2022 INSC 1181

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO..... OF 2022
(arising out of SLP (C) No. 17009 of 2019)

MUNICIPAL CORPORATION OF GREATER MUMBAI & ORS. ...APPELLANT(S)

VERSUS

PROPERTY OWNERS' ASSOCIATION & ORS. ...RESPONDENT(S)

with

CIVIL APPEAL NO..... OF 2022
(arising out of SLP (C) No. 25689 of 2019)

CIVIL APPEAL NO..... OF 2022
(arising out of SLP (C) No. 22138 of 2019)

CIVIL APPEAL NO..... OF 2022
(arising out of SLP (C) No. 24126 of 2019)

CIVIL APPEAL NO..... OF 2022
(arising out of SLP (C) No. 25686 of 2019)

CIVIL APPEAL NO..... OF 2022
(arising out of SLP (C) No. 25687 of 2019)

and

CONTEMPT PETITION (C) NO. 38 OF 2021
in
SPECIAL LEAVE PETITION (C) NO. 17009 OF 2019

J U D G M E N T

Uday Umesh Lalit, CJI

1. Leave granted in all Special Leave Petitions.

2. These appeals are challenging the common judgment and order dated 24.4.2019 passed by the Division Bench of the High Court of Judicature at Bombay in Writ Petition No. 2592/2013 and connected matters. Contempt Petition (Civil) No. 38/2021 has been filed against the alleged contemnor for disobedience of orders dated 29.7.2019, 21.10.2019 and 22.11.2019 passed by this Court in the appeal arising out of said SLP(C) No. 17009 of 2019. For the present purposes, said Contempt Petition is segregated with a direction to list the same before an appropriate Court after six weeks.

3. The Mumbai Municipal Corporation Act, 1888[1] has been enacted by the State Government to consolidate and amend

1 "MMC Act", for short

various Municipal Acts which were in force relating to the Municipal administration of the city of Mumbai. The Municipal Corporation of Greater Mumbai ("the Corporation" for short) has been established and discharging its duties under the MMC Act.

4. The MMC Act authorizes the Corporation to impose property tax on lands and buildings. Importantly, property tax is one of the main sources of revenue for the Corporation, specifically after abolition of Octroi. The MMC Act earlier provided for levy of property tax on the basis of certain percentage of rateable value of the buildings or lands. The basis of determination of rateable value as provided in the MMC Act was the annual rent for which such buildings or lands might reasonably be expected to be let from year to year.

5. The Corporation appointed Tata Institute of Social Sciences (for short "TISS") and University of Mumbai to study the system of levy of property tax and to suggest alternative system for such levy. TISS submitted a detailed report recommending that capital value-based system of assessment be adopted in place of annual rental system. After detailed discussions with stake holders and based on the recommendations of TISS, the MMC

Act was amended by the Maharashtra Act No. XI of 2009. The amendment incorporated an option and empowered the Corporation to levy property tax on the basis of capital value as an alternative to the earlier method of levying property tax on the basis of rateable value.

6. The Statement of Objects forming part of the Bill which led to the passing of the Maharashtra Act No. XI of 2009 was as under: -

> "**STATEMENT OF OBJECTS AND REASONS**
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> Section 139 of the Mumbai Municipal Corporation Act (Bom.III of 1888) provides for imposition of taxes by the Municipal Corporation of Brihan Mumbai. The taxes to be so imposed provide inter alia property taxes on buildings or lands. The property taxes include water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess and street tax, which are leviable on the basis of certain percentage of rateable value of the buildings or lands.
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> 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. The determination or fixation of the rateable value under different Municipal Acts or Municipal Corporation Acts throughout India for the purpose of levy of property taxes under these Acts has resulted in ceaseless dispute. There has been a catena of decisions rendered by various High Courts and the Supreme Court in respect of the matter of fixation of rateable value particularly because of the provisions of Rent Control Legislation in various States including the State of Maharashtra. On account of these

decisions the annual rent to be taken into account for fixation of rateable value of any buildings or lands has been pegged down to the standard rent of any buildings or lands according to the provisions of the Rent Control Acts. In so far as the area of the Municipal Corporation of *Brihan Mumbai* is concerned, the Rent Control Act, which provided for standard rent for the first time, was the Bombay Rent Restriction Act. 1939 (Bom. XVI of 1939). This Act was repealed by the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 (Bom.VII of 1944), which had been replaced by the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. LVII of 1947), which has also been now repealed by the Maharashtra Rent Control Act, 1999 (Mah. XVIII of 2000) which came into force on the 31st day of March 2000 and is at present in operation. Thus the Rent Control Act has been in operation in the Mumbai Municipal Corporation area for over 65 years. 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. Apart from this, it has also resulted in lack of transparency, equity and rationality in the system of assessment of property taxes. Property tax is one of the main sources of revenue to the Corporation. Due to such restrictions or limitations the income of the Corporation from property tax has remained static. To continue to compel the Corporation to levy and collect the property tax on the basis of fair rent or standard rent alone, while at the same time under Section 61 in Chapter III and other provisions of the Mumbai Municipal Corporation Act making it incumbent on the Corporation to make adequate provisions to perform all its obligatory and discretionary functions laid down by the Act may be to ask for the impossible. The cost of maintaining and laying roads, drains, water supply lines and providing other essential civic services and amenities, the salaries of staff and wages of employee and all other types of expenditure have gone up steeply over the last more than 65 years.

4. With a view to exploring the possibility of reforming the property tax system, so as to augment the revenue of the

Corporation, the Tata Institute of Social Sciences (TISS), Mumbai were entrusted by the Corporation with the job to study the present system of levy of property taxes and to suggest any alternative system for such levy. After studying various systems available for assessment of property taxes within and without India, they have recommended that Capital Value Based System of Assessment in place of the Annual Rental System may be adopted, as according to them the trend in property tax practices in developing countries is to move away from the Annual Rental Value base to Capital Value base. The capital value based system of assessment has the following merits:-

(1) Formula based assessment is possible with simplicity,

(2) Self-assessment is possible,

(3) Greater flexibility in tax administration which provides control over revenue,

(4) Subjectivity is eliminated to the extent possible,

(5) There is transparency and easy to understand,

(6) Tax revenue can keep pace with inflation and cost of living.

5. The highlights of the system recommended by the Tata Institute of Social Sciences is the shift from Annual Rental Value to Capital Value as the base for the purpose of levy of property taxes at a certain rate which may be determined by the Corporation and such value is proposed to be adopted as the value of any buildings or lands as is indicated in the Stamp Duty Ready Reckoner for the time being in force as prepared under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 and the capital value of the property could then be computed by applying thereto factors such as location, carpet area, type of construction, age of property and user thereof. In this system properties which are old or of semi-permanent structures including chawls, will be given due consideration and concession. Care is also taken to provide for an appropriate cap on the increase on property tax on account of switching over to the capital value base of levy.

6. It is a modest attempt to enable the Corporation to augment its revenue so as to meet the ever-rising expenditure in providing appropriate an adequate infrastructure for rendering civic services in the City like

> Mumbai and its suburbs. Having regard to the status thereof as a financial capital of India, the Mumbai City requires a special attention.
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> 7. The amendments to the Mumbai Municipal Corporation Act (Bom. III of 1888) proposed in this Bill are intended to achieve the above-mentioned objectives."

7. The MMC Act was, thereafter, amended by successive amendments as a result of which newly introduced Section 154(1A) and (1B) MMC Act now authorizes Municipal Commissioner to fix the Capital Value of land and building with the approval of the Standing Committee. Accordingly, the Commissioner formulated Factors and Categories of Users of Buildings or Lands (Assignment of Weightages by Multiplication) Fixation of Capital Value Rules, 2010 ('the Capital Value Rules of 2010', for short) which came into force on and with effect from 20.03.2012, and Factors and Categories of Users of Buildings or Lands (Assignment of Weightage by Multiplication) Fixation of Capital Value Rules, 2015 ('the Capital Values Rules of 2015', for short), which came into force on 01.04.2015.

8. It must be stated here that on 20.01.2010 a resolution was passed appointing an expert committee comprising of Dr. D.M. Sukthankar, Dr. D.N. Choudhary and Dr. Roshan Namavati to make recommendations on the Capital Value System. The draft

rules prepared by the Committee were published in various newspapers on 18.10.2010 inviting objections. The last date for submissions and objections after due extension expired on 30.11.2010, whereafter final report was submitted. After obtaining the sanction of the Standing Committee, the Capital Value Rules, of 2010 were published on 20.03.2012. Subsequently, the Capital Value Rules of 2015 were also framed.

9. The relevant provisions of the MMC Act dealing with the matters in issue are extracted here for ready reference:

> "**120. Constitution of Fines Fund**. Fines collected under section 83 shall be credited to a separate fund to be called "the Fines Fund" the proceeds of which shall be expended in promoting the well-being of municipal officers and servants other than those appointed under the provisions of Chapter XVIA of this Act, and for the payment of compassionate allowances to the widows of such officers and servants who die while in municipal service and to such other relation of the officers and servants as the corporation may from time to time determine.
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> xxx xxx xxx
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> **123. Accounts to be kept in forms prescribed by Standing Committee**. Subject to the provisions of Chapter XVI-A of this Act accounts of the receipts and expenditure of the corporation shall be kept in such manner and in such forms as the Standing Committee shall from time to time prescribe:
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> Provided that, the accounts of the Water and Sewage Fund and the Consolidated Water Supply and Sewage Disposal Loan Fund shall be maintained on the accrual basis, unless otherwise prescribed by the Standing Committee.
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125. Estimates of expenditure and income to be prepared annually by Commissioner.

The Commissioner shall on or before each fifth day of February, have prepared and lay before the Standing Committee, in such form as the said Committee shall from time to time approve, —

(1) (a) an estimate of the expenditure which must or should, in his opinion be incurred by the corporation in the next ensuing Official Year, other than—

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(ii) expenditure to be incurred by reason of the obligations imposed on the corporation arising out of the transfer to the corporation of the powers, duties, assets and liabilities of the Board of Trustees for the improvement of the City of Bombay constituted under the City of Bombay Improvement Trust Transfer Act, 1925 13 or for any of the purposes of Chapter XII-A; and

(iii) expenditure to be incurred on account of the Brihan Mumbai Electric Supply and Transport Undertaking;

(iv) expenditure to be incurred for the purposes of clause (q) of section 61;

(v) expenditure to be incurred for the purposes of Chapters IX and X;

(b) an estimate of the balances, if any (other than balances) shown in the accounts maintained under sections 123A and 123C which will be available for re-appropriation or expenditure at the commencement of the next ensuing official year;

(c) an estimate of the corporation's receipts and income for the next ensuing official year other than from taxation and from the Brihan Mumbai Electric Supply and Transport Undertaking and other than that referred to in clause (c) of sub-section (2) and in clause (d) of section 126C and in section 126E;

(cc) an estimate of the amount due to be transferred during the next ensuing official year to the municipal fund under the provisions of sections 460KK and 460LL;

(d) a statement of proposals as to the taxation which it will, in his opinion, be necessary or expedient to impose under the provisions of this Act in the next ensuing official year;

(2) (a) an estimate of the expenditure which must or should, in his opinion, be incurred by the corporation in the next ensuing official year by reason of the obligations imposed upon the corporation arising out of the transfer to the corporation of the powers, duties, assets and liabilities of the Board of Trustees for the Improvement of the City of Bombay constituted under the City of Bombay Improvement Trust Transfer Act, 1925 or for any of the purposes of Chapter XII-A;

(b) an estimate of all balances, if any in the account maintained under section 122A, which will be available for re-appropriation or expenditure at the commencement of the next ensuing official year;

(c) an estimate of the corporation's receipts and income for the next ensuing official year—

(i) arising from sales, leases and other dispositions of immovable property vesting in the corporation by reason of the enactment of the City of Bombay Municipal (Amendment) Act, 1933 or acquired by the Corporation for any of the purposes of Chapter XII-A; and

(ii) being payments of interest on and repayments in whole or part of the capital of loans granted by the corporation and secured on the aforesaid immovable property;

(d) an estimate of three times the amount of the net estimated realisations of the corporation in the then current financial year under the head of general tax (including arrears and payments in advance) divided by the rate fixed for general tax for the then current financial year;

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Provided further that, with effect from the financial year 1974-75, this subclause shall have

effect as if for the words "three-times" the word "twice" were substituted;

(e) an estimate of the Corporation's receipts and income, other than receipts and income referred to in other clauses of this sub-section arising from or relating to, transaction connected with the obligations imposed upon the Corporation by the transfer to the Corporation of the powers, duties, assets and liabilities of the said Board of Trustees or with the exercise of the powers and duties conferred or imposed upon the Corporation by Chapter XII-A including grants from the State Government.

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128. Fixing rates, of municipal taxes and of fares and charges of "Brihan Mumbai Electric Supply and Transport Undertaking"

(1) The Corporation shall, on or before the twentieth day of March after considering the Standing Committee's proposals in this behalf, —

(a) determine, subject to the limitations and conditions prescribed in Chapter VIII, the rates at which municipal taxes shall be levied, and the articles on which octroi shall be levied, in the next ensuing official year:

Provided that, the Corporation may determine different rates of property taxes for different categories of users of a building or land or part thereof; and

(b) approve, subject to the limitations and conditions which may have been prescribed by or under any of the enactments or any licence referred to in clause (i-a) of sub-section (2) of section 126B, the rates at which the fares and charges in respect of the Brihan Mumbai Electric Supply and Transport Undertaking shall be levied.

(2) Except under sections 134,196, 460H and 460I, the rates so fixed and the articles so appointed shall not be subsequently altered for the year for which they have been fixed.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Corporation may, at any

time during the official years 2010-2011, 2011-2012 and 2012-2013 determine, separately for each of the said three years, the rates of property taxes for different categories of users of a building or land or part thereof. The rates of property taxes so determined shall be effective and shall be deemed to have been effective from the 1st of April of those three years and the taxes for the said three years shall be leviable and payable at the rates so determined.

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139. Taxes to be imposed under this Act. For the purpose of this Act, taxations shall be imposed as follows, namely:-

(1) property taxes;

(2) a tax on dogs: and

(3) a theatre tax;

139A. Property taxes what to consist.

(1) Property taxes leviable on buildings and lands in Brihan Mumbai under this Act shall include water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess, street tax and betterment charges.

(2) For the purposes of levy of property taxes, the expression "Building" includes -a flat, a *gala,* a unit or any portion of the building.

(3) All or any of the property taxes may be imposed on a graduated scale.

(4) Save as otherwise provided in this Act, it shall be lawful - for the Corporation to levy all property taxes on the rateable value of buildings and lands until the Corporation adopts levy of any or all the property taxes on such buildings and lands on the capital value thereof under section 140A.

140. Property taxes leviable on rateable value, or capital value as the case may be, and at what rate. (1) The following property taxes shall be levied on building and lands in Brihan Mumbai, namely: -

(a) (i) the water tax of so many per centum of their rateable value, or their capital value, as the case may be, as the Standing Committee may consider necessary for providing water supply;

(ii) an additional water tax which shall be called 'the water benefit tax' of so many per centum of their rateable value, or their capital value, as the case may be, as the Standing Committee may consider necessary for meeting the whole or part of the expenditure incurred or to be incurred on capital works for making and improving the facilities of water-supply and for maintaining and operating such works;

Provided that all or any of the property taxes may be imposed on a graduated scale.

(b) (i) the sewerage tax of so many per centum of their rateable value, or their capital value, as the case may be, as the Standing Committee may consider necessary for collection, removal and disposal of human waste and other wastes;

(ii) an additional sewerage tax which shall be called the "sewerage benefit tax" of so many per centum of their rateable value, or their capital value, as the case may be, as the Standing Committee may consider necessary for meeting the whole or a part of the expenditure incurred or likely to be incurred on capital work - for making and improving facilities for the collection, removal and disposal of human waste and other wastes and for maintaining and operating such works;

General tax

(c) a general tax of not less than eight and not more than fifty per centum of their rateable value, or of not less than 0.1 and not more than 1 per centum of their capital value, as the case may be, together with not less than one-eight and not more than five per centum of their rateable value or not less than 0.01 and not more than 0.2 per centum of their capital value, as the case may be, added thereto in order to provide for the expense necessary for fulfilling the duties of the corporation arising under clause (k) of section 61 and Chapter XIV;

Education cess

(ca) the education cess leviable under section 195E;

(cb) the street tax leviable under section 195G;

(d) betterment charges leviable under Chapter XII-A.

(2) Any reference in this Act or in any instrument to a water tax or a halalkhor tax shall after the commencement of the Bombay Municipal Corporation (Amendment) Ordinance, 1973, be construed as a reference to the water tax or the water benefit tax or both or the sewerage tax or the sewerage benefit tax, or both as the context may require;

140A. Property taxes to be levied on capital value and the rate thereof. (1) Notwithstanding anything contained in section 140 or any other provision of this Act, the Corporation may pass a resolution to adopt levy of property tax on buildings and lands in Brihan Mumbai on the basis of capital value of the buildings and lands on and from such date, and at such rates, as the Corporation may determine in accordance with the provisions of section 128:

Provided that, for the period of five years from the date on and from which such property tax is levied on capital value, the tax shall not:

(a) exceed, -

(i) in respect of building used for residential purposes, two times, and

(ii) in respect of building or land used for non-residential purposes, three times, and

(b) where the tax so levied on any building or land, whether used for residential or for non-residential purposes, gets reduced, be less than half of the amount of the property tax leviable in respect thereof in the year immediately preceding such date:

shall not exceed, -

(i) in respect of building used for residential purposes, two times, and

(ii) in respect of building or land used for non-residential purposes, three times,

the amount of the property tax leviable in respect thereof in the year immediately preceding such date:

Provided further that, where the property taxes levied in respect of any residential or non-residential building or portion thereof were on the basis of annual letting value arrived at considering the leave and licence

charges, by whatever name called, then for the purposes of the first proviso it shall be lawful for the Commissioner to ascertain such tax leviable during such immediately preceding year, as if such building or portion thereof were self-occupied and had been so entered in the assessment book:

Provided also that, the property tax levied on the basis of capital value of any building or land on revision made under sub section (1C) of section 154 shall not in any case exceed 40 per centum of the amount of the property tax payable in the year immediately preceding the year of such revision:

Provided also that, for the period of five years commencing from the year of adoption of capital value as the base, for levy of property tax under section 140A, the amount of property tax leviable in respect of a residential building or residential tenement, having carpet area of 46.45 sq. meter (500 sq. feet) or less, shall not exceed the amount of property tax levied and payable in the year immediately preceding the year of such adoption of capital value as the basis.

Provided also that, for a period of five years commencing on the 1st April 2015, the amount of property tax leviable in respect of a residential building or residential tenement, having carpet area of 46.45 sq. meter (500 sq. feet) or less, shall not exceed the amount of property tax which is being levied and payable in respect of such residential building or tenement as on the 31st March 2015.

Provided also that, for the financial year 2019-20, the provisions of the preceding proviso shall apply as if the general tax leviable under clause (c) of sub-section (1) of section 140 do not form part of the property tax leviable under that section.

(2) Notwithstanding anything contained in sub-section (4) of section 139A or any other provisions of this Act or Resolution, if any, passed by the Corporation for adopting the levy of property tax on the basis of capital value but subject to the provisions of section 154A, buildings and lands in respect of which the process of fixing capital value is in progress on the 26th August 2010, being the date of coming into force of section 3 of the Maharashtra Municipal Corporations and Municipal Councils (Third Amendment) Act, 2010, until it is so fixed, the tax

leviable and payable in respect of such buildings and lands shall provisionally be equal to the amount of tax leviable and payable in the preceding year, that is to say, for the year commencing on the first day of April 2009 and ending on the thirty-first day of March 2010 and such provisional tax shall be leviable and payable for each of the years 2010-2011, 2011-2012 and 2012-2013, according to the provisional bills which may be issued separately for each such year; so, however, that on fixation of capital value of the respective buildings and lands, final bill of assessment of property taxes on the basis of capital value may then be issued for each such year as aforesaid. After such final assessment, if it is found that the assessee has paid excess amount, such excess shall, notwithstanding anything contained in section 179, be refunded within three months from the date of issuing the final bill, along with interest from such date as provided in the first proviso to sub-section (5) of section 217, or after obtaining the consent of the assessee, shall be adjusted towards payment of property tax due, if any, for the subsequent years; and if the amount of taxes on final assessment is more than the amount of tax already paid by the assessee, the difference shall be recovered from the assessee.

(2A) Notwithstanding anything contained in sub-section (1) or (2) or any other provisions of this Act, the tax on buildings and lands, which are liable to be assessed for the first time on or after the 1st April 2010, shall provisionally be equal to the amount of tax, as if such buildings and lands are liable to be assessed in the year 2009-2010; and on ascertainment of the capital value of such 'buildings and lands, the corporation may issue a final bill in respect of the years for which they are liable to be assessed, on the basis of capital value thereof and accordingly it shall be the duty of the owner and occupier of such buildings and lands to pay such tax within the period specified in the final bill issued as aforesaid.

(3) Notwithstanding anything contained in section 163 or 217 or any other provisions of this Act and having regard to the fact that the property tax bill has been issued in accordance with the provisions of sub-section (2), not being a final bill, such bill shall not be questioned before any forum; and no complaint or appeal shall lie against such bill merely on the ground that capital value in respect of the property which is subject matter of the bill is not yet fixed, or that the amount of tax leviable and

payable at the rate of property tax determined by the Corporation is not yet finally ascertained, or on any other ground whatever.

Explanation.- For the purposes of this section, after the Corporation adopts the Capital Value as the basis of levy of property tax, the property tax in respect of any taxable building shall be revised after every five years and on each such revision, such amount of property tax, shall not in any case exceed the forty per cent of the amount of the property tax levied and payable in the year immediately preceding the year of the revision.

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154. Rateable value or capital value how to be determined. (1) In order to fix the rateable value of any building or land assessable to a property-tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year as unequal 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.

(1A) In order to fix the capital value of any building or land assessable to a property tax the Commissioner shall have regard to the value of any building or land as indicated in the Stamp Duty Ready Reckoner for the time being in force as prepared under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995, framed under the provisions of the Bombay Stamp Act, 1958, as a base value[2] or where the Stamp Duty Ready Reckoner does not indicate Value of any properties in any particular area wherein a building or land in respect of which capital value is required to be determined is situate, or in case such Stamp Duty Ready Reckoner does not exist, then the Commissioner may fix the capital value of any building or land taking into consideration the market value of such building or land, as a base value. The Commissioner while fixing the capital value as

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aforesaid, shall have regard[3] to the following factors, namely: -

(a) the nature and type of the land and structure of the building, -

(b) area of land or carpet area of building,

(c) user category, that is to say, (i) residential, (ii) commercial (shops or the like), (iii) offices, (iv) hotels (upto 4 stars), (v) hotels (more than 4 stars), (vi) banks, (vii) industries and factories, (viii) school and college building or building used for educational purposes, (ix) malls and (x) any other building or land not covered by any of the above categories,

(d) age of the building, or

(e) such other factors as may be specified by rules made under subsection (1B).

(1B) The Commissioner shall with the approval of the Standing Committee, frame such rules as respects the details of categories of building or land and the weightage by multiplication to be assigned to various such factors and categories for the purpose of fixing the capital value under sub-section (1A).

(1C) The capital value of any building or land fixed under sub-section (1A) shall be revised every five years:

Provided that, the Commissioner may, for reasons to be recorded in writing, revise the capital value of any

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3 The expressions were added / substituted by 2010 Amendment. The erstwhile sub-section (1A) introduced by Maharashtra Act No. XI of 2009 was : -

""(1A) In order to fix the capital value of any building or land assessable to a property tax the Commissioner shall have regard to the value of any building or land as indicated in the Stamp Duty Ready Reckoner for the time being in force as prepared under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995, framed under the provisions of the Bombay Stamp Act, 1958, or where the Stamp Duty Ready Reckoner does not indicate value of any properties in any particular area wherein a building or land in respect of which capital value is required to be determined is situate, or in case such Stamp Duty Ready Reckoner does not exist, then the Commissioner may fix the capital value of any building or land taking into consideration the market value of such building or land, as a base value; and also have regard to the following factors, namely: -

(a) the nature and type of the land and structure of the building,

(b) area of land or carpet area of building,

(c) user category, that is to say, (i) residential, (ii) commercial (shops or the like), (iii) offices, (iv) hotels (upto 4 stars), (v) hotels (more than 4 stars) (vi) banks, (vii) industries and factories, (viii) school and college building or building used for educational purposes, (ix) malls and (x) any other building or land not covered by any of the above categories,

(d) age of the building, or

such other factors as may be specified by rules made under subsection (1B)."

building or land any time during the said period of five years and shall accordingly amend the assessment book in relation to such building or land under section 167.

(1D) (a) Notwithstanding anything contained in sub-section (1C),-

(i) due to the spread of COVID-19 pandemic, the capital value of any building or land fixed under sub-section (1A) shall not be revised in the year 2020-21 and the year 2021-22;

(ii) for the year 2020-21 and the year 2021-22, the property tax bill for any building or land shall be the same as is for the year 2019-20;

(iii) the capital value of any building or land fixed under sub-section (1A) shall be revised in the year 2022-23, as if the clause (i) is not applicable for the year 2020-21 and the year 2021-22.

(b) Subject to the proviso to sub-section (1C), the next revision shall be in the year 2025-26, and, thereafter, the revision of capital value of any building or land, shall be in accordance with the provisions of sub-section (1C).

(2) The value of any machinery contained or situate in or upon any building or land shall not be included in the rateable value or the capital value, as the case may be, of such building or land.

154A. Provisional fixation of capital value in certain cases. Notwithstanding anything contained in section 154, the rateable value of any building or land or part thereof, for the official year 2009-2010, shall be the provisional capital value of such building and lands in respect of the official years 2010-2011, 2011-2012 and 2012-2013, and such provisional capital value shall be deemed to be the capital value validly and legally fixed under the provisions of this Act, pending fixing the capital value thereof, and it shall be lawful for the Commissioner to treat it as such for the purposes of assessment book kept under the provisions of this Act, and the bill for property taxes issued under sub-section (2) of section 140A shall be deemed to have been validly and legally issued under the provisions of this Act.

Provided that, in respect of the buildings and lands which are liable to be assessed for the first time on or after the 1st April 2010, the capital value of such buildings and lands

shall, until the final capital value is determined under this section, be provisionally equal to the amount of rateable value worked out on the basis of the prescribed letting rates by the corporation in respect of the official year 2009-2010.

155. Commissioner may call for information or returns from owner or occupier or enter and inspect assessable premises. (1) To enable him to determine the rateable value or the capital value, as the case may be, of any building or land and the person primarily liable for the payment of any property tax leviable in respect thereof the Commissioner may require the owner or occupier of such building or land, or of any portion thereof, to furnish him, within such reasonable period as the Commissioner prescribes in this behalf, with information or with a written return signed by such owner or occupier-

(a) as to the name and place of abode of the owner or occupier, or of both owner and occupier of such building or land; and

(b) as to the details in respect of any or all the items as enumerated in clauses (a) to (e) of sub-section (1A) of section 154 in relation to such building or land or any portion thereof.

(2) Every owner or occupier on whom any such requisition is made shall be bound to comply with the same and to give true information or to make a true return to the best of his knowledge or belief.

(3) The Commissioner may also for the purpose aforesaid make an inspection of any such building or land.

156. Assessment book what to contain.
The Commissioner shall keep a book, in such form and manner as he may, with the approval of the Standing Committee, determine, and such book shall be called "the assessment book" in which shall be entered every official year-

(a) a list of all buildings and lands in Brihan Mumbai distinguishing each either by name or number, as he shall think fit;

(b) the rateable value or the capital value, as the case may be, of each such building and land determined in accordance with the foregoing provisions of this Act;

(c) the name of the person primarily liable for the payment of the property taxes, if any, leviable on each such building or land;

(d) if any such building or land is not liable to be assessed to the general tax or is exempt from payment of property tax either in whole or in part, as the case may be, the reason of such non-liability or exemption, as the case may be;

(e) when the rates of the property taxes to be levied for the year have been duly fixed by the corporation and the period fixed by public notice, as hereinafter provided, for the receipt of complaints against the amount of rateable value or the capital value, as the case may be, entered in any portion of the assessment book, has expired, and in the case of any such entry which is complained against, when such complaint has been disposed of in accordance with the provisions hereinafter contained, the amount at which each building or land entered in such portion of the assessment book is assessed to each of the property taxes, if any, leviable thereon;

(f) if under section 169, a charge is made for water supplied to any buildings or land by measurement or the water taxes or charges for water by measurement are compounded for, or if, under section 170, the sewerage taxes or sewerage charges for any building or land are fixed at a special rate, the particulars and amount of such charges composition or rates;

(g) such other details, if any, as the Commissioner from time to time thinks fit to direct."

10. The relevant portion of the Capital Value Rules, 2010 is as under: -

"No. AC/NTC/1310/2011-22 dated 20.03.2012. In exercise of the powers conferred by clause (e)s of sub-section (1A) and sub-section (1B) of section 154 of the Mumbai Municipal Corporation Act (Act No. Bom.III of 1888), and of all other powers enabling him in this behalf, the Commissioner, after having obtained the approval of the Standing Committee, as required under the said sub-section (1B), hereby makes the following rules to provide for the factors and categories of users of buildings or lands and the

weightage by multiplication to be assigned to various such factors and categories for the purpose of fixing the capital value of buildings and lands in Brihan Mumbai, namely:-

1. Short title and commencement: - (i) These rules may be called for the Factors and Categories of Users of Buildings or Lands (Assignment of Weightages by Multiplication) Fixation of Capital Value Rules, 2010.

(ii) They shall come into force forthwith.

xxx xxx xxx

3. Capital of open land :- Save otherwise provided in these rules, where, within the precincts of a building there is vacant land other than the land appurtenant to the building, such land shall be treated as open land and the capital value thereof shall be fixed accordingly, as provided for in rule 21.

4. User categories of open land and weightages by multiplication to be assigned thereto:- User categories of open land shall be as specified in column (2) of Part 1 of schedule 'A' and the weightages by multiplication to base value, to be respectively assigned thereto the purpose of fixing capital value, shall be as shown in column (3) of the said Part I of schedule 'A'.

5. User categories of buildings or part thereof and weightages by multiplication to be assigned thereto:- User categories of buildings part thereof shall be as specified column (2) of each of Parts II, III and IV of schedule 'A' and the weightages by multiplication to the relative base value, to be respectively assigned thereto for the purpose of fixing capital value, shall be as in column (3) of each of the said Parts II, III and IV of schedule 'A'.

6. The nature and type of building and the weightage by multiplication to be assigned thereto:- The nature and type of a building shall be as specified in column (2) of schedule 'B' and the weightages my multiplication to be assigned thereto for the purpose of fixing capital value, shall be shown in column (3) of the said schedule 'B'.

7. The weightage by multiplication to be assigned to a building on account of the age thereof: - The weightage by multiplication to be assigned to a

building on account of age factor, for the purpose of fixing capital value, shall be according to the age of the building as shown in column (2) of schedule 'C' and the weightage by multiplication be assigned thereto shall be as shown in column (3) of the said schedule 'C'.

8. The weightage by multiplication on account of floor factor to be assigned to RCC building with lift: - Weightage by multiplication on account of floor factor to be assigned to a RCC building with lift, for the purpose of fixing capital value, shall be according to the number of floors as shown in column (2) of schedule 'D' and the weightage by multiplication to be assigned thereto shall be as shown in column (3) of the said schedule 'D'.

9. Area of hoarding or tower for the purpose of fixing capital value: -Area of hoarding or tower for the purpose of fixing capital value thereof shall mean, -

(a) in the case of a hoarding, the area of the square of the extremities of the poles on which the hoarding is erected plus the area of the hoarding; and

(b) in the case of a tower, the area covered by the extremities of the foundation of the tower.

10. Built-up area of a flat or a building: (1) The total carpet area of a flat shall be reckoned by including the area of the following items, namely: (i) terrace in exclusive possession, (ii) mezzanine floor, (iii) loft (excluding loft in residential flat) or attic, (iv) dry balcony and (v) niches; and

(2) The total built-up area of a building shall be reckoned by including the areas of the following items, namely: - (i) total area of the flats in the building computed in accordance with sub rule (1), (ii) basement, (iii) stilt, (iv)porch, (v) podium, (vi) service floor, (vii) refuge area, (viii) entrance lobby, (ix) lounge, (x) air- conditioning plant room, (xi) air handling room, (xii) the structure for an effluent treatment plant and (xiii) watchman cabin

(3) The built-up area of any of the following items shall not be reckoned while computing the carpet area of a building or part thereof, namely: -

(i) lift room above topmost storey, (ii) lift well, (iii) stair-case and passage thereto including staircase room, (iv) chimney and elevated tank, (v) meter room, (vi) pump room, (vii)

underground and overhead water tank, (viii) septic tank, (ix)flower-bed and (x) loft in residential flat

(4) Where only the carpet area of a flat or building is available on the record of the Corporation and the total built-up area thereof, computed in the manner as aforesaid in sub-rule (1), or, as the case may be, sub-rule (2), is not available on such record, then the total built-up area of the flat or, as the case may be, of a building shall be arrived at in the following manner, namely :-

Built-up area = 1.2 x carpet area as available on the record of the Corporation + the built-up area of the items specified in sub-rule(1),or, as the case may be, sub-rule (2), unless already reckoned in such carpet area.

11. Fixation of capital value of a flat or building or part thereof.- (1) While fixing the capital value of a flat, the capital value of any one or more of the relevant items specified in sub-rule (1) of rule 10, as fixed in accordance with the provisions of rules 14,15, or sub-rule(1) of rule 16, as the case may be, shall be added to the capital value of the flat.

(2) While fixing the capital value of a building or part thereof, the capital value of any of the one or more of the relevant items specified in sub-rule (2) of rule 10 as fixed in accordance with the provisions of sub-rule (2) or, as the case may be, (3) of rule 16, shall be added to the capital value of the building or part thereof.

12. Fixation of capital value of a building where there are tenants: - The capital value of a building or part thereof which is occupied by a tenant shall be fixed at 75% of the capital value of such building or part thereof; fixed in accordance with the provisions of sub-rule (1), or, as the case may be, sub-rule (2) of rule 11.

Explanation. - For the removal of doubts, it is hereby declared that the provisions of this rule shall not apply to a building or part thereof if, -

(1) it is occupied by a licensee to whom it is given on leave and licence;

s(2) it is occupied by an office bearer or officer or an employee of the landlord.

13. Fixation of capital value of religious buildings :- The capital value of a religious building which is a temple, math, gurudwara, mosque, takth, church, durgah, synagogue, or agiary or the like, and is used or intended to be used for the purpose of religious worship or offering prayers or performance of any religious rites or rituals by a person of, or belonging to, the relevant religion, creed, or sect, shall be fixed at the rate of base value applicable to a residential building as indicated in the Ready Reckoner; and by applying the relevant weightages by multiplication provided for in these rules.

14. Fixation of capital value of open terrace: - If an open terrace in exclusive possession is attached to a flat, the capital value of such terrace of a non-residential flat shall be fixed at 40% of the relative rate of base value of such flat, and of residential flat at 10% of the relative rate of base value of such flat; and by applying the relevant weightages by multiplication provided for in these rules.

15. Fixation of capital value of mezzanine floor, loft and attic floor: -

(a) the capital value of mezzanine floor shall be fixed at 70% of the relative rate of base value of the flat beneath the mezzanine floor; and by applying the relevant weightages by multiplication provided for in these rules;

(b) the capital value of loft or attic floor shall be fixed at 50% of the relative rate of base value of the flat beneath the loft, or as the case may be, the attic; and by applying the relevant weightages by multiplication provided for in these rules;

Provided that, where the rate of base value applicable to the mezzanine floor, loft or attic floor having regard to its user is higher or, as the case may be, lower than the rate of base value applicable to the flat beneath such mezzanine floor, loft or attic floor, the capital value of such mezzanine floor, loft or attic floor shall be fixed at 70% or 50%, as the case may be, of such higher or lower rate of base value; and by applying the relevant weightages by multiplication provided for in these rules.

16. Fixation of capital value of certain other items which are part of a flat or a building or part thereto,- (1) The capital value of dry balcony and niches shall be fixed at 25% of the relative rate of base value of the flat, if any one of these items are part of the flat; and by applying the relevant weightages by multiplication provided for in these rules.

(2) The capital value of any one or more of the following items, namely:- (i)porch, (ii) air-conditioning plant room, (iii) air-handling room, (iv) structure for an effluent plant, (v) watchman cabin and (vi) refuge area, shall be fixed at 25% of the relative rate of base value of the building or part thereof, if any one or more of these items are part of the building or part thereof; and by applying the relevant weightages by multiplication provided for in these rules.

(3) The capital value of any one or more of the following items, namely:- (i) service floor, (ii) entrance lobby and (iii) lounge, shall be fixed at the relative rate of base value of the building or part thereof, if any of these items are part of the building or part thereof; and by applying the relevant weightages by multiplication provided for in these rules.

17. Fixation of capital value in respect of demolished building :-

(1) Where a building is fully demolished, or has fully collapsed, the land beneath it shall be deemed to be open land and the capital value thereof shall be fixed accordingly, as provided for in rule 21.

Explanation – For the purpose of this rule, it is hereby declared that where a building is, or is being, demolished, or has collapsed, resulting in the land on which it stood or stands being rendered open land, or only walls or the like are standing but there is no structure as such which can be occupied, and on such demolition, or collapse, debris or any remains of the demolished or collapsed building are not yet removed, the land beneath such building shall be deemed to be open land.

(2) Where only part of a building is demolished or has partly collapsed and the remaining part is yet occupied by occupiers, land beneath the portion of the building which is demolished or has collapsed shall be deemed to be open land and the portion of the structure which is occupied shall be treated as a

building, for the purpose of fixing the capital value thereof.

(3) Notwithstanding anything contained in sub rules (1) and (2), where a cessed building is, or is being, demolished, or has collapsed, the land beneath the building or portion of the building which is demolished or collapsed shall be deemed to be open land and the capital value thereof shall be fixed as open land and assigning thereto a weightage by multiplication of 0.30 of the base value of open land.

18. The capital value of storage tank .-The capital value of storage tank shall be fixed in the following manner, namely : –

(1) storage tank above the ground level :-

(a) land - at the rate of open land in the Ready Reckoner and weightage by multiplication to be assigned thereto shall be 1.25,

(b) storage tank - capacity of storage tank in litres multiplied by the rate of Rs.40 per litre, with weightage by multiplication to be assigned thereto on account of age factor as in schedule 'C',

(c) total capital value of a storage tank = total of items (a) and (b).

(2) storage tank below the ground level :-

(a) land - at the rate of open land in the Ready Reckoner and weightage by multiplication to be assigned thereto shall be 1.25,

(b) storage tank - capacity of storage tank in litres multiplied by the rate of Rs.50 per litre, with weightage by multiplication to be assigned thereto on account of age factor as in schedule 'C',

(c) total capital value of a storage tank = total of items (a) and (b).

19. Capital value of amenities of luxurious RCC building not to be separately fixed again.- Where the capital value of a luxurious RCC building is fixed under these rules, then no capital value of the amenities specified in the definition of the expression 'luxurious RCC building' shall be separately fixed for the purpose of levy of property tax.

20. Valuation of open land capable of utilising more than 1 floor space index (F.S.I) or transfer of

development right (T.D.R.) -As the Ready Reckoner provides for the rate of base value of open land with 1 floor space index, open land which is capable of utilizing more than 1 floor space index or any transfer of development right shall be valued at an increased rate in proportion to the higher floor space index or transfer of development right proposed to be utilized and approved under the building plan submitted to the Corporation for approval.

21. Capital value of open land or building or part thereof.-Capital value of open land or building shall be fixed under the provisions of the Act and these rules in the following manner, namely:

(1) Capital value **(CV)** of open land

Rate of base value **(BV)** of a open land according to Ready Reckoner X weightage by multiplication as per user category **(UC)** (Part I of schedule 'A') X permissible or approved floor space index **(FSI)** X area of land **(AL)**.

CV = BV x UC x FSI x AL

(2) Capital value **(CV)** of a building –

Relative rate of base value **(BV)** of a building according to Ready Reckoner X weightage by multiplication as per user category **(UC)** (Parts II, III, or as the case may be, IV of schedule 'A') X weightage by multiplication as per the nature and type of building **(NTB)** (schedule 'B') X weightage by multiplication on account of age of building **(AF)** (schedule 'C') X weightage by multiplication on account of floor factor **(FF)** for RCC building with lift (schedule 'D') X carpet area **(CA).**

CV = BV x UC x NTB x AF x FF x CA

Examples: - Some examples based and worked out on the formulae as aforesaid are shown in the Appendix.

22. Non-application of Guidelines of Stamp Duty Valuation. - Notwithstanding anything contained in the "Important Guidelines of Stamp Duty Valuation" as specified in the Ready Reckoner, the provisions made in these rules shall have primacy over those guidelines and none of those guidelines shall apply for fixing capital value under the Act and these rules."

11. The relevant portion of Capital Value Rules of 2015 is as under: -

> "No.AC/NTC/1147/2014-15. In exercise of the powers conferred by clause (e) of sub-section (1A), sub-section (1B) and sub-section (1C) of section 154 of the Mumbai Municipal Corporation Act (Act No.Bom.III of 1888), and of all other powers enabling him in this behalf, the Commissioner, after having obtained the approval of the Standing Committee, as required under the said sub-section (1B), hereby makes the following rules to provide for the factors and categories of users of lands and buildings and the weightage by multiplication to be assigned to various such factors and categories for the purpose of fixing the capital value of lands and buildings in Brihan Mumbai, namely: -
>
> 1. Short title and commencement: -(1) These rules may be called the Factors and Categories of Users of Buildings or Lands (Assignment of Weightages by Multiplication) Fixation of Capital Value Rules, 2015.
>
> (2) They shall come into force from 1st April 2015.
>
> 2. Definitions – In these rules, unless the context otherwise requires:-
>
> xxx xxx xxx
>
> (c) "hoarding" includes boards used to display advertisements, erected on poles, on the ground or on a building;
>
> xxx xxx xxx
>
> (g) "open land" includes land not built upon or land being built upon, but does not include land appurtenant to a building;
>
> (h) "Ready Reckoner" means the Stamp Duty Ready Reckoner, for the time being in force, referred to in sub-section (1A) of section 154 of the Act;
>
> xxx xxx xxx
>
> 3. Capital value of open land :- Save otherwise provided in these rules, where, within the precincts of a building there is vacant land other than the land appurtenant to the building, such land shall be treated as open land and

the capital value thereof shall be fixed accordingly, as provided for in rule 21.

4. User categories of open land and weightages by multiplication to be assigned thereto:- User categories of open land shall be as specified in column (2) of Part 1 of schedule ‘A’ and the weightages by multiplication to base value, to be respectively assigned thereto the purpose of fixing capital value, shall be as shown in column (3) of the said Part I of schedule ‘A’.

5. User categories of buildings or part thereof and weightages by multiplication to be assigned thereto:- User categories of buildings or part thereof shall be as specified column (2) of each of Parts II, III and IV of schedule 'A' and the weightages by multiplication to the relative base value, to be respectively assigned thereto for the purpose of fixing capital value, shall be as in column (3) of each of the said Parts II, III and Iv of schedule 'A'.

6. The nature and type of building and the weightage by multiplication to be assigned thereto:- The nature and type of a building and type of building shall be as specified in column (2) of schedule "B" and the weightages assigned thereto for the purpose of fixing capital value, shall be shown in column (3) of the said schedule ‘B’.

7. The weightage by multiplication to be assigned to a building on account of the age thereof: - The weightage by multiplication to be assigned to a building on account of age factor, for the purpose of fixing capital value, shall be according to the age of the building as shown in column (2) of schedule ‘C’ and the weightage by multiplication be assigned thereto shall be as shown in column (3) of the said schedule "C".

8. The weightage by multiplication on account of floor factor to be assigned to RCC building with lift: - Weightage by multiplication on account of floor factor to be assigned to a RCC building with lift, for the purpose of fixing capital value, shall be according to the number of floors as shown in column (2) of schedule 'D' and the weightage by multiplication to be assigned thereto shall be as shown in column (3) of the said schedule 'D'.

9. Area of hoarding or tower for the purpose of fixing capital value: -Area of hoarding or tower for the purpose of fixing capital value thereof shall mean, -

(a)in the case of a hoarding, the area of the square of the extremities of the poles on which the hoarding is erected plus the area of the hoarding; and

(b)in the case of a tower, the area covered by the extremities of the foundation of the tower.

10. Carpet Area area of a flat or a building: (1) The total carpet area of a flat shall be reckoned by including the area of the following items, namely: (i) terrace in exclusive possession, (ii) mezzanine floor, (iii) loft (excluding loft in residential flat) or attic, (iv) dry balcony and (v) niches; and

(2) The total carpet area area of a building shall be reckoned by including the areas of the following items, namely:- (i) total area of the flats in the building computed in accordance with sub rule (1), (ii) basement, (iii) stilt, (iv)porch, (v) podium, (vi) service floor, (vii) refuge area, (viii) entrance lobby, (ix) lounge, (x) air- conditioning plant room, (xi) air handling room, (xii) the structure for an effluent treatment plant room and (xiii) watchman cabin (xix)sewerage treatment plant room (xv) water treatment plant room

(3) The carpet area of any of the following items shall not be reckoned while computing the carpet area of a building or part thereof, namely:

(i) lift room above topmost storey, (ii) lift well, (iii) stair-case and passage thereto including staircase room, (iv) chimney and elevated tank, (v) meter room, (vi) pump room, (vii) underground and overhead water tank, (viii) septic tank, (ix)flower-bed and (x) loft in residential flat, (xi) entrance lobby of residential building

(4) "deleted"

11. Fixation of capital value of a flat or building or part thereof.- (1) While fixing the capital value of a flat, the capital value of any one or more of the relevant items specified in sub-rule (1) of rule 10, as fixed in accordance with the provisions of rules 14,15, or sub-rule(1) of rule 16, as the case may be, shall be added to the capital value of the flat.

(2) While fixing the capital value of a building or part thereof, the capital value of any of the one or more of the relevant items specified in sub-rule (2) of rule 10 as fixed in accordance with the provisions of sub-rule (2) or, as

the case may be, (3) of rule 16, shall be added to the capital value of the building or part thereof.

12. "deleted"

13. Fixation of capital value of religious buildings :- The capital value of a religious building which is a temple, math, gurudwara, mosque, takth, church, durgah, synagogue, or agiary or the like, and is used or intended to be used for the purpose of religious worship or offering prayers or performance of any religious rites or rituals by a person of, or belonging to, the relevant religion, creed, or sect, shall be fixed at the rate of base value applicable to a residential building as indicated in the Ready Reckoner; and by applying the relevant weightages by multiplication provided for in these rules.

14. Fixation of capital value of open terrace: - If an open terrace in exclusive possession is attached to a flat, the capital value of such terrace of a non-residential flat shall be fixed at 50% of the relative rate of base value of such flat, and of residential flat at 20% of the relative rate of base value of such flat; and by applying the relevant weightages by multiplication provided for in these rules.

15. Fixation of capital value of mezzanine floor, loft and attic floor:-

(a) the capital value of mezzanine floor shall be fixed at 70% of the relative rate of base value of the flat beneath the mezzanine floor; and by applying the relevant weightages by multiplication provided for in these rules;

(b) the capital value of loft or attic floor shall be fixed at 50% of the relative rate of base value of the flat beneath the loft, or as the case may be, the attic; and by applying the relevant weightages by multiplication provided for in these rules;

Provided that, where the rate of base value applicable to the mezzanine floor, loft or attic floor having regard to its user is higher or, as the case may be, lower than the rate of base value applicable to the flat beneath such mezzanine floor, loft or attic floor, the capital value of such mezzanine floor, loft or attic floor shall be fixed at 70% or 50%, as the case may be, of such higher or lower rate of base value; and by applying the relevant weightages by multiplication provided for in these rules.

16."deleted"

17. Fixation of capital value in respect of demolished building :-

(1) Where a building is fully demolished, or has fully collapsed, the land beneath it shall be deemed to be open land and the capital value thereof shall be fixed accordingly, as provided for in rule 21.

Explanation - “deleted"

(2) Where only part of a building is demolished or has partly collapsed and the remaining part is yet occupied by occupiers, land beneath the portion of the building which is demolished or has collapsed shall be deemed to be open land and the portion of the structure which is occupied shall be treated as a building, for the purpose of fixing the capital value thereof.

(3) "deleted"

18, "deleted"

19. "deleted".

19 A Assessment of Amenities in Luxurious RCC bldg

Where Property tax in respect of amenities of luxurious RCC building was not levied since 1st April 2010 as per Rule 19, while determining the property tax leviable from 1st April 2015, subject to capping as provided for in section 140A such tax shall be considered which would have been continued to levy from 1st April 2010.

20. Valuation of open land capable of utilising more than 1 floor space index (F.S.I) or transfer of development right (T.D.R.) -As the Ready Reckoner provides for the rate of base value of open land with 1 floor space index, open land which is capable of utilizing more than 1 floor space index or any transfer of development right shall be valued at an increased rate in proportion to the higher floor space index or transfer of development right proposed to be utilized and approved under the building plan submitted to the Corporation for approval.

21. Capital value of open land or building or part thereof.-Capital value of open land or building shall be fixed under the provisions of the Act and these rules in the following manner, namely:

(1) Capital value **(CV)** of open land

Rate of base value **(BV)** of a open land according to Ready Reckoner X weightage by multiplication as per

user category **(UC)** (Part I of schedule 'A') X permissible or approved floor space index **(FSI)** X area of land **(AL)**.

CV = BV x UC x FSI x AL

(2) Capital value **(CV)** of a building –

Relative rate of base value **(BV)** of a building according to Ready Reckoner X weightage by multiplication as per user category **(UC)** (Parts II, III, or as the case may be, IV of schedule 'A') X weightage by multiplication as per the nature and type of building **(NTB)** (schedule 'B') X weightage by multiplication on account of age of building **(AF)** (schedule 'C') X weightage by multiplication on account of floor factor **(FF)** for RCC building with lift (schedule 'D') X carpet area **(CA).**

CV = BV x UC x NTB x AF x FF x CA

22. Non-application of Guidelines of Stamp Duty Valuation. - Notwithstanding anything contained in the "Important Guidelines of Stamp Duty Valuation" as specified in the Ready Reckoner, the provisions made in these rules shall have primacy over those guidelines and none of those guidelines shall apply for fixing capital value under the Act and these rules."

12. In Appendix II of Capital Value Rules of 2010, 13 examples are provided. Examples 12 and 13 from said appendix are as under:

"(12) <u>OPEN LAND WHERE RESIDENTIAL BUILDING PLAN WITH HIGHER F.S.I. HAS BEEN APPROVED</u>

		Weightage
Rate of base value	Rs.36,400	not applicable
User Category	Open Land (Resi)	1.00
Nature and Type of Building	not applicable	not applicable
Age of Building	not applicable	not applicable
F.S.I. Factor	2.50	2.50
Land Area	80 sq. mtr.	not applicable

CV = BV X UC X FSI X LA

= 36400 X 1.00 X 2.50 X 80

C.V.= Rs.72,80,000

(13) OPEN LAND IN SUBURBAN AREA

		Weightage
Rate of base value	Rs.33,200	not applicable
User Category	Residential	1.00
Nature and Type of Building	not applicable	not applicable
Age of Building	not applicable	not applicable
F.S.I. Factor	1.00	1.00
Land Area	80 sq. mtr.	not applicable

CV = BV X UC X FSI X LA

= 33200 X 1.00 X 1.00 X 80

C.V. = Rs.26,56,000"

13. Number of petitions were filed challenging the validity of computation and levy of property tax based on capital value system. The petitions also challenged the vires of Capital Value Rules of 2010 and Capital Value Rules of 2015. Some of the petitions also challenged the amendment effected to the MMC Act pertaining to the implementation of the Capital Value System for computing and assessing property tax. During the pendency of these matters before the High Court interim orders were passed by the High Court on or about 29.01.2014 which

were thereafter modified by subsequent order dated 24.02.2014. The operative part of the order dated 24.02.2014 was as under: -

> "5. In the meantime the petitioners shall pay municipal taxes at the pre-amended rates and also the additional tax at the rate of 50% of the differential tax between the tax payable under the old regime and now payable on the basis of capital value of the property. The petitioners will pay such amounts and the Municipal Corporation shall accept the amounts within prejudice to rights and contentions of parties."

After exchange of pleadings, all the matters were taken up for hearing with Writ Petition No. 2492 of 2014 filed by the Property Owners' Association and others as the lead matter. Having considered the rival submissions, the High Court rejected the challenge as to the validity of various provisions of the MMC Act. It, however, held Rules 20, 21 and 22 of the Capital Value Rules 2010 and 2015 to be *ultra vires* the provisions of the MMC Act.

14. Before considering the challenge raised on various grounds, at the outset the High Court dealt with the approach to be adopted by a Court while dealing with the challenge to the validity of tax laws, and concluded that in case of taxing statute, more latitude would be required to be given to the legislature and that the burden on the petitioners challenging the validity

would be more onerous. Thereafter the challenge was considered under following heads: -

(a) The argument on legislative competence.

The submission that the tax in terms of the instant legislation would be one covered by Entry 86 of List I of the Seventh Schedule to the Constitution, was not accepted and the challenge in that behalf was rejected with following conclusions: -

> "155. The legislation providing for the levy of property tax by a municipality on the basis capital value will be covered by Entry 49 of List-II. Now coming to the impugned provisions, we find that capital value of lands and buildings is adopted only as a measure to determine the tax on lands and buildings. There is no attempt to levy a tax on capital value of assets. Therefore, the conclusion which can be drawn is that the State Legislature was competent to enact provisions regarding property tax based on capital value under Entry-49 of List-II of Seventh Schedule. The argument that the impugned amended provisions of the BMC Act impinge upon the powers of the Central Legislature covered by Entry-86 of List-I of Seventh Schedule deserves to be rejected. The adoption of capital value as a basis or measure of tax on land and building will not attract Entry-86 of List-I of Seventh Schedule.
>
> …."

(b) Challenge to the validity of sub-Sections (1)(a) and (1)(b) of Section 140 regarding water tax and sewerage tax.

The submissions were rejected with following observations: -

> "158. .....
>
> A tax is a compulsory exaction as a part of common burden without promise of any special advantages to classes of taxpayers, whereas a fee is a payment for services rendered, benefit provided or privilege conferred. Coming back to sub-sections (1)(a) and (1)(b) of section 140, the same provide for levy of such water tax as the Standing Committee may consider necessary for providing water supply. The imposition of this tax does not depend on whether the water is being supplied to the premises or property in respect of which water tax is demanded. Similarly, in case of additional water tax, the expenditure incurred or to be incurred for capital works for making or improving the facilities of water supply may not be for a direct benefit to the premises or property subject matter of levy of tax. The Municipal Corporation may not be providing water supply to a particular premises or land at a particular point of time but it may be providing it to other properties in the city. Similarly, in respect of sewerage tax or additional sewerage tax, in case of an open land there may not be any requirement for collection or removal and disposal of human and other wastes or for doing capital works for making and improving the facilities for collection and removal of waste. Thus, in case of these four taxes, it is a compulsory exaction as part of a common burden without promise of any special advantages or promise to the tax payers. The said taxes are imposed to generate revenue. Even assuming that in the levy of tax under these four heads, an element of quid pro quo exists, that by itself does not mean that the levy ceases to be in the nature of tax. We, therefore, reject the argument that these four taxes cannot be levied in respect of vacant land or a land under construction which is not enjoying any service such as water supply or collection of sewerage or waste.
>
> 159. Where the facilities of water supply or sewerage collection are provided to a land or building, as per the Rules framed under sections 169 and 170 of the BMC Act, the water charges or sewerage charges, as

the case may be, by way of fees can be recovered which would have direct nexus with the quality and quantity of services provided. Where charge is collected, taxes covered by the above four heads cannot be levied. Therefore, we do not agree that the aforesaid four taxes are not in substance a tax but the same are in the nature of fees."

(c) Challenge to the validity of sub-Section (1) (c) (a) of Section 140 regarding levy of Education Cess.

The submissions were rejected thus:-

"160. .....

On plain reading of sub-section (1) of section 195E, it is clear that this section provides for levy of additional tax on buildings and lands which is called as education cess of so many per centum not exceeding 12 per centum of their rateable value or so many per centum of their capital value, as the case may be, as may be determined by the Corporation. Sub-section (1) of section 195E provides that levy of said additional tax is for the purposes of clause (q) of section 61. Under clause (q) of section 61, it is an obligation of the BMC to maintain and aid schools of primary education. Therefore, as in the case of the aforesaid four taxes which we have discussed above, this tax is a compulsory exaction as a part of a common burden. We, therefore, do not see any merit in the submission that the aforesaid provisions are *ultra vires* the provisions of the Constitution of India. The argument whether education cess can be levied on the basis of capital value is dealt with separately."

(d) Similarly, the argument with regard to sub-Section (1) (d) of Section 140 dealing with levy of Betterment Charges was rejected with following observations: -

"162. In none of the Petitions in this group, it is demonstrated that a demand is made from the petitioners for payment Betterment Charge. Elaborate

> procedure for determination thereof is laid down. The Authority which has power to determine the charge is the Improvement Committee. As per section 49B of the BMC Act, the said Committee consists of 26 elected councilors of BMC. Moreover, the betterment charge is not payable on the basis of the capital value. Hence, the main ground of attack in these petitions about the levy of property taxes based on capital value has no relevance to levy of Betterment charges."

(e) Consideration of challenge on the basis of violation of provisions of Chapter IXA and in particular, Article 243-X of the Constitution of India.

The substratum of the challenge was that the levy and collection as provided in clauses (a) and (b) of Article 243-X of the Constitution must be by the Corporation consisting of the elected and nominated councillors and not by any other authority under Section 4 of the MMC Act. The submissions in that behalf were rejected as under:-

> "173. `We, firstly, deal with the argument that as the power to levy and collect property taxes has been assigned to the Municipality i.e. the Corporation, the power must be exercised by the Corporation consisting of elected and nominated councilors and not by any other municipal authority. If the said argument is accepted, it will lead to absurdity for the reason that the exercise of fixing the capital value of all properties, fixing the rate of tax at a particular percentage of capital value, imposition, levy and collection will have to be done by the Corporation which consists of the elected councillors and nominated councillors and by no other municipal authority. It will be impossible for the Corporation to do so."
>
> xxx xxx xxx

"181. To conclude, the BMC Act has been already amended in terms of Article 243-ZF. Perusal of various provisions of Part-IXA of the Constitution of India shows that the constitutional provisions itself provide for the State Legislature enacting law providing for constitution of committees and conferring them with powers and authority. We have already referred to the various provisions including clause (b) of Article 243-W. Therefore, the provision of section 4 of the BMC Act is consistent with the provision of Part-IXA. Clauses (a) and (b) of Article 243-X cannot be read in isolation and merely because Legislature authorizes the Standing Committee to fix the rates of property taxes and to approve rules framed by the Commissioner in accordance with sub-section (1B) of section 154, the relevant provisions of the BMC Act cannot be said to be *ultra vires* Article 243-X. The powers under the charging sections in Chapter VIII are conferred on the Corporation itself including the power to exercise option of taking recourse to capital value regime for the levy of property taxes. Moreover, we have pointed out that certain provisions of Chapter VIII are machinery provisions. As required by law, the decision adopting Capital Value System has been taken by the Corporation consisting of 227 elected and nominated councillors. This power cannot be said to be unguided power only because sub-section (1) of section 140A does not expressly lay down any specific conditions for exercise of the option. The provisions which confer power on the Standing Committee to fix the rates of taxes contain sufficient guidelines. Even the provision of sub-section (1A) of section 154 which confer power on the Commissioner to determine capital value contains more than sufficient guidelines. We see no violation of Article 243-X or any other provisions of Part-IX-A.

182. If we accept the submissions canvassed across the bar by the petitioners, not only the decision to adopt capital value system but the job of fixing rates in case of all categories of property taxes, determination of capital value of all properties liable to taxes, process of serving notices under section 162, giving hearing on complaints and deciding the complaints will have to be done by the Corporation consisting of elected councillors and nominated councillors and by no one else. Such interpretation put to clauses (a) and (b) of Article 243-X will lead to

> absurdity and the provisions will become unworkable. Such interpretation will defeat the object of 74th Amendment to the Constitution and, therefore, the challenge on the ground of violation of Article 243-X must fail."

(f) Submissions on the ground of excessive delegation.

While observing that the power conferred in sub-Section (1A) of Section 154 of the MMC Act on the Commissioner to fix capital value, was not at all an unguided power and that sufficient guidelines were set out, it was concluded thus: -

> "185. .... There are sufficient guidelines and safeguards. Moreover, in case of taxes where power to fix rates is given to the Standing Committee, the same will always form part of proposals of the Standing Committee which will be considered by the Corporation in accordance with clause (e) of subsection (1) of Section 128 for determination of rates. The BMC Act does not provide for delegation of essential functions of the Corporation. Conferment of powers on the Standing Committee and Improvement Committee and other municipal authorities is within the four corners of Part-IXA of the Constitution. Therefore, the argument of excessive delegation has no merit and deserves to be rejected."

(g) Submission based on violation of Article 14 of the Constitution of India.

The submission that there was manifest arbitrariness in the impugned provisions and that the provisions were confiscatory in nature, were rejected by the High Court. It was observed thus: -

> "189. .... There is an argument canvassed that there is a disparity of tax payable in respect of residential and hotel properties. An argument is canvassed that there is disparity between five star hotel properties and other hotel properties. On first principle, the submissions cannot be accepted. The user of residential properties, 5-Star hotel properties and other hotel properties is different. These properties form part of distinct classes and by its vary nature cannot be treated as equal. Therefore, it is very difficult to sustain an argument that there is manifest arbitrariness in the impugned provisions. As the provisions do not lead to confiscatory nature of taxes, violation of Article 14 is not attracted."

(h) Challenge to the notification issued under the Maharashtra Education Cess Act, 1962

The submissions in that behalf were also negatived with observation that by adopting capital value system, only the computation of property tax was altered.

(i) The ground of retrospective operation of the impugned provisions of the BMC Act.

The contentions advanced in that behalf were rejected by the High Court after making following observations: -

> "205. The liability to pay property taxes was always provided in the BMC Act. By the impugned amendments, only the basis of computing property taxes has undergone a change. Assuming that there is any retrospective operation, it is no facilitate transition form one regime to another. As per the amendments, the final assessment for the years 2010-11, 2011-12 and 2012-13 can be made after expiry of the respective years. But provisional assessment has to be made during the respective three years. The impugned provisions do not take away or affect any vested right as only the

> procedure/method of computing the property taxes has undergone a change. By virtue of the impugned amendments, a property in respect of which taxes were not payable earlier does not become subject to taxes. It cannot be said that by the impugned amendment, from an earlier date, any new obligation or disability has been attached in respect of any earlier transactions. The impugned amendments will affect the properties which even under the unamended Act, were subject to payment of property tax. The impugned provisions do not bring about any unreasonable or arbitrary consequences. Thus, there is no merit in the contention based on retrospective operation."

Thus, the majority of submissions advanced on behalf of the writ petitioners were rejected by the High Court.

15. The High Court however accepted the challenge on three grounds, namely: -

(i) Challenge to the Capital Value Rules of 2010 on retrospective operation,

(ii) Challenge to the Capital Value Rules of 2010 and 2015, on the ground that the rule making power did not permit the Commissioner to determine capital value.

(iii) Rule 20 of the Capital Value Rules of 2010 was held to be *ultra vires* the provisions of sub-Section (1A) and (1B) of Section 154 of the MMC Act.

16. On the first issue, the High Court observed that neither clause (e) of sub-Section (1A) nor sub-Section (1B) of Section 154 of the MMC Act conferred powers to frame rules with retrospective effect. The Capital Value Rules of 2010, which came into effect from 20.3.2012, were, therefore, held to be applicable prospectively and that said Rules could not be applied from 1st April, 2010.

17. With regard to the second issue, it was observed that there was no provision in the MMC Act regarding consideration of development potential of vacant land for determining its capital value. The conclusion arrived at by the High Court in that behalf was as under: -

> "211. Now we turn to the Capital Value Rules of 2010. As stated earlier, there is no provision which enables the Commissioner to frame rules for laying down guidelines for determining capital value. Rule 2 contains definition. Rule 3 provides that where within the precincts of the building there is a vacant land other than the land appurtenant to the building, such land shall be treated as open land and capital value thereof shall be fixed as provided in Rule 21. As observed earlier, the rule making power is confined to the three aspects mentioned above. As Rule 3 refers to Rule 21, we will have to consider the provision of Rule 21. Perusal of Rule 21 and, particularly clause (1) thereof shows that it lays down how the capital value of the open land is to be determined. It provides for a formula. It provides that the capital value of open land will be equal to rate of base value of open land according to SDRR multiplied by weightage by multiplication as per user category. The said weightage is provided in Part-I under heading "Open Land"

multiplied by permissible or approved FSI multiplied by area of the land. Once the base value is determined as per SDRR, it is obvious that the said value is fixed taking into consideration potential of the land. The rates in SDRR are fixed after taking into consideration all the aspects of market value. The capital value has to be decided in accordance with the base value which has to be taken as per SDRR. Clause (1) of Rule 21 provides for weightage by multiplication as per user category. It also provides that the rate of base value shall be multiplied by permissible FSI for determining the capital value of the land. There is no provision under the BMC Act to take into consideration development potential of vacant land for determining its capital value. When the substantive provision i.e sub-section (1A) of Section 154 lays down that the base value has to be in terms of SDRR rates, the subordinate legislation cannot provide for adding additional value to SDRR rates on account of availability of FSI. Thus, the provision of multiplying base value with permissible or approved FSI is *ultra vires* the provisions of the BMC Act. Moreover, the rule making power does not permit the Commissioner to frame the rules for determining what is the capital value. The rule making power is confined to three aspects which are pointed out earlier. Clause (1) of Rule 21 which provides for taking into consideration the potential FSI is not covered by any of the three categories. Under sub-section (1B) of section 154 of the BMC Act, the rules can be framed providing for details of categories of buildings or land and the weightage by multiplication to be assigned to various such categories. Under clause (e) of sub-section (1A) of section 154, factors which are to be taken into consideration for determining base value can be subject matter of rules. The factors referred in clause (e) will have to be considered *ejusdem generis*. The other factors provided are nature of the land, type of land and structure, areas of land or building, user category such as residential or commercial and the age of the building. Under clause (e) of sub-section (1A) of section 154, rules cannot be framed to decide how the capital value should be determined. In fact, framing rules for laying down the method of calculating the capital value is itself *ultra vires* the statutory rule making power."

18. Rule 20 of the Capital Value Rules of 2010 was struck down by the High Court on the reasoning that the effect of said rule would be that the value higher than what was provided for in Stamp Duty Ready Reckoner would be taken into consideration while computing the property tax. The High Court observed as under: -

> "216. Rule 20 of Capital Value Rules, 2010 deals with valuation of open land capable of utilizing more than 1.0 FSI or transfer of development right (TDR). It provides that as the Ready Reckoner provides for the rate of base value of open land with 1.0 FSI, open land which is capable of utilizing more than 1.0 FSI or any TDR shall be valued at an increased rate in proportion to the higher FSI or TDR proposed to be utilized and approved under the building plan submitted to the Corporation for approval. Thus, the effect of rule 20 is that while fixing capital value of open land, its potential for development by using additional FSI or TDR has to be considered. Thus, a value higher than what is provided in SDRR should be taken into consideration."

It was further observed thus: -

> "218. Rule 20 provides for taking into consideration potential of construction on the vacant land for making valuation. For the purpose of property taxes, not only a vacant land but even a land under construction will have to be treated as a vacant land. Wherever SDRR is applicable, in view of sub-section (1A) of section 154, the base value has to be as per SDRR rate for vacant land. Rule 20 provides for taking into consideration potential for development. It is completely contrary to the provisions of the BMC Act as interpreted in the case of *Polychem Limited* (supra) which requires even the land under construction to be treated as a vacant land. Moreover, rule 20 purports to lay down how valuation of the land has to be made. The rule making power under sub-section (1B) or clause (e) of sub-section (1A) of

section 154 does not confer any such power. Moreover, if rule 20 is implemented, capital value which is higher than SDRR rate will have to be fixed which will be in violation of sub-section (1A) of section 154 which mandates that the Commissioner will take into consideration SDRR rate while finalizing capital value. Thus, rule 20 is *ultra vires* the provisions of sub-sections (1A) and (1B) of section 154 of the BMC Act. There is no difference in Rule 20 of the Capital Value Rules of 2010 and 2015."

19. In the end, the conclusions arrived at and the directions issued by the High Court were as under: -

"229. Our conclusions can be summarized as under:

(i) We uphold the constitutional validity of the sprovision of the BMC Act which are under challenge;

(ii) The Capital Value Rules of 2010 shall apply prospectively from the date on which the same were made;

(iii) We strike down rules 20, 21 and 22 of Capital Value Rules of 2010 and 2015. As far as rules 3 and 17 are concerned, we hold that as rule 21 has been struck down, the capital value of properties covered by the said rules shall not be fixed in accordance with rule 21. As a result of striking down of rules 20, 21 and 22, in those cases where the capital value has been finally fixed either by issuing notice under section 162 of the BMC Act or by issuing final bills, the Commissioner or the officer empowered to exercise delegated powers will have to re-determine the capital value in accordance with sub-section (1A) of section 154 and serve a fresh special assessment notice. We hold that if a complaint is filed after service of special assessment notice, the same shall be disposed of only after giving an opportunity of being heard to the assessee filing such complaint. Only after

the complaint is disposed of in such a fashion, a final bill can be served.

(iv) As the Municipal Commissioner will require a reasonable time to do the tasks as aforesaid, the interim orders which are operating in these petitions will have to be continued till the service of final bills. We also make it clear that though we are setting aside the final bills issued, no party will be entitled to claim refund of the amounts paid under the interim orders and till the final bills are served, the petitioners will have to pay the amounts as per the interim orders.

(v) This judgment will apply only to the properties subject matter of the petitions in this group except Writ Petition No. 2592 of 2013 and PIL 46 OF 2014. We make it clear that only those special assessment notices and final bills which are specifically challenged will stand set aside. In Writ Petition No. 2592 of 2013, the fresh exercise will have to be undertaken only in relation to the properties in respect of which there is a specific prayer for quashing the notices and bills based on final assessment. The details of properties held by 610 members in the lead petition are not set out. Hence, no relief can be extended to the properties of the said members save and except the properties subject matter of bills and notices which are expressly challenged.

(vi) This judgment will not affect the final bills which are accepted by the concerned owners.

230. We record our appreciation for the valuable assistance rendered by the learned counsel appearing for various parties. We dispose of the petitions by passing the following order:

ORDER

(i) We reject the prayers made for challenging the constitutional validity of various provisions of the Mumbai Municipal Corporation Act, 1888 as

prayed in the writ petition/PIL. We hold that Rules 20, 21 and 22 of the Capital Value Rules of the years 2010 and 2015 are *ultra vires* the provisions of the Mumbai Municipal Corporation Act, 1888 and, therefore, the same are struck down;

(ii) We quash and set aside the special assessment notices and final bills based on final capital value fixed which are specifically the subject matter of challenge in this group of petitions. The demand of provisional taxes is not disturbed. The orders specifically impugned which are passed on the complaints do not survive. We direct the Mumbai Municipal Corporation to re-fix the capital value in respect of the properties subject matter of the notices/final bills which are set aside in the light of the findings recorded earlier. After re-determination of capital value, special assessment notices be issued to the persons primarily liable to pay property taxes in respect of subject properties. Thereafter, further steps shall be taken by the Municipal Corporation in accordance with law;

(iii) We hold that the complaints filed objecting to the special assessment notices issued under sub-section (2) of section 162 shall be disposed of only after giving an opportunity of being heard to the complainants.

(iv) Till the expiry of a period of 21 days from the date on which fresh special assessment notices are served in accordance with clause (ii) above, the ad-interim/interim orders which are operating in these petitions till today shall continue to operate subject to compliance of requirement of deposit of amounts by the petitioners as set out in those orders. In those cases where the complaints are lawfully filed within stipulated time pursuant to the special assessment notices, the ad-interim/interim reliefs will continue to operate on the same conditions till the date of service of fresh final bills;

(v) Rule is made partly absolute on the above terms;

(vi) All pending chamber summonses and notices of motion stand disposed of."

20. The Corporation being aggrieved by the decision of the High Court on three issues as stated above, approached this Court by filing Special Leave Petition (Civil) No. 17009 of 2019. While issuing notice in the matter on 29.7.2019, by way of interim relief, it was directed:

> "Pending further consideration, the relationship between the parties shall be governed by interim order dated 24.2.2014 passed by the High Court and more particularly by para 5 as quoted above.
>
> We are conscious of the fact that there were more than 150 petitions before the High Court but special leave petition has been filed only in one matter. However, since the issues in question are common to all the matters and go to the root of the controversy, we direct that this interim order shall apply in every single petition which was considered by the High Court."

Various interim applications have since then been preferred by certain parties seeking impleadment and projecting their view points. At the same time, some of the parties who were aggrieved by the rejection of their submissions challenging the validity of the various provisions of MMC Act and other issues which were answered against them also preferred Special Leave Petitions.

21. Mr. K.K. Venugopal, learned Attorney General for India and Mr. V. Sreedharan, learned Senior Advocate appearing on behalf of the Corporation initially advanced submissions on the issues which were answered against the Corporation. However, after

the submissions were advanced on behalf of various impleading applicants and other parties including substantive petitions challenging the correctness of the decision of the High Court, submissions were also advanced in response.

22. The factual aspects regarding framing of the Capital Value Rules of 2010 and 2015, as well as the background for some of the amendments effected to the MMC Act, have been dealt with in the written submissions of the Corporation, as under:

> "2. The amendment to the MMC Act introducing the capital value system was brought about inf 2009 (Act No. XI of 2009 on Pg 24-39 in Compilation of Corporation – Vol 4). Pursuant to the same, the Corporation passed resolution dated 27.01.2010 for adoption of capital value with effect from 01.04.2010 (Pg 6 of consolidated counter affidavit on behalf of Respondents 2 to 4). Accordingly, the section was already enacted by State Legislature providing for levy of tax on capital value basis from 01.04.2010.
>
> 3. In January 2010, the Corporation appointed an expert committee composing of Appointment of expert committee comprising of Shri D.M. Sukthankar, Ex Chief Secretary of the State of Maharashtra, Shri D.N. Chaudhri, Ex Chairman of Maharashtra Law Commission and Dr. Roshan Namavati, expert on valuation to make recommendation on the introduction and smooth implementation of capital value system. (Para 13, Pg 9 of consolidated counter affidavit on behalf of Respondents 2 to 4)
>
> 4. On 08.10.2010, the expert committee published draft rules in various newspapers for comments of public at large (Pg 79 to 94 in Compilation of Corporation – Vol 4). The committee received 254 objections and suggestions all of which were considered and scrutinized by the committee. Thereafter, certain benevolent changes were made by the committee and draft rules were

recommended to the Corporation on 29.12.2010. (Para 14, Pg 10 of consolidated counter affidavit)

5. After the rules were published, the Corporation appointed a chartered accountant firm to suggest a revenue neutral rate. Revenue neutral rate means such rate as would yield the same amount of property tax as being levied by the Corporation before introduction of capital value system. (Para 39, Pg 22 of consolidated counter affidavit)

6. Evidently, the rates can be determined only after capital value of all properties are calculated on memorandum basis. The work of fixing the capital value of land and buildings across Greater Mumbai took time. The scale of the work involved was very large and extremely time consuming. The data of the old rateable value system which was in physical form had to be digitized for the purposes of the new capital value system. This voluminous data covered approximately 2.75 lakh properties (or 27.5 lakh individual units). In some cases however, the data was not complete and the carpet area was not available. In these cases the property owners were given notices under Section 155 of the MMC Act to furnish the details in the prescribed format. The response was however very limited and the officers of the MCGM had to physically ascertain the required information. (Para 31, Pg 19 of consolidated counter affidavit on behalf of Respondents 2 to 4)

7. In light of the same, the State Legislature stepped in and introduced L.A. Bill No. LXXIV of 2010 whereby inserting sub-section (2) in Section 140A to enable the Corporation to issue provisional bills for the year 2010-11 and treat the rateable value of the building or land as provisional capital value. (Statement of object and reasons on Pg 48 and 49 in Compilation of Corporation – Vol 4). The said bill culminated into Act No. XXVII of 2010 (Pg 51 to 58 in Compilation of Corporation – Vol 4).

8. The amendments to the MMC Act provided that once the capital value was fixed, final bills would be issued. If the final bill was lower than the provisional bill, the MCGM would refund the excess payment made with interest at the rate of 6.25% p.a., or with the consent of the tax payer, adjust the excess amount against future bills (Section 140A(2). (Para 32, Pg 19 of consolidated counter affidavit on behalf of Respondents 2 to 4)

9. Pursuant to the same, the Corporation started implementation of the capital value system by issuing provisional property tax bills.

10. In March 2011, the State Legislature observed that the process of fixing the capital value which had started in August, 2010 is bound to stretch beyond 31st March 2011. This is so because there are more than 3 lakh properties of which capital value has to be fixed for the purposes of such levy of property tax thereon, but the volume of work of fixing the capital value of all these properties being so large that it may not be possible for the Corporation to complete the fixation of capital value of all these properties before 31st March 2011. As a result of this, the work of fixing capital value would continue during the year 2011-2012 also. Unless the capital value of all the properties is fixed and the total extent thereof is ascertained, it may not also be feasible.

11. Accordingly, by Maharashtra Ordinance No. X of 2011, the State Legislature expanded the scope of certain transitory provisions as contained in sections 128, 140A, 154A and 219A of the Mumbai Municipal Corporation Act, so as to enable the Corporation to separately issue the provisional bills on the basis of rateable value treating it as provisional capital value for the years 2010-11 and 2011-12. Further, with a view to prevent loss of revenue in respect of tax on properties which have escaped from assessment, a new section 216B has also been inserted in the Act to enable the Corporation to assess such properties at any time within six years from the date on which such properties should have been assessed. (Statement of object and reasons on Pg 141 and 142 in Compilation of Corporation – Vol 4). The said ordinance culminated into Act No. XI of 2011 (Pg 143 to 148 in Compilation of Corporation – Vol 4).

12. In March 2012, the State Legislature observed that the process of fixing the capital value which had started in August, 2010 is bound to stretch beyond 31st March 2012. This is to because the proposal submitted to the Standing Committee of the Corporation for rules and rates have not yet received the approval. The general election of the Corporation is due in February, 2012 and new Standing Committee will be operative only from the end of March, 2012.

13. Accordingly, the bill proposed to expand the scope of transitory provisions so as to enable the Corporation to separately issue the provisional bills on the basis of rateable value treating it as provisional capital value for

the years 2012-13, as was done for the period 2010-11 and 2011-12. (Statement of object and reasons on Pg 155 and 156 in Compilation of Corporation – Vol 4). The said ordinance culminated into Act No. VI of 2012 (Pg 157 to 162 in Compilation of Corporation – Vol 4).

14. It is submitted that, in present case there is no retrospective levy of tax. The section for imposition of tax on capital value was already in force from 01.04.2010. Draft rules were already published in October, 2010. The levy is broadly speaking on assesses who were paying tax under earlier regime also.

15. The statute provided for transitionary arrangement pursuant to which provisional bills were issued as per Section 140A(2) read with Section 154A of the MMC Act from official year 2010-2011 (under the capital value system), 2011-2012 and till 2012-2013. Refunds are granted, or shortfall recovered after the capital values are fixed.

16. It is submitted that, time taken in assessment can never make the levy retrospective when the section imposing a tax is already in force. In case contention raised by assesses is accepted, it would amount to imposition of tax on rateable value even when the statute provides for imposition of tax on capital value w.e.f. 01.04.2010.

Law laid down in Chhotabhai Jethabhai Patel and Co. v. Union of India AIR 1962 SC 1006. The same notes and proves the practice in USA of levying taxes from the beginning of year even when the law is made during the year."

23. In response, the submissions advanced by various learned counsel, in the order that they appeared, were as under:

(A) Mr. Neeraj Kishan Kaul, learned Senior Advocate appearing for Indian Hotels Company Limited which has intervened in the proceedings as well as filed substantial challenge in the form of Special leave Petition (Civil) No.2568 of 2019 submitted that the property tax as a

percentage of value was confiscatory and exorbitant. On facts it was stated that initially for a property situated in the city a property tax was to the tune of Rs.6.29 crores per annum which had now risen to Rs.17.78 crores showing an increase of 275 %. Reliance was placed on paragraph 34 of the decision of this Court in ***Patel Gordhandas Hargovindas & Ors. vs. Municipal Commissioner, Ahmedabad & Anr.***[4]. It was further submitted that the impugned provisions suffered from excessive delegation which was without any guidelines and in any case could not be retrospective in operation. In support of the submission, reliance was placed on the decisions of this Court in ***Marathwada University vs. Seshrao Balwant Rao Chavan***[5], ***Delhi Race Club Limited v. Union of India & Ors.***[6], ***Devi Das Gopal Krishnan etc. vs. State of Punjab & Ors.***[7] and ***Avinder Singh & Ors. vs. State of Punjab & Ors.***[8].

4 AIR 1963 SC 1742.
5 (1989) 3 SCC 132.
6 (2012) 8 SCC 680.
7 AIR 1967 SC 1895.
8 (1979) 1 SCC 137.

Learned Senior counsel then submitted that the tax could be levied by the body constituted of elected representatives and not by the Standing Committee and that the power to tax could not be delegated. It was further submitted that since a new method of levying and computing property tax was revised, it was rightly denied retrospective application.

On facts, it was also submitted that certain areas of the properties of the entity which housed pump rooms and other facilities ought to be excluded while arriving at the determination.

(B) Dr. Milind Sathe, learned Senior Advocate appeared for certain entities in IA Nos.110990 of 2019, 163118 of 2019 and 160953 of 2019 and submitted that Rules 20, 21 and 22 of the Capital Value Rules, 2010 and 2015 were rightly struck down by the High Court. Relying on the decision of this Court in ***The Municipal Corporation of Greater Bombay v. Polychem Ltd***.[9], it was submitted that till the potential of the property was translated into a habitable building, the land must be

9 (1974) 2 SCC 198

treated and taxed only as land and not going by its buildable potential. It was further submitted that the process of fixing and/or changing the value, must be done in the same financial year.

(C) Mr. Shekhar Naphade, learned Senior Advocate appearing for intervenors in IA Nos.110998 and 158888 of 2019 submitted that the existing buildings having been demolished, the property could be taxed only as land and not going by the projected or contemplated developments as a shopping centre or a mall.

(D) Mr. H. Devarajan, learned Advocate who appeared for the Property Owners Association submitted that in terms of Article 243Y(1)(b) of the Constitution the matter ought to have come through the suggestions of the Finance Commission. But the entire process was initiated as a result of the suggestions made by the TISS.

It was also submitted that the exercise adopted in the instant case was in violation of Article 243-X of the Constitution. Reliance was placed on the decision of this Court in ***State of Uttar Pradesh & Ors. v. Systematic Conscom Ltd.***[10] to submit that the four components of incidence of tax as explained in Paragraphs 17 and 18 of

10 (2014) 13 SCC 627.

said decision were not satisfied. The learned counsel further submitted that Sections 125 to 128 of the MMC Act deal with budget, but by virtue of amendments to the MMC Act, the rates were now being fixed without a budget. According to the learned counsel, the element of property tax under the new regime would be almost twenty times the rent and thus would be confiscatory.

It was submitted that tax on lands and buildings must be directly on the land as a unit and must have a definite relationship with the land. The learned counsel further submitted that the unit for calculation according to SDRR and the Capital Value Rules, was not the same. In one case, the reckonable unit was the built-up area while under the second, the reckonable unit was the carpet area.

(E) Mr. Darius Khambata, learned Senior Advocate who appeared in I.A. No.157014 of 2014 submitted that Rules 20, 21, 22 of the Capital Value Rules of 2010 and 2015 were rightly held to be ultra vires. It was further submitted that the factors delineated in sub-clause (a) to (d) of Section 154 (A) of the MMC Act would be matters

"*in presenti*" and not with regard to future prospects and that no reliance could be placed on sub-clause (e) to introduce the concept of something "*in futuro*" *i.e.,* the potential in the market or capital value. It was further submitted that there could be no retrospectivity to any delegated legislation when the parent Act did not give any indication in that behalf and that the final assessment could have altered the basis in the same financial year and not otherwise.

(F) Mr. Abhishek Bharti, learned counsel relied upon the decision of this Court in ***State of Himachal Pradesh & Ors. vs. Nurpur Private Bus Operators' Union & Ors.***[11]**,** Mr. Shikhil Suri, learned counsel who appeared for National Centre for Performing Arts and Tata Power Company Limited adopted the submissions of Dr. Milind Sathe and Mr. Darius Khambata, learned senior counsel. Mr. Bhushan Deshmukh who appeared for the petitioner in SLP(C) No. 25689/2019, also adopted the submissions of Dr. Sathe and Mr. Khambata, learned senior counsel. Mr. Satish Muley, learned counsel appearing for a

11 (1999) 9 SCC 559.

subsequent purchaser, also adopted the submissions of Dr. Sathe and Mr. Khambata, learned senior counsel.

24. Mr. V. Sreedharan, learned senior counsel for the Corporation made submissions in rejoinder. He also submitted that the overall tax demand of the Corporation under the capital value assessment actually decreased by 12% to Rs.2908 crores as compared to Rs.3308 crores under the Relatable Value System. The tax demand for residential units got reduced from Rs.1030 crores to Rs.949 crores while that for the Offices and Banks was reduced from Rs.979 crores to Rs.65 crores and from Rs.342 crores to Rs.222 crores respectively. Thus, according to the Corporation, under the new system only 32.20% units suffered an increase while 21.95 % of the units actually got benefitted as a result of reduction in the property taxes.

25. We will first deal with the submission that any proposal for change or modification in the methodology adopted for levy of property tax ought to have been initiated through the Finance Commission alone. Article 243Y of the Constitution deals with constitution of Finance Commission whose principal duty is to review the financial position of the municipalities and to make

recommendations to the Governor as to the relevant principles which should govern distribution of the net proceeds of the taxes and the measures needed to improve the financial position of the municipalities. In ***Campaign for People Participation in Development Planning vs. Lieutenant Governor of NCT of Delhi & Ors.***[12], a Division Bench of the High Court of Delhi had the occasion to consider the scope of Article 243Y of the Constitution. It was observed: -

> "14. Article 243I of the Constitution of India mandates constitution of a Finance Commission by the Governors of the States at the expiration of every 5th year. Article 243Y further mandates that the Finance Commission constituted under Article 243I shall also review the financial position of the municipalities and make recommendations to the Governors as to the various aspects specified therein. As per Clause (2) of Article 243Y, the Governor shall cause every recommendation made by the Finance Commission under the said Article together with an explanatory memorandum as to the action taken thereon to be laid before the legislature of the State."

26. It is true that certain functions are entrusted to the Finance Commission and the recommendations made by the Finance Commission must carry great weightage. However, the matter has to be seen from the perspective: whether any "measures needed to improve the financial position of the municipalities" must necessarily emanate from the

12 (2016) SCC Online Del 80

recommendations of the Finance Commission. Sub-Article (2) contemplates that the recommendations made by the Finance Commission along with the explanatory memorandum as to the action taken thereon must be laid before the Legislature of the State. Thus, it is the Legislature of the State which will ultimately take an appropriate action with respect to the recommendations made by the Finance Commission and the papers placed before it. If the Legislature itself has taken into account certain prevailing situation, which according to the Legislature is causing some prejudice to the financial health and condition of the municipalities and, therefore, the method of imposition of property tax ought to be changed, it cannot then be said that the matter must necessarily and ought to have emanated from the Finance Commission or that in the absence of such recommendations by the Finance Commission, no steps could have been taken by the Legislature.

27. Article 243X of the Constitution states that the Legislature of a State may by law authorize a municipality to levy, collect and appropriate such taxes etc. in accordance with such procedure and subject to such limits as may be specified in law. The exercise undertaken by the Legislature in the instant case is

completely consistent with the empowerment relatable to Article 243X of the Constitution and does not in any way go counter to said empowerment.

28. Coming to the effect and scope of the statutory provisions, it must be stated that Sections 123 to 128 of the MMC Act deal with accounts and annual budget estimates. With the fixed parameters and scope of taxation, as well as, the elements that can be covered by levy of such taxes, depending upon the annual budget estimates, the rates of municipal taxes, fares and charges can certainly be fixed in terms of Section 128 of the MMC Act. In such cases, the width of the tax regime is already decided and the rates of taxes would be dependent upon the annual estimates. What the present amendments seek to achieve is to change the methodology on the basis of which property tax can be levied. Instead of rateable value, the property tax can now be levied going by the capital value. Such exercise could not have been undertaken through the process of annual estimates and in terms of Sections 120, 123, 125 and 128 of the MMC Act. All that could be done under these provisions would be to vary or change the rates and not the very

basis of taxation. The submission in that behalf, therefore, does not merit acceptance.

29. We now turn to the scheme relating to property tax as is discernable from the provisions of the MMC Act. Section 139 deals with taxes including property taxes that can be imposed. Section 139A deals with the kinds of property taxes while Section 140 deals with the per centum of their rateable value or the capital value as the case may be. Section 140A enables the Corporation to adopt levy of property tax on the basis of Capital Value of buildings and lands and puts a cap in the proviso to sub-section (1). Section 154 then deals with how rateable value and capital value are to be determined. Sub-section (1) deals with rateable value while sub-section (1A), (1B) and (1C) deal with capital value. The first part of Section 154(IA) contemplates that the value indicated in the Stamp Duty Ready Reckoner for the time being in force, would be the "base value." According to the second part, if such ready reckoner value is not available, the market value can be taken into account while arriving at a base value. According to the provision, while fixing the capital value, the Commissioner "shall have regard" to the factors enumerated in sub-clauses (a) to (e). Thus, the factors on the

basis of which capital value can be arrived at are delineated in sub-clauses (a) to (e) of sub-section (1A) of Section 154. While sub-clause (a) to (d) are clear and well defined, sub-clause (e) refers to the factors as may be specified by rules under sub-section (1B). Said sub-section (1B) in turn authorizes the Commissioner, to frame such rules, with the approval of the Standing Committee as respects details of categories of building or land and the weightage by multiplication to be assigned to various such factors and categories for the purpose of fixing the capital value.

30. Section 154(1A) of the MMC Act is the crucial provision for the present discussion. The opening part of sub-Section (1A) states that in order to fix the capital value of any building or land assessable to property tax, regard shall be had to the value of any building or land as indicated in the SDRR for the time being in force. The value so indicated in SDRR is to be the base value to which certain factors delineated in clauses (a) to (e) of sub-Section (1A) are to be applied while fixing the capital value. Clauses (a) to (d) are physical features or attributes of the land or building which are in existence when the value is to be reckoned. In essence, as submitted by Mr. Khambata, learned

senior counsel, these attributes are situations "*in praesenti*". The buildable potential of the land in future is not an attribute "*in praesenti*" but is in the nature of likelihood of user or exploitation of the asset "*in futuro*".

31. The crucial question is: whether such potential of the land or the likelihood of exploitation in future can also be taken into consideration while fixing the capital value in terms of sub-Section (1A), especially when none of the factors delineated in clauses (a), (b), (c) and (d) speaks of future prospects or such likelihood?

32. At this stage, we may deal with two decisions of this Court having bearing on the controversy before us.

(A) It was observed in ***Patel Gordhandas***[4] that the statutory provision did not contemplate levying of the rates as a percentage of capital value. The relevant portion of Paragraph 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 R. 350-A read with R. 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)

(B) In ***Polychem Ltd.***[9], 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:

> "**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.

xxx xxx xxx

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 atleast 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)

33. Both the decisions were rendered in the regime when the property tax could be levied on rateable value. In the first decision, 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 this Court. In the second decision, 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". In the second decision, the construction was actually going on but the building was not ready. The conclusion from the second decision is quite clear that unless and until the building was ready to be occupied, the land must be treated as vacant land. Notably, the second decision was premised on the methodology where the rateable value was the determining criteria. Therefore, so long as the building could not be let out in open market, the land would continue to be treated as "vacant land".

34. However, after the amendments, the emphasis has now changed and the basis for taxation is now to be capital value of land and building. Capital value again can have two dimensions. First, the value of land or building as it stands today or secondly, the value as may be in future as per anticipated development. However, the legislative intent, as is clear from clauses (a) to (d), is about actual status and user as on the date the capital value is to be reckoned or considered. These clauses clearly show that the features contemplated therein must be in existence as on such date and not what would be the projection in future.

35. There are two ways in which sub-clause (e) of sub-Section (1A) of Section 154 can be construed. In the first case, said clause can be read e*jusdem generis* along with sub-clauses (a) to (d), in which event the scope of any rules to be made in terms of power granted by sub-clause (e) read with sub-Section (1B), would be relatable to the factors actually in existence and not as something contemplated in future. On the other hand, if the clause is read independently, there is nothing in clause (e) or in the language of sub-Section (1B) that the future prospects of the land in question could be reckoned or noted for arriving at the

capital value. The conclusion is thus quite clear that the width of clauses (a) to (e) read with sub-Section (1B) do not by any stretch of imagination contemplate taking into account the future prospects of the land in question.

36. Viewed thus, the conclusion arrived at by the High Court on the second and third grounds, as stated in paragraph 15 (supra) are quite correct. We, therefore, hold that the empowerment in terms of clauses (a) to (e) read with sub-Section (1B) or the conferral of rule-making power would not permit the Corporation to determine the capital value beyond the scope of said clauses (a) to (e). Thus, for the purpose of determining capital value, only the present physical attributes and status of the land and building can be considered and not the future prospects of the land.

37. At this stage, we may consider the scope of Rule 20 of the Capital Value Rules of 2010 and the Capital Value Rules of 2015. The said Rule refers to the Ready Reckoner which provides for the rate of base value of open land with 1 (one) floor space index. However, the open land in question may be capable of utilizing more than 1 (one) floor space index, for

instance in certain areas the floor space index may be 1.5 or 2. Such component i.e. the capability of the land in question in utilizing more then 1 (one) floor space index is a postulate which is sought to be reckoned by Rule 20. The second component to be added in terms of Rule 20 is the intended or proposed utilization of Transfer of Development right which has been approved under the building plan submitted for approval. Nonetheless, this component is the intended use or exploitation in future and not something which is available *in presenti*.

38. To the extent Rule 20 of the Capital Value Rules of 2010 and the Capital Value Rules of 2015 empower the Commissioner to consider the capability of the open land of utilizing more than 1 floor space index (FSI) or any transfer of development right (TDR), would go well beyond the permissible scope delineated by the provisions of Section 154 of the MMC Act. The High Court, in our view, was, therefore, right in concluding that Rule 20 of the Capital Value Rules of 2010 and the Capital Value Rules of 2015 would be *ultra vires* the provisions of sub-Sections (1A) and (1B) of Section 154 of the MMC Act.

39. We now turn to the issue regarding retrospectivity of the Capital Value Rules of 2010. The factual narration relied upon by the learned counsel for the Corporation does show that the preparatory steps were being undertaken since 2010 with the appointment of an expert committee and publication of draft rules. It appears that the Corporation had to collect voluminous data. But in order to enable the Corporation to compute or levy property tax based on capital value, the concerned rules had to be in force. There being no empowerment to compute and/or levy property tax with retrospective effect by the statute itself, the rule making power, in any view of the matter, could not have created a liability pertaining to the period well before the Rules came into effect. The first ground as set out in paragraph 15 (supra) was, therefore, rightly answered by the High Court against the Corporation. Logically, the Rules having come into force on 20.3.2012, the levy and computation of property tax on capital value would be available and possible on and with effect from 20.3.2012 and not with any retrospective operation.

40. The question then arises as to what would be the scope and extent of the present property tax regime. It is quite clear that with the amendment to Section 154 and other provisions,

the property tax can be levied on the basis of capital value of the land or building. To that extent, there would be departure from the regime which was in existence when ***Patel Gordhandas***[4] and ***Polychem Ltd.***[9] were decided by this Court. Now, the statute certainly empowers and contemplates imposition of property tax on the capital value. However, the capital value must be one which answers the postulates in sub-clauses (a) to (e) of sub-Section (1A) read with sub-Section (1B) of Section 154. At the cost of repetition, we may say that since the statutory provisions do not contemplate any likelihood of exploitation of capacity in future, the capital value of the land and building must be based on situation "*in presenti*". It must be clarified here that in projects which are in progress, the value addition to the property would be ongoing feature. However, considering clauses (a) to (d), it would mean that the governing principle must be the actual use and not the intended use in future.

41. In the circumstances, the challenge raised by the Corporation must fail and we dismiss the appeal preferred by the Corporation.

42. We now turn to the challenges raised by the original writ petitioners. Those challenges on various grounds as detailed hereinabove including the grounds of legislative competence; validity of certain provisions and basis of alleged violation of Article 14 of the Constitution, were considered by the High Court in *extenso*. We do not find any reason or room to take a different view. We, therefore, affirm the view and dismiss the challenge. Consequently, the appeals preferred by the original writ petitioners are dismissed.

43. These appeals are disposed of in aforesaid terms without any order as to costs.

.....CJI.
[Uday Umesh Lalit]

.....J.
[Ajay Rastogi]

New Delhi;
November 07, 2022.