejected by the Hon'ble Apex Court in the case of

(i) Municipal Coporation of Greater Bombay Vs. Polychem (1974) 2 SCC 198,

(ii) Municipal Corporation of Greater Mumbai Vs. Kamal Mills AIR 2006 SC 2998,

(iii) Municipal Corporation of Greater Mumbai Vs. Property Owner's Association.

The Judgment of the Additional Chief Judge, Small Causes Court fixing the Rateable Value at Rs.300/- per sq.mtr. is completely erroneous contrary to well settled principles of law and deserves to be set aside.

8. Preliminary Submissions of the learned counsel **Mr. Suresh Pakale, Senior Advocate a/w. Ms. Vidya Vyavhare a/w.**

Mr. Pradeep M. Patil i/b. Mr. Sunil Sonawane for the Respondent – Municipal Corporation:-

(a) The learned counsel for the Respondent – Municipal Corporation raises preliminary objection as to continuation of the appeals at the instance of the present appellant.

(b) The learned counsel submits that, admittedly, the assessed property is disposed of by the appellant somewhere in the year 2010. As such, the appellant has lost the jural right to proceed with the appeal. The appeal can now be contested only by the person, who have purchased the assessed property. It is submitted that the 'property tax' remains attached with the property and can only be adjusted in the future tax of the same property. Refund of property tax is not contemplated under the Act and has be adjusted in the future tax of the same property. The right to sue will be to the aggrieved person, who is now holding the property and liable to pay property tax on the assessed property. The present appellant has lost jural relation to the assessed property having transferred the same and is not entitled to proceed with the present appeals.

(c) The learned counsel for the respondent also submits that the appellant has filed 40 odd appeals before the City Civil Court, for the adjacent properties and in all the appeals before the City Civil Court, challenging the assessment order, similar orders were passed by the Small Causes Court reducing the rateable value of Rs.600/- per sq. mt. to Rs.300/- per sq.mt. The appellant has not challenged the same in about the 20 matters and accepted the judgment. Whereas in the present 20 appeals, the appellant has challenged the order of the City Civil Court. The rate applicable to the adjacent property would be applicable to the present appellant and interference in the present matter would affect assessment of the adjacent properties.

(d). The learned counsel further submits that the appellant had filed an interim application being application no.3188 of 2003, seeking refund of Rs.300/- of the additional tax paid by the assessee. This Court by order dated 17.09.2004 *(Coram: Justice Kanade)* had allowed the application and directed the Corporation to refund excess amount to the assessee. The interim order dated 17.09.2004 passed by this

court was challenged in the Hon'ble Supreme Court. The Hon'ble Supreme court by order dated 02.05.2005 set aside the order passed by this court with the observations as under:-

> *"...*
>
> ***In view of the above, it is evident that the excess payment of property tax, if any, has to be adjusted and not refunded and the statutory rate of interest 6.25% p.a. deserves to be awarded and not 9% p.a.***
>
> *Resultantly, we partially allow the appeal and direct that the prayer as in clauses (a) and (b) would be granted in favour of the respondent but limited in the terms of paragraph 4 above noted. The adjustment would, however, be subject to the decision to be rendered in the Municipal Appeal. ..."*

(e). Relying upon the above observations of the Hon'ble Supreme Court, learned counsel submits that the issue of refund is categorically concluded by the Hon'ble Supreme Court; as refund cannot be granted to the assessee and the same has to be adjusted in future property tax. The learned counsel also submits that the statutory provisions mandate that the property tax has to be adjusted in future. Section 217 specifically provides that the excess tax deposited has to be adjusted in future with the interest at the rate of 6.25% per year.

(f). The learned counsel submits that in view of the specific provision, this court, while exercising the appellate jurisdiction in absences of the challenge to constitutional validity of Section 217 cannot direct refund of the extra tax paid; as that would be contrary to the statutory provisions and beyond the powers of the appellate court, more particularly, of the Single Judge dealing with the present appeals.

9. SUBMISSIONS ON MERITS BY THE RESPONDENTS:

(A) Insofar as the merits of the case is concerned, the learned counsel submtis that it is a settled principle of law that the burden to prove that the RV *(Rateable Value)* fixed by the Ld. Commissioner is incorrect or illegal is on the Appellant. In the instant case, the Appellant has failed to bring any cogent material to establish that the RV fixed is exorbitant.

(B) The principle of fixation of RV is well known. Ordinarily, RV will be arrived at after particulars had been given by the owners and occupiers. It was for the Appellant to lead evidence and prove what should be correct RV. Thus, in absence of any

evidence brought by the Appellant, the Ld. Small Causes Court is not supposed to disturb the RV fixed by the Ld. Commissioner. The Order passed by the Ld. Commissioner fixing the RV is an administrative Order and the Appeal filed under Section 217 of the MMC Act is an original proceeding wherein the Appellant is entitled to lead evidence to establish its case. No such case was either pleaded or established.

(C) Similarly, it is also a well settled principle of law that when the subject land undergoes any material change, the RV also undergoes a change accordingly. In the instant case, it is not at all in dispute that the subject land underwent several material changes including conversion of the same from a non-development zone into a development zone, making it from an undeveloped parcel of land into a developable land and lastly, the land under construction (open plot of land ready for development). The subject land was not assessed when it was under the non-development zone. The same was taken for assessment only when the Respondent Corporation granted an IOD and CC, permitting the Appellant to carry out the development on the said plot of land.

(D) It is important to note that when the subject land was taken for assessment, the character and nature of the land was not the same as to the land which was originally allotted by the State Govt. in the year 1983. By that time, the subject land had undergone a sea change.

(E) It is also a well settled principle of law that the RV of the property has direct nexus with the changes that take place in the subject property. As a result of the changes made in the property, the value of the property increases and the same can be considered for upward revision in rateable value. It is therefore incorrect to say and suggest that the subject land should be assessed at Rs. 25/- sqmt."

10. **Reply to Preliminary Submissions of the Respondents - BMC by the Appellant - Nagri Niwara Parishad** :-

(a)

(i) The appellant had deposited taxes arrived on the basis of rateable value of Rs.600/- per sq.mtrs. With the respondent when the appeals were filed.

The appeals were decided on 09th, 10th, 29th October, 2002 and rateable value was reduced to Rs.300/- per sq.mtr.

(ii) The respondent ought to have started the adjusting the excess property taxes paid by the appellant immediately from November, 2002 or even immediately thereafter.

(iii) After completion of the building the allottees were put in possession. Thereafter society of the allottees was formed which started receiving bills in its name. The societies started paying property taxes from April, 2002.

(iv) The appellant requested the respondent to adjust the excess amount against the property taxes of other plots which were part of the same layout. The respondent failed to adjust the excess property taxes till date inspite of repeated requests.

(v) The property taxes were deposited by the appellant with the respondent from 1996

onwards @ Rs.600/- as per demand of the respondents.

(vi) On 08.10.2010 the Collector passed land grant orders and allotted the property in question to the respective Co-operative Housing Society. The appellant is no longer concerned with the plot.

(vii) The excess taxes paid by the appellant cannot be now adjusted against the subject property and, therefore, the taxes need to be refunded to the appellant.

(viii) According to the respondent, the excess property taxes can only be adjusted against future taxes of the said property. However, respondent failed to adjust towards the future municipal taxes for the property before the flats were allotted to the allottees and a society was formed. Now the flats are exempt from paying property tax as the area of the flat is less than 500 sq.ft. With the result it has become practically impossible to adjust the tax against future taxes.

(b) The respondent has ignored the appellant's request and continues to withhold the refund amount without the authority of law in gross violation of Article 265 of the Constitution of India.

(c) On account of the time lapse, the appellant has completed the construction of the subject plots and handed over to the allottees their respective flats. The appellant is no longer concerned with the property. Since the appellant has paid the taxes, the tax has to be refunded to the appellant and cannot be adjusted against the future taxes of the subject property. It is impermissible for the respondent to contend that law permits only adjustment, and that too qua the property, as the property is transferred.

(d) On account of the respondent's failure to comply with statutory and therefore mandatory requirement to adjust against future taxes immediately on receiving the judgment, it is has now become impossible, to comply with Section 217(5). In any case, it is incumbent upon the respondent to forthwith refund of excess taxes of over and above Rs.300/- per sq.ft.

And refund water and sewerage tax as respondents have not challenged the Order of the Small Causes Court.

(e) The appellant relies on the following authorities in support of its contention:

(i) **(2005) 4 SCC 530 Standard Bank & Ors. Vs. Directorate of Enforcement & Ors.** (Paras 29,30 and 31)

(ii) **(2003) 11 SCC 146, Saurabh Chaudhri & Ors. Vs. UOI & Ors**.

(iii) **(2003) 3 SCC 57 Commissioner of Income Tax Vs. Hindustan Bulk Carriers** (paras 14,15,16,17,18,20).

(f) The learned counsel submits that in several appeals pertaining to different plots in the same project, the Small Causes Court has granted refund of excess property taxes deposited with the corporation and the respondent has not challenged the orders.

(g) The respondent also cannot retain the excess taxes as the same would in violation of Article 265 amounting to retaining moneys without the authority of law.

(h) In several cases which were of exactly similar nature pertaining to appellants, the respondent has given refund in 2014 and 2015. Moreover, in few other cases, the respondents have refunded the excess property taxes to the assesses.

CONSIDERATION:-

11. To appreciate the preliminary submission of the respondent i.e. whether on transfer of the assessed property the appellant lost the jural relationship with the assessed property and cannot proceed with the appeal, it is necessary to appreciate and understand what is the nature of property tax under the MMC Act.

12. The relevant provisions of the Mumbai Municipal Corporation Act, 1888 are as under:

"CHAPTER VIII – MUNICIPAL TAXATION

Section 139

For the purpose of this Act, taxations shall be imposed as follows, namely :—

(1) property taxes;

(2) a tax on dogs;

(3) a theatre tax;

** * *; and*

(4) octroi :

** * * * **
...”

“Section 146
(1) Property-taxes shall be leviable primarily from the actual occupier of the premises upon which the said taxes are assessed, if such occupier holds the said premises immediately from the Government or from the corporation or from a fazendar:

Provided that the property-taxes due in respect of any premises owned by or vested in the Government and occupied by a Government servant or any other person on behalf of the Government for residential purposes shall be leviable primarily from the Government and not the occupier thereof.

(2) Otherwise the said taxes shall be primarily leviable as follows, namely :--

(a) if the premises are let, from the lessor;

(b) if the premises are sub-let, from the superior lessor; 5[* *]*

(c) if the premises are unlet, from the person in whom the right to let the same vests.

(d) if the premises are held or occupied by a person who is not the owner and the whereabouts of the owner of the premises cannot be ascertained, from the holder or occupier; and

(e) if the premises are held or developed by a developer or an attorney or any person in whatever capacity, such person may be holding the premises and in each of whom the right to sell the same exists or is acquired, from such holder, developer, attorney or person, as the case may be:

Provided that, such holder, developer, attorney or person shall be liable until the actual sale is effected.]

(3) But if any land has been let for any term exceeding one year to a tenant, and such tenant or any person deriving title howsoever from such tenant has built upon the land, the property taxes assessed upon the said land and upon the building erected thereon shall be leviable primarily from the said tenant or such person, whether or not the premises be in the occupation of the said tenant or such person."

"Section 148

If any person who is primarily liable for the payment of any property-tax himself pays rent to another person other than the Government or the corporation in respect of the premises, upon which such tax is assessed, he shall be entitled to credit in account with such other person for such sum as would be leviable on account of the said tax if the amount of the rent payable by him where the rateable value or the amount of property tax levied

on the basis of capital value, as the case may be of the said premises."

*"**Section 149** - Notice to be given to the Commissioner of all transfers of title of persons primarily liable to payment of property-tax*

(1) Whenever the title of any person primarily liable for the payment of property-taxes on any premises to or over such premises is transferred, the person whose title is so transferred and the person to whom the same shall be transferred shall, within three months after execution of the instrument of transfers, or after its registration, if it be registered, or after the transfer is effected, if no instrument be executed, give notice of such transfer, in writing, to the Commissioner.

(2) In the event of the death of any person primarily liable as aforesaid, the person to whom the title of the deceased shall be transferred, as heir or otherwise, shall give notice of such transfer to Commissioner within one year from the death of the deceased."

*"**Section 151** - Liability for payment of property-taxes to continue in the absence of any notice of transfer*

(1) Every person primarily liable for the payment of a property-tax on any premises who transfers his title to or over such premises without giving notice of such transfer to the Commissioner as aforesaid, shall, in addition to any other liability which he incurs through such neglect, continue liable for the payment of all property-taxes from time to time payable in respect of the said premises until he gives such notice, or until the transfer shall have been recorded in the Commissioner's books.

(2) But nothing in this section shall be held to diminish the liability of the transfer for the said property-taxes, or to affect the prior claim of the Commissioner on the premises conferred by section 212, for the recovery of the property-taxes due thereupon."

*"**Section 209** - When occupiers may be held liable for payment of property taxes*

(1) If the sum due on account of any property-tax remains unpaid after a bill for the same has been duly served on the person primarily liable for the payment thereof and the said person be not the occupier for the time being of the premises in respect of which the tax is due, the Commissioner may 2[serve a bill for the amount on] the occupier of the said premises, or, if there are two or more occupiers thereof may serve a bill on each of them for such portion of the sum due as bears to the whole amount due the same ratio which the rent paid occupier bears to the aggregate amount of rent paid by them both or all in respect of the said premises.

(1A) ...

(2) If the occupier or any of the occupiers fails within thirty days from the service of any such bill to pay the amount therein claimed, the said amount may be recovered from him in accordance with the foregoing provisions.

*(3) No arrear of a property tax shall be recovered from any occupier under this section, *** which is due on account of any period for which the occupier was not in occupation of the premises on which the tax is assessed.*

(4) If any sum is paid by, or recovered from an occupier under this section, he shall be entitled to credit therefor in account with the person primarily liable for the payment of the same."

*"**Section 211** - Defaulters may be sued for arrears, if necessary*

*Instead of proceeding against a defaulter by distress and sale as hereinbefore provide, or after a defaulter shall have been so proceeded against unsuccessfully or with only partial success, any sum due or the balance of any sum due, as the case may be, by such defaulter, on account of a property-tax * * * * * * * may be recovered from him by a suit in any court of competent jurisdiction."*

"Section 212 - Property-taxes to be a first charge on premises on which they are assessed

Property-taxes due under this Act in respect of any building or land shall, subject to the prior payment of the land-revenue, if any, due to the State Government thereupon be a first charge in the case of any building or land held immediately from the Government upon the interest in such building or land of the person liable for such taxes and upon the goods and chattels, if any, found within or upon such building or land, and belonging to such person; and, in the case of any other building or land, upon the said building or land and upon the goods and chattels, if any, found within or upon such building or land and belonging to the person liable for such taxes."

*"**Section 217** - Appeals when and to whom to lie*

(1) Subject to the provisions hereinafer contained, appeals against any rateable value or the capital value, as the case may be, or tax fixed or charged under this Act shall be heard and determined; by the Chief judge of the Small Cause Court.

(2) ...

(a) ...

(b) ...

(c) ...

(d) ...

(2A) ...

(3) ...

(4) ...

(5) In the case of any appeal against any rateable value or property tax fixed or charged under this Act, which may have been entertained by Chief Judge before the commencement of the Act aforesaid, or which may be entertained by him after the said date, the Chief Judge shall not hear and decide such appeal unless the property tax, if any, payable on the basis of the original rateable value plus eighty per centum of the property tax claimed from the appellant on the increased portion of the rateable value of the property out of the property tax claimed under each of the bills, which may have been issued, from time to time, since the filing of appeal, is also deposited with the Commissioner within the period prescribed under the Act. In case of default by the appellant, on getting an intimation to that effect from the Commissioner, at any time before the appeal is

decided, the Chief Judge shall summarily dismiss the appeal :

Provided that in case the appeal is decided in favour of the Corporation, interest at 6.25 per centum per annum shall be payable by the applicant on the balance amount of the property tax from the date on which the amount of property tax was payable :

Provided further that, in case the appeal is decided in favour of the appellant and the amount of property tax deposited with the Corporation is more than the property tax payable by him, the Commissioner shall adjust the excess amount of the property tax with interest at 6.25 per centum per annum from the date on which the amount is deposited with the Corporation towards the property taxes payable thereafter."

13. Considering the above provisions, it is to be noticed that the property taxes is to be levied under Section 146 on the lessor if the premises are let; if the premises are sub-let, on the superior lessor; if the premises are unlet, from the person in whom the right to let the same vests. Section 146 provides for levy of property tax on the persons who are responsible for the payment of the property taxes of the assessed property.

Section 149 of the MMC Act provides for notice to the Commissioner in case of transfer of title. Section 151 provides for continuation of liability to pay tax in absence of

the notice of transfer. However, it shall not affect the prior claim of the Commissioner under Section 212 of the MMC Act for the recovery of property tax.

Section 212 provides for first charge of the property taxes on the assessed land / building.

Second proviso to Section 217(5) provides that in the event the appeal is decided in favour of appellant and the amount of property tax deposited is more than the property tax payable by him, the excess amount along with 6.25% interest will be adjusted on the taxes payable thereafter.

14. The Hon'ble Supreme Court while dealing with the nature of charge created under Section 141(1) of the Bombay Provincial Municipal Corporation Act, 1949, which is pari materia with Section 212 of the MMC Act in the case of **Ahmedabad Municipal Corporation of the City of Ahmedabad Vs. Haji Abdulgafur Haji Hussenbhai, 1971 (1) SCC 757**, considered the provision of Section 141(1) of the Bombay Provincial Municipal Corporation Act, 1949 and Section 100 of the Transfer of Property Act and observed at paras 3 & 4, as under:

*"**3.** ...The second point canvassed was that there is an express provision in Section 141(1) of the Bombay Provincial Municipal Corporation Act, 1949 (hereinafter called the Bombay Municipal Act) for holding the present property to be liable for the recovery of municipal taxes and, therefore, though the property was subject only to a charge not amounting to mortgage and, therefore, involving no transfer of interest in the property, the same could nevertheless be sold for realising the amount charged, even in the hands of a transferee for consideration without notice. Section 141 of the Bombay Municipal Act is an express saving provision as contemplated by Section 100 of Transfer of Property Act, contended Shri Desai. This submission has no merit as would be clear from a plain reading of Section 100 of the Transfer of Property Act, 1882 and Section 141 of the Bombay Municipal Act, the only relevant statutory provisions. Section 100 of the Transfer of Property Act dealing with 'charges' provides:*

" ...

..."

***4.** This section in unambiguous language lays down that no charge is enforceable against any property in the hands of a transferee for consideration without notice of the charge except where it is otherwise expressly provided by any law for the time being in force. The saving provision of law must expressly provide for enforcement of a charge against the property in the hands of a transferee for value without notice of the charge and not merely create a charge. We now turn to Section 141 of the Bombay Provincial Municipal Corporation Act, 1949 to see if it answers the requirements of Section 100 of Transfer of Property Act. This section reads:-*

"Section 141. Property taxes to be a first charge on premises on which they are assessed:

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

Explanation.-The term "Property taxes" in this section shall be deemed to include charges payable under Section 134 for water supplied to any premises and the costs of recovery of property-taxes as specified in the rules.

(2) ..."

Sub-section (1), as is obvious, merely creates a charge in express language. This charge is subject to prior payment of land revenue due to the State Government on such building or land. The section, apart from creating a statutory charge, does not further provide that this charge is enforceable against the property charged in the hands of a transferee for consideration without notice of the charge. It was contended that the saving provision, as contemplated by Section 100 of the Transfer of Property Act, may, without using express words, in

effect provide that the property is liable to sale in enforcement of the charge and that if this liability is fixed by a provision expressly dealing with the subject, then the charge would be enforceable against the property even in the hands of a transferee for consideration without notice of the charge. According to the submission it is not necessary for the saving provision to expressly provide for the enforceability of the charge against the property in the hands of a transferee for consideration without notice of the charge. This submission is unacceptable because, as already observed, what is enacted in the second half of Section 100 of Transfer of Property Act is the general prohibition that no charge shall be enforced against any property in the hands of a transferee for consideration without notice of the charge and the exception to this general rule must be expressly provided by law. The real core of the saving provision of law must be not mere enforceability of the charge against the property charged but enforceability of the charge against the said property in the hands of a transferee for consideration without notice of the charge. Section 141 of the Bombay Municipal Act is clearly not such a provision. The second contention accordingly fails and is repelled."

The Hon'ble Supreme Court in the case of **Haji Hussenbhai** *(supra)* has observed that Section 100 of the Transfer of Property Act is a general prohibition that no charge shall be enforced against any property in the hands of a transferee for consideration without notice of the charge and the exception to this general rule must be expressly provided

by law. The real core of the saving provision of law must be not mere enforceability of the charge against the property charged but enforceability of the charge against the said property in the hands of a transferee for consideration without notice of the charge and that Section 141 of the Bombay Municipal Act is clearly not such a provision.

15. I can apply the same principle as held in the case of **Ahmedabad Municipal Corporation of the City of Ahmedabad Vs. Haji Abdulgafur Haji Hussenbhai, 1971 (1) SCC 757**, to para materia provision of Section 212 and hold that unless the charge is known to the transferee the charge cannot be enforced against the transferee without notice of the charge. The principles of constructive notice is also rejected by the Hon'ble Supreme Court in the case of **Haji Hussenbhai** *(supra).* Thus, prima facie, it cannot be said that in all circumstances the property tax travels with the property.

16. The Hon'ble Supreme Court in the case of **AI Champdany Industries Limited Vs. The Official Liquidator and another, (2009) 4 SCC 486**, has observed at para 18 as under:

> *"18. ...*
>
> *There cannot, thus, be any doubt or dispute that a provision of law must expressly provide for an enforcement of a charge against the property in the hands of the transferee for value without notice to the charge and not merely create a charge."*

17. The Hon'ble Supreme Court in the case of **Rajkot Municipal Corporation Vs. State of Gujarat and others, Civil Appeal No.7873 of 2024, dated 09.08.2024**, wherein the respondent no.2 had purchased the property from respondents no.4 and 5 on 03.09.2015, it was held that the liability to pay property tax prior to 03.09.2015 cannot be foisted upon respondent no.2 and that the respondent no.2 was liable to pay property taxes from the date of acquisition of the ownership and, thus, the High Court Judgment directing de-sealing of the property was upheld by the Hon'ble Supreme Court. It was also noticed that for the prior assessment years appeals were pending at the instance of prior owner i.e. respondents no.4 and 5, who had deposited certain amounts before the appellate court. However, the Hon'ble Supreme Court has held that liability of the purchaser was from the date of purchase of the assessed property.

18. First proviso to Section 217 of the MMC Act provides for payment of balance amount of property tax along with interest in the event the appeal is decided against the appellant. Thus, the liability to pay the balance amount of property tax as determined by the Small Causes Court continues on the appellant even if he has transferred the assessed land. Reference can also be made to Clause (g) of Sub-section (1) of Section 55 of the Transfer of Property Act. In the case of **AI Champdany Industries Limited Vs. The Official Liquidator and another, (2009) 4 SCC 486**, the Hon'ble Supreme Court, at para 21 has observed as under :-

> *"21. Clause (g) of Sub-section (1) of Section 55 of the Transfer of Property Act whereupon reliance has been placed by Mr. Sen reads as under:*
>
> > *"55. Rights and liabilities of buyer and seller.- In the absence of a contract to the contrary, the buyer and the seller of Immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:*
> >
> > *(1) The seller is bound -*
> > ** * **
> > *(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest to all encumbrances on such property due on such date, and, except where the property is sold*

subject to encumbrances, to discharge all encumbrances on the property then existing."

In terms of the aforementioned provisions, therefore, the seller is bound to pay all public charges due in respect of the property upto the date of sale, when a property is sold in auction."

19. From the above referred Judgments of the Hon'ble Supreme Court, it is apparent that the property tax is the liability of the person as noted in Section 146. The submission of the counsel for the Corporation that the property tax although is levied on the person enumerated in Section 146 of the MMC Act is not personal in nature cannot be accepted. Although, the Corporation may have first charge and may sell the property or attach the rent of the assessed property in view of it's charge on the assessed property, as the charge may run with the property in case of notice of charge to the transferee, but the primary liability to pay the levied property tax is on the person mentioned under Section 146 of the MMC Act and can also be personally recovered from him under Section 211 of the MMC Act. Further the charge on the assessed property may not become enforceable against persons who may have purchased the property without due

notice of the charge. As such, the liability to pay the property tax is primarily on the persons mentioned in Section 146 of the MMC Act and that it may or may not travel with the property in the hands of the purchaser.

20. The second proviso to Section 217 which provides for adjustment of the excess property tax deposited with the corporation towards the property taxes payable thereafter does not any way change the nature of property tax. The tax imposed is personal in nature and the person liable to pay the property tax is mentioned in Section 146 of the MMC Act.

21. Coming to the next submission of the appellant, whether the assessment of Rs.300/- per sq.mtr. of rateable value of the assessed property is exorbitant. The Small Causes Court has rendered the finding of rateable value of the assessed property at the rate of Rs.300 per sq.mtr., as under:

> *"**43.** It is very difficult to agree with the arguments advanced by Shri. Mehta Advocate that same price of Rs.25 per square metre should be taken into consideration for assessment of the property because during the period between 1973 and 1995 the appellants have spent more than Rs.1,12,59,000/- for development of the property as the property was undeveloped. It is absolutely*

necessary to consider that amount also while considering the price of the land. No doubt that the said amount was spent for entire property and the entire-property is not under the assessment, but only some plots out of entire piece of land are under assessment, because there are 91 plots which were sanctioned for construction of the buildings. Out of them on some plots construction work was started and that factor is also necessary to the considered. The rates about development of the property are given by the appellants themselves in their letter dated 30th December 1997 and according to them that amount was spent for levelling 17 plots in Zone No.II. The property was assessed for the first time in the year 1995. Therefore, it cannnot be said and argued that the price of the land should be taken into consideration when it was purchased by the appellants by concessional rate from Government at Rs.25 per square metre. It was argued by Advocate Shri. Mehta that it was purchased at Rs.4 but it long back and in the year it was Rs.20 as per their circular of 1983 but that also cannot be taken into consideration because there after there are lot of changes. Therefore, if the property is taken into consideration at the rate of Rs.300 per square metre, that will be in the interest of justice. It will not be less or more, but this court cannot say that it should be Rs.25 per square metre. Therefore, considering all these aspects above, I hold that the order passed by the Investigating Officer fixing the rateable value taking the rate at Rs.600 per square metre is required to be set aside as the rate taken is excessive and exhorbitant and answer the point No.1 accordingly and further hold that the rateable value of the property will be at Rs.300 per square metre and answer the point No.2 accordingly."

22. In the instant case, the property was given by the State to the appellant for the purpose of housing of the weaker sections of the society.

23. The State had transferred the property to the appellants at the rate of Rs.25/- per sq.mtr. The appellants had developed the property by incurring various costs for levelling of the property and, as such, the value of the land increased at the time of assessing. There was no prior assessment of the land and that the property was assessed for the first time by the Municipal Corporation in the year 1995. It has considered the ratable value at the time of assessment.

24. Section 154 of the MMC Act provides for computing the rateable value . Section 154 (1) of the MMC Act as applicable at the relevant time is quoted below:

> *"**Section 154(1)** - Rateable value how to be determined*
>
> *(1) In order to fix the rateable value 2[or capital value] of any building or land assessable to a property-tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten per centum of the said annual rent and the said deduction shall be in*

lieu of all allowances for repairs or on any other account whatever."

25. In the case of **Municipal Corporation of Greater Mumbai and another Vs. Kamla Mills Ltd., (2003) 6 SCC 315**, the Hon'ble Supreme Court while dealing with the provisions of the Rent Restriction Legislation namely the Bombay Rent Act in computing the rateable value of the assessed property observed as under:

*"23. The contention of the learned counsel for the respondent that the ratable value to be fixed under Section 154(1) of the Bombay Municipal Corporation Act is limited by the measure of the standard rent within the meaning of Section 5(10) of the Bombay Rent Act appears to be justified, particularly in view of the fact that Section 7 of the Bombay Rent Act makes it illegal to claim of any rent or any licence fee in excess of the standard rent. **Thus, in determining what would be the "amount of the annual rent for which such land or building might reasonably be expected to let from year to year" for the premises, meaning thereby land or building, since both are included in the definition of the premises in Section 2(3)(g), one has to keep in mind that determining anything contrary to law could not be "reasonable" as a hypothetical tenant would hardly be inclined to pay a rent in excess of the standard rent**, though, on account of circumstances which may be peculiar to the property, the reasonable rent which may be offered by the hypothetical tenant could even be less than the standard rent."*

26. The Hon'ble Supreme Court in the case of **Kamla Mills** (supra) has rejected the arguments that the restriction in the Rent Control Act would not apply to the premises which are not leased out. The principle laid down in the case of **Kamla Mills** *(supra)* in computing the rateable value of the assessed land is what a hypothetical tenant would offer for the land / building as a reasonable rent and that the hypothetical tenant would look at the restriction applicable under the rent legislation and make a reasonable offer. It is also been observed the concept of reasonableness would necessarily include the concept of an owner and a tenat who are both law-abiding and do not indulge in "black marketing". If there is a rent restriction legislation which imposes a limit on the rent which can be charged, then the concept of "reasonableness" would include that restriction also.

27. Thus, as regards the MMC Act, 1888 is concerned, the standard rent is taken as one of the restriction which determining the rateable value of the assessed land / building.

28. This court in the case of **Municipal Corporation of Gr. Bombay and others Vs. Karnani Building** in **First Appeal No.62 of 1992, dated 20.02.2024** by relying upon the judgment of the **Filmistan Private Limited Vs. Municipal Corporation of Greater Mumbai, AIR 1973 Bom. 66**, held that where there is no order of the court under Section 11 of the Bombay Rent Act fixing standard rent, agreed rent can be taken as basis for the purpose of arriving at rateable value under Section 154 of the said Act. It is also observed that in the case of Kamala Mills (supra) the Hon'ble Supreme Court has held that while objecting to rateable value fixed by the Municipal Coporation, the burden of proving that a particular rateable value determined is illegal or unreasonable, is upon the assessee.

29. The Mumbai Municipal Corporation Act was amended by the Maharashtra Act No. XI of 2009, empowering to levy property tax on the basis of capital value as an alternative to the basis of reteable value. This was felt necessary as the rateable value is pegged down to the standard rent of building or land. The relevant portion of the statement

of objects of the Bill which led to the passing of the Maharashtra Act No. XI of 2009 is noted below :

STATEMENT OF OBJECTS AND REASONS

....

2. Section 154 of the Act provides the method of fixing rateable value of any buildings or lands assessable to property tax. The basis to determine the rateable value is the annual rent for which such buildings or lands might reasonably be expected to let from year to year, less 10 per centum of the said annual rent and the said deduction is in lieu of all allowances for repairs or on any other account whatever.

3. ...In effect, therefore, the property tax has to be determined on the basis of rateable value fixed considering the annual rent, being the fair rent (standard rent) alone, regardless of the actual rent received. Fair rent very often means the rent prevailing prior for the year 1940 with some marginal modifications and additions. Because of the limitations or restrictions brought into play by the provisions of the Maharashtra Rent Control Act, 1999 and the various judgements of the Court in respect of fixation of rateable value for the purpose of levy of property taxes a lot of subjectivity has crept into the system by which the rent, of buildings or lands is determined.

30. In the case of **Municipal Corporation of Greater Mumbai and others Vs. Property Owners' Association and others** reported in **[2023] 3 SCC 258**, the Hon'ble Supreme

Court considered the case of **Municipal Coporation of Greater Bombay Vs. Polychem (1974) 2 SCC 198** and **Patel Gordhandas Hargovindas & Ors., AIR 1963 SC 1742**, with regard to the computation of rateable value of assessed property and at para nos.52 to 53 has observed as under :

> **"52**. It was observed in *Patel Gordhandas* that the statutory provision did not contemplate levying of the rates as a percentage of capital value. The relevant portion of para 34 of the decision was:
>
> > 34. .... We are therefore of opinion that though mathematically it may be possible to arrive at the same figure of the actual tax to be paid as a rate whether based on capital value or based on annual value, the levying of the rate as a percentage of capital value would still be illegal for the reason that the law provides that it should be levied on the annual value and not otherwise. By levying it otherwise directly at a percentage of the capital value, the real incidence of the rate is camouflaged, and the electorate not knowing the true incidence of the tax may possibly be subjected to such a heavy incidence as in some cases may amount to confiscatory taxation. We are therefore of opinion that fixing of the rate at a percentage of the capital value is not permitted by the Act and therefore Rule 350-A read with Rule 243 which permits this must be struck down, even though mathematically it may be possible to arrive at the same actual tax by varying percentages in the case of capital value and in the case of annual value."
>
> (emphasis supplied)

53. In Polychem, a part of the land was being constructed upon while the rest was lying vacant. The assessor divided the plot notionally into two parts-one, which was being built upon and the other which was lying vacant. One of the questions was : whether during the period when the construction was going on and was not completed, what should be the approach? The following observations are noteworthy : (SCC pp. 206 & 209-10, paras 12 & 22)

> 12. The principles upon which lands are rated in this country have been practically settled by the decisions of this Court. But, no case was brought to our notice in which an application of these principles to land upon which a building was being constructed was involved. In other words, no case was cited by any party in which the doctrine of sterility, as indicated above, was invoked. We will, however, glance at the cases cited before deciding the question raised before us.
>
> 22. The abovementioned authorities of this Court, which were cited before us, enable us to hold that the mode of assessment in every case must be directed towards finding out the annual letting value of land which is the basis of rating of land, and, by definition, "land" includes land which is either being built upon or has been built upon. Nevertheless, a reference to the provisions of the Act shows that, after a building has been completed, the letting value of the building, which becomes part of land, will be the primary or determining factor in fixing the annual rent for which the land which has been built upon "might reasonably be expected to be let from year to year". All that Section 154 seems to contemplate, by mentioning "land or building", is that land which is vacant or which has not

> been built upon may be treated, for purposes of valuation, on a different footing from land which has actually been built upon. But, relevant provisions of the Act do not mention and seem to take no account, for purposes of rating, of any building which is only in the course of being constructed although Section 3(r) of the Act makes it clear that land which is being built upon is also "land". Hence, so long as a building is not completed or constructed to such an extent that at least a partial completion notice can be given so that the completed portion can be occupied and let, the land can, for purposes of rating, be equated with or treated as vacant land. It is only when the building which is being put up is in such a state that it is actually and legally capable of occupation that the letting value of the building can enter into the computation for rating "Rebus sic Stantibus". Although, the definition of land, which is rateable, covers three kinds of "land", yet, for the purposes of rating Section 154 recognises only two categories. Therefore, all "land" must fall in one of these two categories for purposes of rating and not outside.
>
> (emphasis supplied)

31. The Hon'ble Supreme Court observed in the above Judgment that the decisions of **Municipal Corporation of Greater Bombay Vs. Polychem (1974) 2 SCC 198** and **Patel Gordhandas Hargovindas & Ors., AIR 1963 SC 1742**, (supra) were rendered in the regime when the property tax could be levied on rateable value. In the case of **Patel Gordhandas**, it

was found that fixing of the rate at a percentage of the capital value was not a modality permitted by the Act and, therefore, Rules 350-A read with Rule 243, which permitted such exercise, were struck down. Therefore, to the extent the rules went beyond the statutory import and extent, the transgression was not accepted by the Hon'ble Supreme Court. In the decision of **Polychem** *(supra)*, it was held that so long as the building was not completed and ready for occupation, the land in question for the purposes of rating must be equated with and treated as "vacant land". Therefore, so long as the building could not be let out in open market, the land would continue to be treated as "vacant land".

32. The Small Causes Court in the impugned order has considered that the lands were purchased at the price of Rs.4 by the State in the year 1973 and in the year 1983 as per the Respondents Circular the price of adjacent land was Rs.20/- per sq. mtr. The Small Causes Court has further taken into consideration that Rs.1,12,59,000/- was spent on the development of the entire allotted property and proportionate expenditure is included towards the assessed land and,

therefore, has considered the property at the rate of Rs.300/- per sq.mtr. and, accordingly, has calculated the rateable value of Rs.300/- per sq.mtr.

33. After the 2010 amendment the rateable value is computed on the basis of capital value under Section 154.

However, as far as present case is concerned, the rateable value is required to be determined on the basis of the annual rent for which such land may reasonably be expected to let from year to year. It is required to be noted that the Small Causes Court so also the authorities have computed the rateable value of the assessed land on the basis of the capital value of the assessed land. The price of the assessed land was Rs.25/- in the year 1983. Thereafter, the appellants have spent substantive amount on the assessed property and the same is proportionately added to the value of the assessed property and the rateable value of the property is computed at the rate of Rs.300/- per sq.mtr. This principle of computation of the rateable value apparently does not fit into the principle of computation of rateable value as provided under Section 154 of the MMC Act as it then existed and the law laid down in the

Judgments of the Hon'ble Supreme Court as discussed above in the case of **Kamla Mills, Polychem and Patel Gordhandas** *(supra).*

34. The Small Causes Court computed the capital value of the land by including the cost incurred by the appellant in levelling and making land ready. In view of the law laid down in **Patel Gordhandas** *(supra)* levying property tax on the basis of capital value can become confiscatory as real incident of rate is camouflaged.

35. In the instant case, the land which is allotted is subjected to restrictions that it has to be developed only for backward and weaker sections and for constructions of small tenements under 45 sq.mtr. and 25 sq.mtr. The land which is allotted to the appellant thus cannot reasonably fetch, high rental returns. The annual rental returns has to be less than the capital value of the assessed property. Even if I accept that there was value addition of land the rental value cannot be near to the capital value of the land. However, since the assessment is done for the first time some guess work is

necessary and, thus, even if I err in favour the corporation I hold that the rental value of the assessed property cannot be more than Rs.200/- per sq.mtr. since, the property was purchased at the rate of Rs.25/- per sq.mtr. and the adjacent land in the year 1983 was also proposed to be acquired at the rate of Rs.20/- per sq.mtr. , so also, some improvements were done in the purchased properties. While confirming the rateable value I have also taken into consideration the fact that the appellants have not challenged the Judgment of Small Causes Court, of the adjacent plots where the rateable value was fixed at Rs.300/- per sq.mtr. However, in those cases the Small Causes Court had directed refund of the excess amount of tax collected. In any event, the annual rental value cannot be equal to the capital value of the taxed property, more so, on account of limitation on usage of the assessed land.

36. Coming to the next question, whether the refund can be claimed on the excess tax deposited while filing appeal. Interim order was passed by this court to refund the excess amount of property tax deposited by the appellants, since the Small Causes Court had reduced the rateable value from

Rs.600/- to Rs.300/- per sq.mtr. The same was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court by order dated 02.05.2005 had set aside the order of this court granting relief of refund in view of the proviso to Section 217 of the MMC Act as the excess tax can be adjusted in future taxes of the assessed property and had allowed for adjustment of the excess property tax. However, the assessed properties are now not amenable to property taxes. So also, the Municipal Corporation has failed to adjust the property tax from the year 2002 from the date of Judgment of the Small Causes Court till the transfer of assessed land in the year 2010.

37. In view of the amendment to section 140 of the MMC Act the property tax cannot be adjusted on the tenements build on the assessed property as the tenements build are for the weaker sections of the society and are of less than 500 sq.ft.

38. Section 140 of the Mumbai Municipal Corporation Act as amended by Act No.XXV of 2022, is as under:

> *"2. In section 140 of the Mumbai Municipal Corporation Act,-*

(a) ...

(b) ...

"(1A) Notwithstanding anything contained in this section or any other provisions of the Act, from the 1st January 2022, the Corporation shall not levy any tax component of property tax specified in sub-section (1) of section 139A, on the residential buildings or residential tenements, having carpet area of 46.45 sq. meter (500 sq. feet) or less."

39. Thus, it is not possible to adjust the additional amount of property tax collected by the corporation towards the future property tax of the assessed property. The corporation has also failed to adjust the extra tax collected towards the future property tax from the year 2002 in compliance with the Judgment of the Small Causes Court. Once it is held that the corporation has received extra amount of tax, it cannot be lawfully retained by the corporation, in view of Article 265 of the Constitution of India, which is quoted below:-

*"**Article 265** - Taxes not to be imposed save by authority of law*

No tax shall be levied or collected except by authority of law."

40. I am informed that there are outstanding dues of the appellant towards the property tax on other plots in the same project. Since, it is not possible to adjust the excess amount collected on the same plot, the corporation is permitted to adjust the excess amount with interest of 6.25% on outstanding amount of property tax on the other plots of the appellant on the same project and refund the balance (if any) to the appellant along with interest of 6.25% per annum from the date of deposit till the payment.

41. As such, the following order is passed:

ORDER

A. The rateable value of the assessed property is directed to be computed at the rate of Rs.200/- sq. mtr. and the property tax to be assessed accordingly.

B. The corporation is permitted to adjust the excess tax collected along with 6.25% interest accrued thereon, towards the outstanding dues of the property tax of the appellants on other plots of the same project and on such adjustment, if any amount is left balance; the corporation is

directed to refund the balance excess amount to the appellants along with 6.25% interest from the date of deposit of excess amount till payment, within a period of twelve (12) weeks from the date of uploading of the Judgment.

C. All the First Appeals stand accordingly disposed of.

[ARUN R. PEDNEKER, J.]

42. At this juncture, learned counsel appearing for the corporation seeks stay of the Judgment for four (04) months to enable him to move the Hon'ble Supreme Court.

As such, this Judgment is stayed for the period of eight (08) weeks.

[ARUN R. PEDNEKER, J.]

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