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(Supreme Court and Bombay High Court)

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ACQUISITION PROCEEDINGS

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ENHANCED COMPENSATION

Enhanced compensation on the basis of market value of land- entitled -allowed- evidence- required to be considered- contention of acquiring body that compensation cannot be enhanced in absence of new evidence, such claim cannot be considered- Acquiring body- after remand, not filed any documentary or oral evidence - Appeal allowed. [*Bhujanga S/o Sarangdhar Sarkate; Uttam S/o Sarangdhar Sarkate vs. State of Maharashtra; Special Land Acquisition Officer; V I D C Minor Irrigation Project 2023(1)MLPJ1*]

ENHANCEMENT OF COMPENSATION

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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. [*Municipal Corporation of Greater Mumbai & Ors vs. Property Owners Association & Ors 2023(1)MLPJ43*]

QUASHING OF ORDER

Order- Divisional Joint Registrar Cooperative Societies - quashed and set aside- nomination duly acknowledged by society - society shall admit nominee as a provisional Member after death of a Member till legal heir or heirs or a person who is entitled to flat and shares in accordance with succession law or under will or testamentary document are admitted as Member in place of such deceased Member- petitioner -nominee -society is empowered to transfer share, right, title and interest of the deceased member in the society - provisional member of society - Petition allowed. [*Karan Vishnu Khandelwal vs. Honourable Chairman / Secretary Vaikunth (Andheri) Cooperative Housing Society Ltd; Rajendra M Khandelwal; Deputy Registrar, Cooperative Societies 2023(1)MLPJ25*]

STALE AND TIME-BARRED CLAIMS

In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court - Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2). [*Delhi Development Authority vs. Asha Jain & Ors 2023(1)MLPJ5*]

SUIT FOR RECOVERY OF DAMAGES

Suit for recovery of damages/ compensation with respect to 14.40 cents - Trial Court decreed the suit and directed the defendant - Bank to pay to the plaintiff a sum of Rs.58,10,000/- with future interest @ 12% pa from the date of suit till realization - High Court has allowed the said appeal preferred by respondent no.1 herein - Bank and has quashed and set aside the judgment and decree passed by the learned Trial Court - Held, Rule 8 of the 2002 Rules cast a duty on the authorized officer to take all precautions before putting the secured asset to sell - As per sub-rule 5 of Rule 8 before effecting sale of the immovable property (secured assets) the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor and fix the reserve price of the property and may sell the whole or any part of such immovable secured asset - Therefore, when the reserve price was fixed the same was for 54 cents - Therefore, it can be presumed that the Bank was aware that the actual area of the secured asset is less than 54 cents - As per Section 54 of the Transfer of Property Act the seller was bound to disclose any buyer any material defect in the property of which the buyer is not aware and which the buyer could not ordinarily discover - Under the circumstances also the submission on

behalf of the Bank that the property was put to auction on "as is where is" and "as is what is" condition, thereafter the plaintiff shall not be entitled to compensation of the less area cannot be accepted - Impugned judgment is quashed and set aside - Appeal is allowed. [*Leelamma Mathew vs. Indian Overseas Bank & Ors 2023(1)MLPJ35*]

WRIT PETITION

Writ petition- Were the petitioners deprived of their property in accordance with law- negative- reservation in terms of section 127- planning authority is not entitled to again reserve the same land in the revised development plan- reservation shall lapse- Lapsing of reservations- by reason having no steps as aforesaid are commenced for its acquisition - Petition allowed. [*Padama W/o Shivchandra Mundada; Subodh S/o Shivchandra Mundada; Girish S/o Shivchandra Mundada vs. State of Maharashtra; Director of Town Planning; Deputy Director of Town Planning, Nashik Division; Chief Ofcer, Municipal Council, Chalisgaon 2023(1)MLPJ95*]

LAND AND PROPERTY JUDGEMENTS

2023(1)MLPJ1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before M S Jawalkar]

First Appeal No 252 of 2020 **dated 22/11/2022**

Bhujanga S/o Sarangdhar Sarkate; Uttam S/o Sarangdhar Sarkate

Versus

State of Maharashtra; Special Land Acquisition Officer; V I D C Minor Irrigation Project

ENHANCED COMPENSATION

Land Acquisition Act, 1894 Sec. 6, Sec. 4-Enhanced compensation on the basis of market value of land- entitled -allowed-evidence- required to be considered-contention of acquiring body that compensation cannot be enhanced in absence of new evidence, such claim cannot be considered- Acquiring body- after remand, not filed any documentary or oral evidence - Appeal allowed

[Para 10,11,13]

Acts Referred:

Land Acquisition Act, 1894 Sec. 6, Sec. 4

Counsel:

Sandeep Marathe, T H Udeshi, Ujwalla A Patil

JUDGEMENT

M S Jawalkar, J.

[1] Heard. Heard finally by consent of the learned Counsel for both the parties.

[2] The present appeal is filed challenging the judgment and order dated 19/04/2017 passed by the learned Civil Judge, Senior Division, Washim in Land Acquisition No.98/2002.

[3] The facts of case in brief are as under:

The State of Maharashtra decided to construct a Dam at village Haral and for that reason started to acquire the land from the villagers. The appellant's land in Survey No.372 admeasuring 2.74 H.R. land in Haral came to be acquired by the respondent no.2 vide Land Acquisition Proceedings No.12/47/96-97. The Section 4 Notification came to be published on 13/11/1997. Section 6 Notification published on 12/01/2000

and the final award came to be published on 02/06/2000. The Land Acquisition Officer awarded an amount of Rs.1,45,314/- for the acquired land.

[4] The appellants preferred reference against the aforesaid award and claimed for compensation @ Rs.3,00,000/- per hector and an amount of Rs.90,000/- for the trees and well. The Reference Court by its order dated 05/04/2010 enhanced the compensation to the tune of Rs.3,28,800/- for acquired land. It has also awarded amount of Rs.80,253/- for the trees and well. The entire compensation awarded was Rs.16,03,613/-. The respondent no.3 (Land Acquisition Officer) challenged the said judgment before this Court, on the ground that though it is an acquiring body, it was not made a party before the learned Reference Court and therefore, prayed for quashing of the judgment and award dated 05/04/2010.

This Court by its judgment dated 29/04/2016 allowed the appeal and remanded it back with directions to implead the Vidarbha Irrigation Development Corporation as party respondent and with liberty to the parties to prosecute the proceedings in accordance with law. After remanding back the matter, the learned Reference Court passed the impugned judgment without giving proper opportunity to the appellants nor considering the evidence adduced by the appellant in Reference Case No.49/2002. The said judgment and order is being challenged in the present appeal.

[5] The learned Counsel for appellants contended that the appellants used to take double crops in a year. They used to earn annual income Rs. 8000/- per annum from fruit bearing trees. He also used to take Kharip as well as Rabbi crops in the acquired land. The land is a black soil land and having superior quality and having perennial source of water and substantial potentiality.

[6] It is further contended by the learned Counsel for appellants that the learned Reference Court has committed patent illegality in holding the matter to be decided in time bound manner. Reference came to be decided without giving an opportunity to appellants of hearing or to produce additional evidence on record. The joint measurement report clearly show existence of a well in the field of appellants. The learned Reference Court committed illegality in observing that there is no evidence about the well and not awarded compensation for the same. The acquired land of the appellants was fertile black soil and irrigated land. The rate of such land was much higher. The learned Reference Court has not properly assessed valuation of acquired land on the basis of its productivity, non-agricultural potential and thus impugned judgment needs to be quashed and set aside.

[7] Learned Counsel for appellants relied on citation in the case of **Special Land Acquisition Officer (N) and another Vs.Gracinda Braganza(D) Thr. L.Rs.**, 2018 5 MhLJ 529.

[8] It is contended by the respondent no.1 that the land acquired is not black soil or fertile or irrigated land. It is also denied that the land is near to the village. The acquired land is dry Kharip crop medium quality land having no potentiality value.

The applicant has not produced any evidence to prove the presence of trees in the acquired land. The grounds are not raised by the applicant for enhancement of compensation which are raised now are incorrect and false.

[9] It is further contended that the land acquisition officer before passing the award has taken into consideration, the sale instances of the land in the vicinity for determination of the compensation. Therefore, the compensation awarded is adequate and reasonable and as per the market value.

[10] Heard both the parties. It is a matter of record that matter was remanded back as acquiring body was not the party before the learned Reference Court. Acquiring body- VIDC after remand, not filed any documentary or oral evidence and filed pursis that it do not want to examine the witnesses. In view thereof, evidence already laid by the applicant ought to have considered by the learned Referral Court. After remand, the learned Referral Court reduced enhancement from Rs. 1,30,00/- to Rs. 67,000/-.

[11] I have perused earlier judgment passed by the learned Civil Judge, Senior Division, Washim dated 05/04/2010 in Land Acquisition Case No.98/2002 as well as judgment after remand dated 19/04/2017. It is the matter of record that the added respondent No.3 filed their written statements vide Exhibit 32, however, by filing pursis Exhibit 34 informed that the respondent No.3 do not wish to lead any oral evidence. As such, evidence already laid by the parties, was for consideration before the learned Referral Court. As held in **Special Land Acquisition Officer Vs. Gracinda Braganza**, 2018 5 MhLJ 529, this Court in similar matter held that the contention of acquiring body that compensation cannot be enhanced in absence of new evidence, such claim cannot be considered as earlier evidence laid by claimants does not stand wiped off after matter is remanded. As such, no new evidence laid by respondent no.3, the earlier evidence laid is required to be considered.

[12] After going through the judgment passed by learned Referral Court after remand, it appears that the learned Referral Court has not appreciated the evidence already laid and without there being any reason to discard the same, it was discarded. The earlier judgment was perfectly justified in view of the evidence laid before it. The contention raised by VIDC is totally misconceived and without any basis. In the award passed by Special Land Acquisition Officer, there is specifically mention of well in the acquired field so also trees. The learned Senior Division, in earlier judgment rightly appreciated the said factual position. He has also considered the sale instances before the Special Land Acquisition Officer itself and the judgment passed in Land Acquisition Case No.49/2002. It is in respect of the same village and the market price is fixed in the said Land Acquisition Case as Rs.1,00,000/- per hectare for dry crop land. In fact, there was order that this land acquisition case was directed to be heard along with Land Acquisition Case No.49/2002, reference of this order is in paragraph no.21 of the judgment passed after remand as well as there is reference of this order in

paragraph no.16 of the judgment passed before remand. As such, price which was fixed as Rs.1,30,000/- by the judgment before remand is perfectly justified.

[13] As there is no additional evidence adduced by the VIDC and the learned Judge before remand has taken into account of the documents placed on record along with the evidence laid by the applicant. In fact, after remand, in view of the fact that no evidence laid by the respondent no.3, the learned Referral Court ought to have considered the evidence laid by the appellant prior to remand. Admittedly, in view of findings recorded by the land acquisition officer, there is reference of trees as well as of well. The said land is situated 2.5 k.m. away from Washim-Risod road and 2.5 k.m. away from the main road. There is educational facility, weekly market and water facility from well as well as from river. There is Post, Bank, Schools, Electric Line available in the village. There were 25 sale instances referred in the award itself.

[14] All these aspects are being taken into account by the learned Referral Court before remand. After remand, the learned Referral Court without recording any reasons for discarding sale instances which were rightly considered by the learned Referral Court prior to remand, discarded the same. If there is no additional evidence adduced by the respondent No.3 (acquiring body) and in the similarly situated circumstances accepted the enhanced amount of Rs.1,00,000/- per hectare in case of Land Acquisition Case No.49/2002, there is no reason at all to the learned Referral Court to take contrary view as if, it is setting in the appeal. As such, I am satisfied that the judgment and order passed on 19/04/2017 is liable to be quashed and set aside. The order is required to be passed as per order passed in 05/04/2010 by Civil Judge, Senior Division before remand. Hence I proceed to pass the following order:

ORDER

i) The appeal is partly allowed.

ii) It is held that the marked price of the land is fixed as Rs.1,30,000/- per hectare appellant is entitled for enhanced compensation on the basis of this market value of land.

iii) The applicant is also entitled for compensation for Mango trees and well @ Rs.32,009/- and Rs.48,244/- respectively.

iv) The applicant is entitled for other statutory benefits on enhanced compensation.

The appeal is disposed of accordingly

2023(1)MLPJ5

IN THE SUPREME COURT OF INDIA

[From DELHI HIGH COURT]

[Before M R Shah; M M Sundresh]

Civil Appeal No 8088 of 2022 **dated 09/11/2022**

Delhi Development Authority

Versus

Asha Jain & Ors

STALE AND TIME-BARRED CLAIMS

Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 Sec. 24 - In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court - Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

[Para No. 3]

Law Point- Section 24(2) of the 2013 Act does revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.

Acts Referred:

Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 Sec. 24

JUDGEMENT

M.R. Shah, J.

[1] Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Delhi at New Delhi in Writ Petition (C) No. 2987 of 2016 by which the High Court has allowed the said writ petition preferred by the respondent No. 1 herein and has declared that the acquisition with respect to the land in question is deemed to have lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "Act, 2013"), the Delhi Development Authority (DDA) has preferred the present appeal.

[2] We have heard the learned counsel for the respective parties at length.

[3] At the outset, it is required to be noted that in the present case and even as observed by the High Court, the possession of the land in question was taken over in the year 2005, however, observing that as the compensation has not been paid and/or tendered to the recorded owners / petitioners, relying upon the decision of this Court in the case of **Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and Ors.**, 2014 3 SCC 183, the High Court has allowed the writ petition and has declared that the acquisition with respect to the land in question is deemed to have lapsed under Section 24(2) of the Act, 2013.

3.1 The decision of this Court in the case of **Pune Municipal Corporation and Anr. (supra)** relied upon by the High Court while passing the impugned judgment and order has been subsequently overruled by this Court in the Constitution Bench decision of this Court in the case of **Indore Development Authority Vs. Manoharlal and Ors.**, 2020 8 SCC 129. In paragraph 365 and 366, the Constitution Bench of this Court has observed and held as under:-

> "**365.** Resultantly, the decision rendered in Pune Municipal Corpn. [**Pune Municipal Corpn. v. Harakchand Misirimal Solanki**, 2014 3 SCC 183] is hereby overruled and all other decisions in which Pune Municipal Corpn. [**Pune Municipal Corpn. v. Harakchand Misirimal Solanki**, 2014 3 SCC 183] has been followed, are also overruled. The decision in Sree Balaji Nagar Residential Assn. [**Sree Balaji Nagar Residential Assn. v. State of T.N.**, 2015 3 SCC 353] cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In **Indore Development Authority v. Shailendra**, 2018 3 SCC 412, the aspect with respect to the proviso to Section 24(2) and whether "or" has to be read as "nor" or as "and" was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.
>
> **366.** In view of the aforesaid discussion, we answer the questions as under:
>
> **366.1.** Under the provisions of Section 24(1)(a) in case the award is not made as on 1-1-2014, the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.
>
> **366.2.** In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.
>
> **366.3.** The word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor

compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

366.4. The expression "paid" in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(b).

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

> **366.9.** Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

In that view of the matter, the impugned judgment and order passed by the High Court is unsustainable.

[4] Even otherwise, it is required to be noted that in the present case, the notification under Section 4 of the Land Acquisition Act, 1894 was issued on 25.11.1980; acquisition was for a public purpose, namely, planned development of Delhi by which the large chunk of land in 13 villages of South Delhi including Village Neb Sarai was sought to be acquired. As per the record, the land in question originally is the part of Khasra No. 675 recorded in the name of M/s. Laxmichand Bhagaji Limited - a non-banking company. Therefore, M/s. Laxmichand Bhagaji Limited was the recorded owner. From the material on record, it appears that even according to the original writ petitioner, she acquired the right in the land in question pursuant to the Agreement to Sell dated 09.05.2005. Thus, the original writ petitioner was claiming the right in the land in question pursuant to the Agreement to Sell dated 09.05.2005.

4.1 As per the settled position of law, Agreement to Sell by itself does not confer any right, title, or interest. In any case, the original writ petitioner can be said to be subsequent purchaser and/or has acquired the right subsequently. In the recent decision of this Court in the case of **Delhi Development Authority Vs. Godfrey Phillips (I) Ltd. & Ors., Civil appeal No. 3073 of 2022** after considering the other decisions on the right of the subsequent purchaser to claim lapse of acquisition proceedings, i.e., Meera Sahni Vs. Lieutenant Governor of Delhi & Ors.,2008 9 SCC 173 and **M. Venkatesh & Ors. Vs. Commissioner, Bangalore Development Authority**, 2015 17 SCC 1, it is specifically observed and held that subsequent purchaser has no right to claim lapse of acquisition proceedings. Similar view has been expressed by the Larger Bench judgment of this Court in the case of **Shiv Kumar & Anr. Vs. Union of India & Ors.**, 2019 10 SCC 229.

4.2 Under the circumstances also, the High Court has erred in entertaining the writ petition at the instance of the original writ petitioner being subsequent purchaser, praying for a declaration that the acquisition is deemed to have lapsed in view of Section 24(2) of the Act, 2013. Under the circumstances also, the impugned judgment and order passed by the High Court is unsustainable.

[5] In view of the above and for the reasons stated above, present appeal succeeds. The impugned judgment and order passed by the High Court, declaring that the acquisition with respect to the land in question is deemed to have lapsed under Section

24(2) of the Act, 2013, is hereby quashed and set aside. Consequently, the writ petition filed by the original writ petitioner before the High Court being Writ Petition (C) No. 2987 of 2016 stands dismissed.

Present appeal is accordingly allowed. No costs.

Pending application, if any, also stands disposed of

2023(1)MLPJ9

IN THE SUPREME COURT OF INDIA

[From DELHI HIGH COURT]

[Before M R Shah; M M Sundresh]

Civil Appeal No 8198 of 2022, 8248 of 2022 **dated 24/11/2022**

Govt of NCT of Delhi and Anr; Delhi Development Authority

Versus

Shiv Dutt Sharma and Anr

ACQUISITION PROCEEDINGS

Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 - Sec. 24 - Acquisition of land - Compensation - High Court has declared that the acquisition with respect to the land in question has lapsed - Held, In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisitio**n has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court - The obligation to pay is complete by tendering the amount under Section 31(1) - The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act - The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(b) - Appeals are allowed.**

[Paras 3 and 4]

Law Point: Landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed

Acts Referred:

Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 Sec. 24

Counsel:

Astha Tyagi, Diksha Narula, Dinesh Chander Trehan, Manish K Bishnoi, Nirmal Prasad, Jasleen Chahal, Nishit Agrawal, Ishaan Sharma, Kanishka Mittal

JUDGEMENT

M.R. Shah, J.

[1] Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Delhi at New Delhi in Writ Petition (C) No. 1870 of 2016 by which the High Court has allowed the said writ petition preferred by the respondent No.1 herein and has declared that the acquisition with respect to the land in question has lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "Act, 2013"), the Government of NCT of Delhi as well as the Land Acquisition Collector have preferred the present appeals.

[2] We have heard Ms. Astha Tyagi and Shri Nishit Agrawal, learned counsel appearing on behalf of the respective appellants and Shri Manish K. Bishnoi, learned counsel appearing on behalf of the respondent No.1.

[3] At the outset, it is required to be noted that while passing the impugned judgment and order, the High Court has relied upon the decision of this Court in the case of **Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and Ors.**, 2014 3 SCC 183 and has declared that the acquisition with respect to the land in question has lapsed under Section 24(2) of the Act, 2013 as the compensation has not been paid / tendered to the original writ petitioner. However, there is a specific finding given by the High Court that the possession of the subject land has been taken over, however, the compensation has not been paid to the recorded owner.

3.1 It is the case on behalf of the respondent No.1 that the actual possession of the land in question has not been taken over as the land in question is occupied by the encroachers and that the area in question is known as 'Sanjay Mohalla'. However, it is required to be noted and as observed hereinabove, in paragraph 8, the High Court has specifically observed that there is a categorical assertion made in the counter affidavit filed by the Land Acquisition Collector that the possession of the subject land has been taken over, however, the compensation has not been paid to the recorded owner. It may be that there may be **illegal occupants and / or encroachers,** but that does not mean that the possession of the land in question was taken over and/or handed over to the beneficiary department on 21.06.1973. As per the case on behalf of the Land Acquisition Collector, in any case, the landowner can be permitted to take the benefit of the encroachment made on the land in question. Be that it may, as observed hereinabove, while passing the impugned judgment and order, the High Court has relied upon the decision of this Court in the case of **Pune Municipal Corporation and Anr. (supra)** and the said decision in the case of **Pune Municipal Corporation and Anr. (supra)** has been subsequently specifically overruled by the Constitution Bench of this Court in the case of **Indore Development Authority Vs. Manoharlal and Ors.**, 2020 8 SCC 129. In paragraphs 365 and 366, it is observed and held as under:-

"**365.** Resultantly, the decision rendered in Pune Municipal Corpn. [**Pune Municipal Corpn. v. Harakchand Misirimal Solanki**, 2014 3 SCC 183] is hereby overruled and all other decisions in which Pune Municipal Corpn. [**Pune Municipal Corpn. v. Harakchand Misirimal Solanki**, 2014 3 SCC 183] has been followed, are also overruled. The decision in Sree Balaji Nagar Residential Assn. [**Sree Balaji Nagar Residential Assn. v. State of T.N.**, 2015 3 SCC 353] cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In **Indore Development Authority v. Shailendra**, 2018 3 SCC 412, the aspect with respect to the proviso to Section 24(2) and whether "or" has to be read as "nor" or as "and" was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1-1-2014, the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.

366.3. The word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

366.4. The expression "paid" in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit

with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act. 366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(b).

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

[4] In view of the above and for the reasons stated above, and, more particularly, considering the subsequent decision of the Constitution Bench of this Court in the case of **Indore Development Authority (supra)**, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside.

The submission on behalf of the respondents that the encroachment on the land in question is being regularized is concerned, that is not the subject matter before this Court. It is ultimately for the appropriate court to take appropriate decision. However, so far as the impugned judgment and order passed by the High Court is concerned, the

same is unsustainable in view of the decision of this Court in the case of **Indore Development Authority (supra)** and as observed hereinabove. The present appeals are accordingly allowed. No costs. Pending application, if any, also stands disposed of

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2023(1)MLPJ13

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Manish Pitale]

Writ Petition No 3557 of 2021, 3559 of 2021, 3560 of 2021, 3558 of 2021 **dated 29/09/2022**

Hiralal S/o Ganpatrao Bangadkar

Versus

State of Maharashtra; Divisional Joint Registrar Co-operative Societies, Nagpur; Bhandara Urban Cooperative Bank Ltd; Jayant S/o Vasantrao Vairagade; Ramdas S/o Jagannath Shahare; Jyoti Poonamchand Ba

DISQUALIFICATION OF DIRECTOR

Maharashtra Co-Operative Societies Act, 1960 Sec. 73CA, Sec. 73AAA - Maharashtra Co-Operative Societies Rules, 1961 Rule 58 - Disqualification of the respondents from continuing as Members of the Executive Committee / Board of Directors of the respondent No.3, Bank Limited, by operation of the Bye-laws of the said Co-operative Bank - Revision allowed - Appeal against the order of Minister for the State -of Maharashtra - Respondent failed to maintain deposits as specified in bye-law No.40 of the aforesaid **bye-laws - If the elected Director withdraws eligible deposits as per bye-law No.40, at any time before the completion of the entire tenure of the board, such Director would incur disqualification - Subsequent replenishment of the deposits to satisfy the bare minimum requirement of the bye-law No.40 of the said bye-laws would not cure the defect or reverse the disqualification -Orders passed by Minister of the State are quashed and set aside -Disqualification of respondent is restored - Rule made absolute.**

Law Point: - Disqualifications have been prescribed under section 73-FF and section 73-FFF of the Act of 1960 and under Rule 58 of the Maharashtra Co-operative Societies Rules, 1961, no further qualifications can be laid down under the bye-laws.

Acts Referred:

Maharashtra Co-Operative Societies Act, 1960 Sec. 73CA, Sec. 73AAA

Maharashtra Co-Operative Societies Rules, 1961 Rule 58

Counsel:

Akshay A Naik, N R Rode, P S Tidke, A M Ghare

JUDGEMENT

Manish Pitale, J.

[1] Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for the rival parties.

[2] The question that arises for consideration in these petitions is, as to whether the petitioner is justified in claiming that the fourth respondents in these petitions had incurred disqualification from continuing as Members of the Executive Committee / Board of Directors of the respondent No.3 - Bhandara Urban Co-operative Bank Limited, by operation of Bye-law Nos. 40 and 45 of the Bye-laws of the said Co-operative Bank.

[3] On a complaint lodged by the petitioner, who himself was elected as Member of the Executive Committee and Director of the respondent No.3 - Co-operative Bank, on 07/07/2015, for a period of five years, the respondent No.2 - Divisional Joint Registrar, Co-operative Societies, held that the fourth respondents in these petitions had incurred disqualification and accordingly passed orders disqualifying them from continuing as Members of the Executive Committee / Directors. Aggrieved by such orders passed by the respondent No.2, the fourth respondents in these petitions filed revision petitions before the respondent No.1 - State. The revision petitions were allowed and the orders of disqualification were quashed and set aside.

[4] Aggrieved by the said orders passed by the Hon'ble Minister for the State of Maharashtra, the petitioner filed these petitions, wherein notices were issued for final disposal. The respondents entered appearance through counsel and the petitions were taken up for hearing.

[5] The petitioner and fourth respondents in these petitions were elected on 07/07/2015, as Members of the Executive Committee / Directors of the respondent No.3 - Co-operative Bank for a period of five years. The aforesaid period expired in July, 2020, but, by operation of Section 73(AAA)(3) of the Maharashtra Co-operative Societies Act, 1960 (Act of 1960), the elected members continued as members and office bearers of the Committee. It was during such period that the petitioner submitted representations / applications before the respondent No.2 - Divisional Joint Registrar of Co-operative Societies for disqualification of the fourth respondents in these petitions, for having incurred disqualification under the bye-laws of respondent No.3 - Co-operative Bank. Upon the fourth respondents in these petitions being put to notice, they appeared before the respondent No.2. The contention of the petitioner against the fourth respondents was that since they had fallen foul of bye-law 45(1)(n) of the bye-laws of the respondent No.3 - Co-operative Bank, they had incurred disqualification, as they had failed to maintain deposits as per bye-law No. 40 of the aforesaid bye-laws. The petitioner had also claimed that the fourth respondents had incurred

disqualification for having failed to join monthly board meetings. But, in the present petitions, the said ground is not the bone of contention and the only ground pressed on behalf of the petitioner pertains to disqualification incurred by the fourth respondents under bye-law No. 45(1)(n) of the said bye-laws.

[6] In terms of the replies filed by the fourth respondents and the material placed on record before the respondent No.2, it was found that at the relevant point in time the fourth respondents had indeed failed to maintain deposits as specified in bye-law No.40 of the aforesaid bye-laws. Although later the short fall was made good, it was found that the fourth respondents had incurred disqualification. On this basis, by orders dated 19/03/2021, the respondent No.2 disqualified the fourth respondents from continuing as Members of the Executive Committee / Directors of the respondent No.3 - Co-operative Bank.

[7] Aggrieved by the said orders passed by the respondent No.2, the fourth respondents filed revision petitions before the respondent No.1 - State, which were taken up for consideration by the concerned Minister. By the impugned orders dated 05/07/2021, the Minister allowed the revision petitions and set aside the orders of disqualification passed by respondent No.2. It was held that even if the fourth respondents had indeed failed to maintain the deposits as mandated under bye-law No. 40 of the aforesaid bye-laws, since they had immediately made good the shortfall, it could not be said that disqualification was incurred. On this basis, the revision petitions stood allowed. According to the petitioner, the impugned orders passed by the Minister of the concerned Department are wholly unsustainable and deserve to be set aside.

[8] Mr. Akshay Naik, learned counsel appearing for the petitioner in all the petitions submitted that a perusal of bye-law No.40 of the bye-laws of the respondent No.3 - Co-operative Bank, would show that for a Member of the Executive Committee / Director, it was mandatory to maintain model share amount of Rs.10,000/- and model deposit amount of Rs.50,000/-. The note appended to the aforesaid bye-laws mandated that the elected Directors shall keep the said deposits for the entire tenure of the Board. Emphasis was also placed on bye-law No.45(1)(n) of the said bye-laws, contending that if the elected Director withdraws eligible deposits as per bye-law No.40, at any time before the completion of the entire tenure of the board, such Director would incur disqualification.

[9] Thereupon, the learned counsel appearing for the petitioner invited attention of this Court to the material on record to demonstrate that by specific applications filed by the fourth respondents, such model share capital in the case of the petitioner in Writ Petition No.3557/2021 and model deposits in the cases of the fourth respondents in Writ Petition Nos.3558/2021, 3559/2021 and 3560/2021, were withdrawn, as a result of which disqualification was instantly incurred under bye-law No. 45(1)(n) of the said bye-laws.

[10] It was submitted that even though the fourth respondents thereafter made good the shortfall by replenishing the amounts, the disqualification already incurred could not be undone. The learned counsel emphasized upon Section 73CA (1) (f) (iv) of the Act of 1960, as it stood prior to the amendment dated 28/03/2022, read with Rule 58 of the Maharashtra Co-operative Societies Rules, 1961 (Rules of 1961), to contend that disqualification was incurred and that, therefore, the respondent No.2 had correctly passed orders of disqualification against the fourth respondents. It was submitted that the Minister was not justified in reversing the orders passed by the respondent No.2 and allowing the Revision petitions of the fourth respondents, by simply stating that although the mandatory deposits were inadvertently withdrawn, they were later made good.

[11] The learned counsel appearing for the petitioner further submitted that although the term of the Executive Body had expired in July, 2020, by operation of provisos to Section 73AAA (3) of the Act of 1960, the term was extended and, therefore, it could not be said that disqualification proceedings could not be initiated as the five year term was already over. The learned counsel appearing for the petitioner relied upon judgment of the Hon'ble Supreme Court in the case of **Rajendra Singh Rana and others Vs. Swami Prasad Maurya and others**, 2007 4 SCC 270 and judgments of this Court in the cases of **Sambha s/o Gangaram Pikale Vs State of Maharashtra and others**, 1996 2 MhLJ 182 and **Pundlik Kadhav Vs. District Deputy Registrar, Co-operative Societies, Chandrapur and others**, 1990 MhLJ 925

[12] On the other hand, Mr. A. M. Ghare, learned counsel appearing for the contesting fourth respondents in all these petitions submitted that the disqualification proceedings were themselves stillborn, because the five year term of the elected body was admittedly over in July, 2020 itself. It was submitted that the petitioner filed the complaints / representations after the expiry of the five year term and show cause notices were also issued by the respondent No.2 after the said term had expired. By referring to proviso to Section 73AAA(3) of the said Act, it was submitted that merely because the Executive Committee was deemed to have been continued and the fourth respondents continued as members till the new committee was duly constituted, it could not be said that disqualification proceedings could be initiated against them.

[13] On the aspect of attracting disqualification by operation of bye-law Nos.40 and 45(1)(n) of the said bye-laws, it was submitted that the material on record clearly indicated that the deposits stood withdrawn due to the mistake of the Manager and when the same was realized, the fourth respondents immediately made good the shortfall in the deposits, thereby showing that no disqualification was incurred. It was submitted that the situation created by such inadvertent withdrawal of deposits was curable and this could be inferred from the provisions pertaining to a member classified as non-active member, again becoming an active member upon making good the deficiency. In this context, reference was made to Section 73CA(1)(ii-a) read with

Section 26(2)(b) of the said Act, as they stood prior to the amendment brought into effect on 28/03/2022.

[14] It was further submitted that the amendment made effective from 28/03/2022, for the first time introduced the words "or bye-laws of the Society" in Section 73CA(i)(f)(iv) of the said Act and since the proceedings for disqualification in the present cases were initiated prior to the amendment, disqualification could have been incurred only under the provisions of the Act and Rules. It was submitted that reliance placed on Rule 58 of the aforesaid Rules was completely misplaced because the Rule could not override the substantive provision of the Act, as it existed at the relevant point in time. On this basis, it was submitted that when the concerned Minister had allowed the revision petitions, based on a reasonable and proper interpretation of the Act, Rules and the bye-laws of the respondent No.3 - Co-operative Bank, no case was made out for exercise of writ jurisdiction to set aside the said orders passed by the concerned Minister.

[15] Mr. Tidke, learned counsel appeared on behalf the respondent No.3 - Co-operative Bank and supported the contentions raised by Mr. Ghare, learned counsel for the fourth respondents in these petitions. Mr. N.R. Rode, learned Assistant Government Pleader appeared on behalf of the respondent Nos.1 and 2 and submitted that since no relief had been claimed against the said respondents, this Court may pass appropriate orders in the light of the provisions of the aforesaid Act, Rules, as also the bye-laws of the respondent No.3 - Co-operative Bank.

[16] Having heard the learned counsel for the rival parties, it would be appropriate to refer to the relevant provisions of the aforesaid Act and Rules, as they stood at the relevant time, as also the relevant bye-laws of the respondent No.3 - Co-operative Bank.

[17] The relevant provisions of the Act read as follows:

"26 Rights and duties of members

(1) A member shall be entitled to exercise such rights as provided in the Act, rules and by-laws:

Provided that, no member shall exercise the rights, until he has made such payment to the society in respect of membership, or acquired such interest in the society, as may be prescribed and specified under the by-laws of the society, from time to time:

Provided further that, in case of increase in minimum contribution of member in share capital to exercise right of membership, the society give a due notice of demand to the members and give reasonable period to comply with.

(2) It shall be the duty of every member of a society, -

(a) to attend at least one general body meeting within a consecutive period of five years: Provided that, nothing in this clause shall apply to the member whose absence has been condoned by the general body of the society.

(b) to utilize minimum level of services at least once in a period of five consecutive years as specified in the by-laws of the society; Provided that, a member who does not attend at least one meeting of the general body as above and does not utilise minimum level of services at least once in a period of five consecutive years, as specified in the by-laws of such society shall be classified as non-active member:

Provided further that, when a society classifies a member as a non-active member, the society shall, in the prescribed manner communicate such classification, to the concerned member within thirty days from the date of close of the financial year:

Provided also that, a non-active member who does not attend at least one meeting of the general body and does not utilise minimum level of services as specified in the by-laws, in next five years from the date of classification as non-active member, shall be liable for expulsion under section 35:

Provided also that, a member classified as non-active member shall, on fulfillment of the eligibility criteria as provided in this sub-section be entitled to be re-classified as an active member.

Provided also that, if a question of a member being active or non-active member arises, an appeal shall lie to the Registrar within a period of sixty days from the date of communication of classification.

Provided also that, in any election conducted immediately after the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2013, all the existing members of the society shall be eligible for voting, unless otherwise ineligible to vote.

73AAA Constitution of committee

(1) xxxx

(2) xxxx

(3) The term of the office of the elected members of the committee and its office bearers shall be five years from the date of election and the term of the office bearers shall be co-terminus with the term of the committee and on the expiry of the term of the committee, the members shall be deemed to have vacated their offices as members of the committee.

Provided that, if the term of office of the elected members of the committee and its office bearers has expired, and if the election to the committee of the society could not be held due to imposition of lockdown in the State in view of the Covid-19 pandemic, the orders issued by the Government, from time to

time, or any reason not attributable to the members of the committee of the society, such members and office bearers of the committee shall be deemed to have continued as members and office bearers of the committee till new committee is duly constituted.

"73CA. Disqualification of committee and its members.

(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he -

(i) xxx

(a) xxx

(b) xxx

(c) xxx

(d) xxx

(e) xxx

(f) In the case of District Central Co-operative Bank or of the State Co-operative Bank, a member, if he, -

xxx

(ii-a) has been classified as non-active member under sub-section (2) of section 26; or

xxx

(iv) has incurred any disqualification under this Act or the rules made thereunder; or"

[18] Rule 58 of the aforesaid Rules reads as follows:

"58. Disqualification of committee and its membership

When on communication by the Chief Executive Officer of society or otherwise, the Registrar comes to know that any member of the committee incurs disqualification as mentioned in section 73CA and the Bye-laws, the Registrar shall, after giving an opportunity of being heard, issue an order of cessation of membership of such member from the committee of the society:

Provided that, the Registrar shall decide the matter within sixty days from the date of such communication or otherwise."

[19] The relevant bye-laws of respondent No.3 - Co-operative Bank read as follows:

"40. ELIGIBILITY OF BOARD OF DIRECTORS:

To contest the election of Board of Directors, the active member should comply following model criteria depending upon the size of Banks

Sr. No.	Bank Category (Deposit in Cr.)	Model share Amt. (In Rs.)	Model Deposit Amt. (In Rs.)
1	Upto Rs.100 Cr.	5000 And	25000
2	Rs. 100.00 Cr. to Rs.50.00 Cr.	10000 And	50000
3	More than Rs.500.00 Cr.	15000 And	100000

(Note: The elected directors shall keep the above deposits for the entire tenure of the board)

The persons contesting from reserve seat under section 73B and 73C shall comply with 50% of the criteria required for general category."

"45. **DISQUALIFICATION FOR BEING A MEMBER OF THE BOARD**

45(1) No member of the Bank shall be eligible for being elected, or for being a member of the Board if such member

xxx

(n) If he withdraws the eligible deposits as per Bye Law No.40 any time before the completion of the entire tenure of the board."

[20] The principal contention raised on behalf of the fourth respondents in all these petitions was that the orders of disqualification could not have been passed against them, for the reason that the five year term of the elected Executive Body of the respondent No.3 - Co-operative Bank was already over in July, 2020. As the term had expired, there was no question of initiation of disqualification proceedings on the basis of alleged violation of bye-laws Nos.40 and 45 of the bye-laws of respondent No.3 - Co-operative Bank. In this context, Section 73(AAA) of the aforesaid Act, relevant portion of which is quoted hereinabove, is significant. Subsection (3) of Section 73 (AAA) of the said Act, read with the first proviso thereto shows that when the term of the elected Executive Body of a Co-operative Society expired and elections could not be held due to the Covid-19 pandemic, the Members of such Executive Committee as Directors shall be deemed to have continued as Members of the Committee till a new Committee stood duly constituted. Being a deeming fiction, which necessarily implies that a situation that factually does not exist is deemed to be existing, it indicates that although the five year term of the elected Executive Body of the respondent No.3 - Co-operative Bank had expired in July, 2020, by the operation of the aforesaid proviso to Section 73AAA(3) of the said Act, the fourth respondents were deemed to have continued as members and office bearers of the Committee. Even otherwise, the words used in bye-law No.40 and bye-law No.45(1)(n) of the said bye-laws to the effect "entire tenure of the Board" mandatorily requires adherence to the

bye-laws throughout the "tenure" of the elected members of the Executive Body, in order to avoid disqualification.

[21] Even if the contentions raised on behalf of the fourth respondents in these petitions is to be accepted that the "term" of the elected body of the Executive Committee was only five years, which expired in July, 2020 and proviso to Section 73AAA(3) of the said Act merely continued the fourth respondents as Members of the Executive Committee, such continuance clearly continued the tenure of the elected board and the membership of the fourth respondents of such elected body / board. Therefore, there is no substance in the contention raised on behalf of the fourth respondents that since the five year term of the elected Committee / Board had expired in July, 2020, no proceeding for disqualification could be initiated against them under bye-law Nos.40 and 45 of the said bye-laws. By operation of proviso to Section 73AAA(3) of the said Act, when the fourth respondents were deemed to have continued as Members of the Executive Committee / Board and they enjoyed all the privileges of the same, it cannot be said that they would not incur disqualification by operation of bye-law Nos.40 and 45 of the aforesaid bye-laws.

[22] In this backdrop, it needs to be examined as to whether the concerned Minister, while passing the impugned orders was justified in reversing the orders passed by the respondent No.2 - Divisional Joint Registrar. Bye-law No.40 read with 45(1)(n) of the said bye-laws shows that it mandatorily requires the elected members of the Executive Committee / Directors of the respondent No.3 - Co-operative Bank to necessarily keep the deposits pertaining to model share amount and model deposits, alive throughout their tenure as Members of the Executive Committee / Directors of the Board. The moment such deposits fell short of the minimum prescribed in bye-law No.40, the concerned elected members immediately attracted disqualification.

[23] In the present case, it is not disputed that insofar as the petitioner in Writ Petition No.3557/2021, is concerned, the model share amount fell short of the prescribed minimum in bye-law No.40 of the said bye-laws and insofar as petitioners in other writ petitions are concerned, model deposit amounts fell short and below the minimum prescribed under the said bye-laws. Such withdrawal of the amounts was approved by specific resolutions passed in meetings of the Board of Directors and there is no dispute about the same. This Court is of the opinion that the moment the said event occurred of the deposits falling below the minimum prescribed under bye-law No.40 of the said bye-laws, the fourth respondents incurred disqualification. Subsequent replenishment of the deposits to satisfy the bare minimum requirement of the bye-law No.40 of the said bye-laws would not cure the defect or reverse the disqualification already incurred by the fourth respondents. The learned counsel appearing for the fourth respondents in these petitions is not correct in contending that the disqualification so incurred was curable.

[24] The contention raised on behalf of the fourth respondents that the question as to whether they had incurred disqualification, in the facts of the present cases, ought to be examined at the time when the Divisional Joint Registrar considered the matters, is also a fallacious contention, for the reason that the aforesaid aspect has to be examined at the point in time when the fourth respondents had allegedly incurred disqualification under the bye-laws of the respondent No.3 - Co-operative Bank. In this regard, the learned counsel appearing for the petitioner is justified in placing reliance on the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of **Rajendra Singh Rana and others Vs. Swami Prasad Maurya** (supra). In the said case, one of the questions for consideration was, as to whether the aspect of a Legislator incurring disqualification was to be considered at the point when he or she defied the whip or the aspect was to be examined when the Speaker at a subsequent point in time was considering the question of disqualification. In this context, the Hon'ble Supreme Court in the said case held as follows:

> "34. As we see it, the act of disqualification occurs on a member voluntarily giving up his membership of a political party or at the point of defiance of the whip issued to him. Therefore, the act that constitutes disqualification in terms of paragraph 2 of the Tenth Schedule is the act of giving up or defiance of the whip. The fact that a decision in that regard may be taken in the case of voluntary giving up by the Speaker at a subsequent point of time cannot and does not postpone the incurring of disqualification by the act of the Legislator. Similarly, the fact that the party could condone the defiance of a whip within 15 days or that the Speaker takes the decision only thereafter in those cases, cannot also pitch the time of disqualification as anything other than the point at which the whip is defied. Therefore, in the background of Page 1013 the object sought to be achieved by the Fifty Second Amendment of the Constitution and on a true understanding of paragraph 2 of the Tenth Schedule, with reference to the other paragraphs of the Tenth Schedule, the position that emerges is that the Speaker has to decide the question of disqualification with reference to the date on which the member voluntarily gives up his membership or defies the whip. It is really a decision ex post facto. The fact that in terms of paragraph 6 a decision on the question has to be taken by the Speaker or the Chairman, cannot lead to a conclusion that the question has to be determined only with reference to the date of the decision of the Speaker. An interpretation of that nature would leave the disqualification to an indeterminate point of time and to the whims of the decision making authority. The same would defeat the very object of enacting the law. Such an interpretation should be avoided to the extent possible. We are, therefore, of the view that the contention that only on a decision of the Speaker that the disqualification is incurred, cannot be accepted. This would mean that what the learned Chief Justice has called the snowballing effect,

will also have to be ignored and the question will have to be decided with reference to the date on which the membership of the Legislature party is alleged to have been voluntarily given up."

[25] Applying the position of law laid down in the above quoted judgment, it becomes clear that in the present cases, even if the fourth respondents had subsequently replenished the deposits above the minimum required as per bye-law No.40 of the said bye-laws and before the respondent No.2 - Divisional Joint Registrar considered the question, it could not be said that they did not incur disqualification. This Court is of the opinion that disqualification once incurred in such a manner could not have been reversed by subsequent replenishment of the deposits and that the concerned Minister erred in passing the impugned orders in favour of the fourth respondents in these petitions, only because they did replenish the deposits above the minimum required at a subsequent point in time.

[26] It was argued on behalf of the fourth respondents by relying upon unamended Section 73CA(1)(f)(iv) of the said Act, since the words "or bye-laws of the Society" were added only by the subsequent amendment which came into effect from 28/03/2022, that the aforesaid provision as it stood when the question of disqualification of the fourth respondents came up for consideration concerned disqualification that could be incurred only under the Act and Rules and not the bye-laws of the Society. In this regard, reliance placed on Rule 58 of the aforesaid Rules on behalf of the petitioner is justified because the said Rule clearly provides for disqualification as mentioned in Section 73CA and the bye-laws of the concerned Society. The fourth respondents are not justified in contending that Rule 58 of the said Rules goes beyond what the Act provided at the relevant time and the same ought to be ignored because Rules framed under the Act cannot go beyond the substantive provisions of the main statute.

[27] The position of law in this regard is clearly covered in favour of the petitioner as per the judgment of this Court in the case of **Sambha s/o Gangaram Pikale Vs State of Maharashtra** (supra), wherein it was held as follows:

"5. Shri Talekar submitted that since disqualifications have been prescribed under section 73-FF and section 73-FFF of the Act of 1960 and under Rule 58 of the Maharashtra Co-operative Societies Rules, 1961, no further qualifications can be laid down under the bye-laws. The argument is fallacious. What has been prescribed in the Act and Rules are the minimum things which cannot be given go by any Co-operative Society. Therefore, disqualifications as are laid down in the Act and Rules cannot be watered down by the Society by framing bye-laws contrary to it. But it does not mean that the additional qualifications cannot be prescribed under the bye-laws. In many cases, qualification in respect of residence is prescribed. In many cases, number of shares which should be held by a member for being entitled for

election as Director are also prescribed. It cannot be said that no additional qualifications can be prescribed under the rules. It would be within the jurisdiction of the Registrar to examine whether the bye-laws including such qualifications are proper and reasonable. Since the present bye-law is approved by the Registrar, it can well be presumed that the Registrar has accepted its necessity."

[28] Thus, the said contention raised on behalf of the fourth respondents is also rejected.

[29] The contention raised on behalf of the fourth respondents by relying upon Section 26(2)(b) and the proviso appended thereto read with Section 73CA(1)(f)(ii-a) of the said Act is also not justified. It is contended that since it is specified under the aforesaid provisions that a non-active member can become an active member and such reclassification is permissible, the disqualification that may have been incurred by the fourth respondents under bye-law No.40 read with 45(1) of the aforesaid bye-laws, could be cured and the fourth respondents stood reclassified as members of the Executive Committee / Directors of the Board. As noted hereinabove, once the disqualification stood incurred by operation of the aforesaid bye-laws and such a finding is found to be justified on facts, the said disqualification cannot be reversed, even if subsequently the petitioners replenished the deposits to the minimum required under bye-law No.40 of the aforesaid bye-laws. It is clear that the default on the part of the fourth respondents in maintaining the deposits mandatorily required under bye law No.40 of the bye-laws resulted in disqualification on the day such default happened. Therefore, there is no question of the said disqualification being reversed or cured by subsequent action of the fourth respondents. Reliance placed on behalf of the petitioner on the judgment of this Court in the case of **Pundlik Kadhav Vs. District Deputy Registrar, Co-operative Societies, Chandrapur** (supra) is also justified.

[30] The concerned Minister in the impugned orders completely failed to appreciate the correct position of law and wrongly held that the deposits of the fourth respondents, which had inadvertently gone below the minimum required under the aforesaid bye-law, were subsequently made good and, therefore, it could not be said that the fourth respondents had incurred disqualification. The said finding of the concerned Minister is found to be unsustainable and, therefore, the impugned orders deserve to be set aside.

[31] In view of the above, the writ petitions are allowed.

[32] The impugned orders passed by the respondent No.1 i.e. the concerned Minister of the State are quashed and set aside and the orders passed by the respondent No.2 - Divisional Joint Registrar, disqualifying the fourth respondents are restored. No costs.

[33] Rule is made absolute in above terms. Pending applications, if any, stand disposed of.

Later on

On pronouncement of judgment, the learned counsel appearing for the fourth respondents in all these petitions requested for suspension of the order passed today by this Court. Since this Court has held that in the facts of the present cases, disqualification was incurred by the fourth respondents, the moment bye-law No.45(1)(n) came into operation read with bye-law No.40, this Court sees no reason to accept the prayer.

Hence, the prayer for suspension of the order is rejected

2023(1)MLPJ25

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Sandeep K Shinde]

Writ Petition No 12468 of 2022 **dated 09/11/2022**

Karan Vishnu Khandelwal

Versus

Honourable Chairman / Secretary Vaikunth (Andheri) Cooperative Housing Society Ltd; Rajendra M Khandelwal; Deputy Registrar, Cooperative Societies

QUASHING OF ORDER

Maharashtra Co-Operative Societies Act, 1960 Sec. 23, Sec. 30, Sec. 154B-Maharashtra Co-Operative Societies (Amendment) Act, 2019 Sec. 154B-Order-Divisional Joint Registrar Cooperative Societies - quashed and set aside-nomination duly acknowledged by society - society shall admit nominee as a provisional Member after death of a Member till legal heir or heirs or a person who is entitled to flat and shares in accordance with succession law or under will or testamentary document are admitted as Member in place of such deceased Member- petitioner -nominee -society is empowered to transfer share, right, title and interest of the deceased member in the society - provisional member of society - Petition allowed

[Para 6,7,8]

Acts Referred:

Maharashtra Co-Operative Societies Act, 1960 Sec. 23, Sec. 30, Sec. 154B

Maharashtra Co-Operative Societies (Amendment) Act, 2019 Sec. 154B

Counsel:

Simil Purohit, Vishal Pattabiraman, Jayesh Mestry, Kausar Banatwala, Neuty N Thakkar, Tushar Goradia, Sanjay D Rayrikar

JUDGEMENT

Sandeep K Shinde, J.

[1] Rule. Rule made returnable forthwith. By consent of the parties, taken up for hearing forthwith.

[2] This petition under Article 227 of the constitution of India takes exception to order passed in revision by the Revisional Joint Registrar Co-operative Societies, Mumbai Division Mumbai, by which the revision application filed by the Petitioner was dismissed by confirming the order dated 8th February, 2021 passed by the Deputy Registrar Cooperative Societies under Section 23 (2) of the Maharashtra Cooperative Societies Act, 1960.

In brief facts of the case are as under:

2. Mr. Mannalal Surajmal Khandelwal (deceased) was owner of a flat no.1 and by virtue thereof, was entitled to share certificate No. 7 bearing share distinctive numbers 37-35 issued by the Vaikuntha (Andheri) Co-operative Housing Society Ltd. ('Society' for short). The deceased during his lifetime registered a nomination in the name of Petitioner- his grandson. The nomination was acknowledged by the managing committee of the society in its' meeting held on 14th March, 2004 and made an entry in the nomination register. Mr. Mannalal Khandelwal died intestate on 20th January, 2011, leaving behind, Rajendra Mannalal Khandelwal (Son-Respondent No.2); Krishnakumar Mannalal Khandelwal (Son); and Petitioner- son of Vishnu Mannalal Khandelwal (predeceased son of deceased).

[3] That upon demise of Mannalal Surajmal Khandelwal, Respondent No.2 - Rajendra M. Khandelwal, made an application to the society, inter alia, seeking transfer of membership and the share certificate in his name. Along with the application, he submitted a 'No Objection cum Declaration' and indemnity bond made and executed by Krishnakumar Mannalal Khandelwal. This way, the Respondent No.2 claimed 2/3rd share and interest in the flat and sought transfer of proportionate interest in flat and claimed membership. The application was rejected by the society on 8th August, 2018. Whereafter, the Respondent No.2 preferred an appeal under section 23 (2) of the Maharashtra Societies Act ('MCS Act' for short), being Appeal No. 09 of 2019 before the Deputy Registrar. The Petitioner sought intervention in the said appeal. The Intervention was allowed. The Deputy Registrar vide order dated 8th February, 2021 allowed the appeal and held that since the Respondent No.2 has acquired 2/3rd right in flat No.1, to that extent, his interest be noted in the society record. In consequence, the Deputy Registrar acknowledged 2/3rd undivided right of the Respondent No.2 and 1/3rd undivided right of the Petitioner in the flat No.1 and directed to make entry in the society records. In revision, the Divisional Joint Registrar, upheld the order of Deputy Registrar and dismissed the revision application of the Petitioner. Feeling aggrieved by that order, the Petitioner has filed this petition.

[4] Heard learned counsel for the Petitioner, the Respondent No.2 and learned AGP for the State.

[5] Mr. Simil Purohit, Learned Counsel for the Petitioner submitted that Revision application has been decided without affording opportunity of being heard to the Petitioner. To fortify this submission, Mr. Purohit has taken me to the Roznama of the proceedings of the Revision application maintained by the Divisional Joint Registrar. Wherefrom it appears, the Revision application was listed for hearing on 13th June, 2022; however, board was discharged, as the authority was on leave. Accordingly, hearing was adjourned to 27th September, 2022. On 14th June, 2022, Advocate on behalf of Respondent No.2 intimated the petitioner to remain present before the Divisional Joint Registrar on 21st June, 2022, as he would apply for the urgent relief in the said revision. Accordingly, the Petitioner was present before the Divisional Joint Registrar on 21st June, 2022, but none had appeared on behalf of the Respondent No.2. Therefore, hearing was adjourned to 27th September, 2022. However, it appears from the Roznama that the Divisional Joint Registrar heard the matter on 4th of July, 2022, in absence of Petitioner and closed the case for final order with liberty to file written statement within two weeks. On the same day, i.e. 4th July, 2022, a letter was addressed by the Divisional Joint Registrar to the Petitioner intimating that the revision was heard on 4th of July, 2022 in his absence and further informed that he may file his reply or written arguments in support of the revision application. Whereafter, the Petitioner filed an application on 23rd July, 2022 and requested Divisional Joint Registrar to recall the order dated 4th July, 2022, by which the case was closed for passing final order and afford hearing to him. It appears, the Divisional Joint Registrar did not consider Petitioners' request and proceeded to pass order on 24th August, 2022, by which the order of the Deputy Registrar was confirmed and as a result, the revision was dismissed.

5. In consideration of the facts noted above, I have no hesitation to note that the Divisional Joint Registrar passed the impugned order in haste may be at the behest of the respondent No.2. Therefore, impugned order not only suffers from gross irregulity being passed in breach of principles of natural justice but also against the law, for the reasons, stated hereinafter and therefore, deserves to be quashed and set aside.

REASONS:

[6] The Hon'ble Apex Court in the case of Indrani Wahi Vs. Registrar of Cooperative Societies (Civil Appeal 4930/2006), held that the cooperative society was bound by nomination made by the deceased and it was bound to transfer the shares to the nominee. However, clarified that, it is open to other members of the family to pursue their case of succession or inheritance, in consonance with law. As such, held though , the Cooperative Society is bound by a valid nomination; however, it does not mean that nominee becomes owner of the property, but that he holds the property in trust for the legal heirs. As such, legal heirs of the deceased can always approach

appropriate Court to stake their claim to their share of the deceased property including the flat. Once they obtain the relevant order from the Court, the society is bound to transfer the flat/ shares in their name.

[7] The Maharashtra Cooperative Societies Act, 1960 earlier provided under Section 30, that society shall transfer the share or interest of the deceased member to a person nominated in accordance with the rules or if no person has been so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member. However, provisions of this section shall not apply to the Housing Societies w.e.f. 9th March, 2019, in view of Section 154-B(2) of Maharashtra Cooperative Societies (Amendment) Act, 2019. In any event, by Maharashtra Cooperative Societies (Amendment)Act, 2019 Section 154-13 came to be inserted under Chapter XXIII-B with effect from 9th March, 2019. It reads under:

> "154-13. On the death of a Member of a society, the society shall transfer share, right, title and interest in the property of the deceased Member in the society to a person or persons on the basis of testamentary documents or succession certificate or legal heirship certificate or document of family arrangement executed by the persons, who are entitled to inherit the property of the deceased Member or to a person duly nominated in accordance with the rules:
>
> Provided that, society shall admit nominee as a provisional Member after the death of a Member till legal heir or heirs or a person who is entitled to the flat and shares in accordance with succession law or under will or testamentary document are admitted as Member in place of such deceased Member:
>
> Provided further that, if no person has been so nominated, society shall admit such person as provisional member as may appear to the committee to be the heir or legal representative of the deceased Member in the manner as may be prescribed."

Thus as of now in terms of Section 154B-13, as inserted w.e.f. 9th March, 2019, society is empowered to transfer share, right, title and interest of the deceased member in the society to a person, on the basis of (i) testamentary documents or (ii) succession certificate or (iii) legal heir-ship certificate or (iv) document of family arrangement executed by persons, who are entitled to inherit the property of deceased member or (v) to a person duly nominated in accordance with the Rules. However, the first proviso appended thereto, clarifies that a nominee shall be admitted, only as a provisional member, within the meaning of Section 154B -1 (18) (c) of the MCS Act till legal heir or heirs or a person entitled to the flat and shares in accordance with Succession Law or under Will or testamentary document or admitted as member in place of such deceased member.

[8] In the case at hand, Petitioner is a person duly nominated in accordance with Rules. The nomination was duly acknowledged by the society and recorded in the

register. In that view of the matter, the society shall admit the petitioner as a provisional member of the society in terms of Clause (c) of Section 154-B-1 (18) of the MCS Act, as amended and may call upon the Respondent No.2 to produce succession certificate or a legal heir-ship certificate or testamentary document as the case may, be for claiming the right in the flat and membership of the deceased but till then the Petitioner shall be a provisional member of the Society.

7. In consideration of facts above, the impugned order dated 21st August, 2022 passed by the Divisional Joint Registrar Cooperative Societies, Mumbai Division, Mumbai in Revisional Application No. 09 of is quashed and set aside. Rule made absolute and petition is disposed of in the above terms

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2023(1)MLPJ29

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Sandeep V Marne]

Writ Petition No. 11351 of 2022 **dated 22/11/2022**

Laxman Dattatray Jadhav; Bhagwan Bhimrao Khawale; Tukaram Laxman Gavhane; Sayyad Allauddin Sayyad Rajesab; Sayyad Miskin Sayyad Husen

Versus

Taluka Co-operative Election Officer and Assistant Registrar Co-operative Societies; Sinchan Karmachari Sahkari Patsanstha Ltd; Sunil Dnyaneshwar Kakade

NOMINAL MEMBERS

Maharashtra Co-Operative Societies Act, 1960 Sec. 27, Sec. 11, Sec. 154, Sec. 24, Sec. 144-whether an employee can continue as member of Salary Earners' Credit Co-operative Society and whether his name can be continued in voters list after his retirement from service -defeat the very objective behind establishment of the Society -nominal members of the society- retired employee does not earn any salary -does not enjoy the privilege of voting- cannot remain an active member - Section 24 (2)- nominal members are not entitled to vote -Petition-Dismissed

[Para 19,20,21]

Acts Referred:

Maharashtra Co-Operative Societies Act, 1960 Sec. 27, Sec. 11, Sec. 154, Sec. 24, Sec. 144

Counsel:

Kamlakar J Suryawanshi, S K Kadam

JUDGEMENT

Sandeep V Marne, J.

[1] Rule. Rule is made returnable forthwith. The learned advocate Mr. S.K. Kadam waives notice on behalf of respondent no.1. At the joint request of the parties, the matter is heard finally at the admission stage.

[2] The issue that has attracted the attention of this court is, whether an employee can continue as member of Salary Earners' Credit Co-operative Society and whether his name can be continued in voters list after his retirement from service.

[3] The issue arises on account of order dated 12.11.2022 passed by the Taluka Co-operative Election Officer and the Assistant Registrar of Co-operative Societies, Parbhani directing deletion of names of petitioners from voters list on account of their retirements from service.

[4] Brief facts of the case are that Sinchan Karmachari Sahakari Patsanstha Ltd., Parbhani has been established inter alia with the objective of making available credit facilities to its members. It is registered as a Salary Earners' Credit Co-operative Society. The members of the society are employees of Irrigation Department of the Government of Maharashtra. Five petitioners were employees of the Irrigation Department and also members of the society. They were also elected on the Board of Directors of the Society.

[5] Petitioners have retired from service. A complaint dated 16.07.2019 was made alleging that they continued to function on the Board of Directors despite their retirements. On that application, an order came to be passed on 18.11.2019 by the Assistant Registrar of Co-operative Societies, Parbhani inter alia removing them from the posts of Director. On an appeal being preferred by them before the Divisional Joint Registrar of Co-operative Societies, Aurangabad, order of the Assistant Registrar came to be set aside. The complainants, at whose instance the Assistant Registrar had passed order removing petitioners from the post of Director, filed Writ Petition No.6178 of 2020 which came to be disposed of on 18.08.2022 granting liberty to them to prefer a revision before the State Government under Section 154 of the Maharashtra Co-operative Societies Act, 1960 (in short 'Act of 1960'). This is how the petitioners continued to hold the post of Directors of the Society.

[6] As the term of Board of Directors of the Society had come to an end, elections for appointment of new Board of Directors are scheduled to be held. By letter dated 29.10.2022 a provisional voters' list was published inviting objections. It included names of petitioners. Respondent no.3 objected to inclusion of their names in the provisional voters list and sought deletion of their names. After submission of replies and after conducting hearings, the Taluka Co-operative Election Officer and Assistant Registrar of Co-operative Societies, Parbhani passed order dated 12.11.2022 deleting the names of petitioners from final voters list on the ground that they had retired from service. It is held that retired employees can be treated as nominal members of the

Society under the provisions of Section 144-5A of the Act of 1960. It is further held that under the provisions of Section 24 (2), nominal members are not entitled to vote. On these grounds, the names of petitioners have been deleted from the voters list. The order dated 12.11.2022 is the subject matter of challenge in the present petition.

[7] Mr. Suryawanshi, the learned counsel for the petitioners would submit that the membership of petitioners has not been terminated under Section 11 of the Act of 1960. That they continue not only as members, but also as Directors of the Society. Placing heavy reliance on the order passed by the Divisional Joint Registrar, Co-operative Societies, Aurangabad dated 10.02.2020 Mr. Suryawanshi would contend that the issue with regard to continuance of petitioners as members as well as Directors has been finally settled and the same cannot be reopened. He would further submit that the Election Officer can otherwise not decide any issue about membership of petitioners.

[8] Referring to the provisions of Byelaw no. D-1.1 of the Byelaws of the Society, Mr. Suryawanshi would contend that the same applies only for the purpose of admission of a new member and that the Byelaw D-1.1 is irrelevant for deciding whether a person would continue to be a member or not. Relying on Byelaw D-1.2, Mr. Suryawanshi would contend that the petitioners have not attracted any of the eventualities under that Byelaw for becoming ineligible as members. He would further contend that the provisions of Section 144-5A of the Act of 1960, which is referred to in the impugned order, has no application on the issue of eligibility as member or deletion of names from voters list. He would submit that the said provision deals with acceptance of deposits from members / non-members. Mr. Suryawanshi would further contend that the petitioners are active members and not nominal members of the Society and therefore provisions under Sections 24 and 27 of the Act of 1960 have no application.

[9] In support of his contentions that the Election Officer has no power to go into issue of eligibility of the person as a member and that the such power can be exercised only by the Registrar under Section 11 of the Act of 1960, Mr. Suryawanshi would rely upon the following judgments:

(i) Dhondiba Parshuram Lakade and Others Vs. Someshwar Sahakari Sakhar Karkhana Ltd and Others,1979 MhLJ 311

(ii) **Prataprao Govindrao Patil and another vs. The State of Maharashtra and others,** Writ Petition No.2491 of 2021 decided on 08.02.2021.

(iii) **Nitin vs. Prataprao Govindrao Patil and Ors,** order of the Supreme Court dated 18.03.2021 upholding the judgment of this Court in **Prataprao Govindrao Patil** (supra).

(iv) **Suresh Ambadasrao Varpudkar vs. District Co-operative Election Officer & Others,** Writ Petition No.3454 of 2015 decided on 27.03.2015

[10] On the other hand, Mr. Kadam, the learned counsel for respondent no.1 would oppose the petition. He would submit that the very objective of the Society is to extend credit facilities to the employees with an arrangement of recovery of installments and due amounts through salary. That upon retirement of an employee, the Society cannot recover the amount of loan and can therefore no longer extend any credit facility to a retired employee. He would therefore submit that such a retired employee cannot continue as an active member of the Society and is required to be treated as a nominal member within the meaning of Section 144-5A of the Act of 1960. He would therefore submit that a nominal member is not entitled to vote under the provisions of Section 27 and therefore the names of petitioners have rightly been deleted form the voters list. He prays for dismissal of the petition.

[11] Considering the order that I propose to pass, I did not deem it necessary to issue notice to respondent no.3, upon whose complaint the impugned order has been passed.

[12] After having heard the learned counsel for the parties, it is clear that the Society has been registered as a Salary Earners' Credit Co-operative Society. Therefore, ordinarily only a salary earning employee should remain as an active member of the Society. Whether a retired employee can also remain as an active member of the Society for the purpose of contesting elections and voting, that is the issue involved in the present petition.

[13] It would be necessary to first examine the Byelaws of the Society. Under Byelaw D-1.1, only a permanent employee can be admitted as a member of the Society. Admittedly, petitioners, having retired from service, are no longer permanent employees of the establishment. Faced with this difficulty, Mr. Suryawanshi has contended that Byelaw D-1.1 applies only for the purpose of admission of an employee as a new member of the Society and that the same would have no application to the issue of termination of membership. I am unable to agree. If a person is not eligible to be admitted as a member of the Society, upon loosing status as a permanent employee, he would acquire ineligibility to continue as a member. If such a contention is accepted, a permanently appointed employee admitted as a new member would continue to hold membership even if he resigns from service. I am therefore of the view that the requirement of being a permanent employee is applicable both for admission of a new member as well as for continuing as an active member. The contention therefore deserves summary rejection.

[14] One must also bear in mind the objective behind establishment of a Salary Earners' Credit Co-operative Society, the objective being to extend credit facilities to the employees in service. As rightly submitted by Mr. Kadam, there is an inbuilt mechanism of recovery of installments / loans from the salaries of the employees in service. After their retirement, since the Society cannot recover its dues, no credit

facilities can be extended to them. This is one more reason why only a serving employee should ideally remain as an active member of the Society.

[15] Heavy reliance is placed by Mr. Suryawanshi on the previous proceedings relating to removal of petitioners from the post of Director of the Society. It is his case that the issue with regard to petitioners' membership of the Society is finally concluded by order dated 10.02.2020 passed by the Divisional Joint Registrar. However, perusal of that order would indicate that the Divisional Joint Registrar has not recorded any finding to the effect that petitioners continued to remain as active members of the Society, despite their retirements from service. The Divisional Joint Registrar has not examined the provisions of Byelaws nor distinction between an active and a nominal member. He was essentially determining validity of order of Assistant Registrar removing Petitioners from Board of Directors. The order of the Assistant Registrar is set aside on various counts including jurisdiction. Therefore, order passed by the Divisional Joint Registrar cannot cited to contend that the issue of entitlement of petitioners to continue as active members of the society has either been decided or that it has attained finality in any manner.

[16] Now, I turn to the submission of Mr. Suryawanshi that the Election Officer does not have jurisdiction to decide the issue of eligibility of petitioners to continue as a members of the Society. In support of his contentions, Mr. Suryawanshi has relied upon the above listed judgments. I agree with this submission of Mr. Suryawanshi. However, perusal of the order passed by the Election Officer would indicate that he has nowhere recorded a finding that petitioners have ceased to be members of the Society. What is held essentially is that they would now continue to be nominal members of the Society after their retirement from service. This findings has been recorded by referring to the provisions of Section 144-5A of the Act of 1960, which reads thus:

> **"144-5A. Prohibition on accepting deposit from nonmembers.**
>
> Notwithstanding anything contained in any Act, a non-agricultural co-operative credit society shall not accept deposit from any person who is not its member. If any society which has accepted deposit from non-members, before the date of commencement of the said Amendment Act, 2017, it shall either enroll them as members or refund deposits of all non-members within two years from commencement of the said Amendment Act, 2017.
>
> **Provided that, the salary earners' credit co-operative society may accept deposits voluntarily from their members after their retirement by enrolling them as nominal members.**
>
> Explanation.- For the purposes of this section, "member" does not include nominal member."
>
> (emphasis supplied)

[17] The concept of nominal membership is recognized under Section 24 of the Act which reads thus:

"24. [Nominal and associate member]

(1) Notwithstanding anything contained in section 22, a society may admit any person as a [nominal or associate member].

(2) A nominal member shall not be entitled to any share in any form whatsoever in the profits or assets of the society as such member. A nominal member shall ordinarily not have any of the privileges and rights of a member, but such a member, or an associate member, may, subject to the provisions of sub-section (8) of section 27, have such privileges and rights and be subject to such liabilities of a member, as may be specified in the by-laws of the society."

[18] The provision about entitlement of members to vote is dealt with under Section 27, Sub Section 8 of reads thus:

"27. Voting powers of members

[(1) to (7) .....

(8) No nominal member shall have the right to vote [and no such member shall be eligible to be a member of a committee or for appointment as a representative of the society on any other society].'

(9) to (12) ....."

[19] Thus the concept of nominal membership after retirement of an employee is recognized by the Act. Thus objective behind registration of a salary earners' credit cooperative society together with the provision under Section 144-5A of the Act on 1960, would indicate that an active member can continue to remain in a capacity as a nominal member after his retirement. In his capacity as a nominal member, he can make voluntary deposits with a salary earners' credit cooperative society. However under Sub Section 8 of Section 27 of the Act of 1960, such a nominal member does not enjoy the privilege of voting. The cumulative reading of the above provisions would lead to an inescapable conclusion that after retirement of an employee, he can continue only as a nominal member of a salary earners' credit cooperative society and he is not entitled to vote.

[20] Even otherwise, considering the broad objective behind establishment of a Salary Earners' Credit Co-operative Society, in my view, accepting the contentions of the petitioners would lead to an absurd situation where a retired employee would indefinitely continue as member, contest elections and occupy positions in the management committee. Since the Society will not be in a position to extend any credit facilities to a retired employee, continuation of his membership with the Society would be only for the purpose of participation in the elections. This would completely defeat the very objective behind establishment of the Society. A retired employee does not

earn any salary and cannot remain an active member of the Salary Earners' Credit Co-operative Society. The interpretation sought to be placed by Petitioners which leads to absurdity will have to be avoided and the one that subserves the objective behind establishment of such society needs to be upheld. The Election Officer has therefore rightly held the petitioners to be nominal members of the Society.

[21] The judgments cited by Mr. Suryawanshi are of no avail as the Election Officer has nowhere cancelled the membership of the petitioners. All that he has done is to treat petitioners as nominal members of the society.

[22] In the result, I do not find that any error is committed by the Election Officer while passing the impugned order. The petition, being devoid of any merits, deserves to be dismissed and is accordingly dismissed without any orders as to costs. Rule is discharged

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2023(1)MLPJ35

IN THE SUPREME COURT OF INDIA

[From KERALA HIGH COURT]

[Before M R Shah; Krishna Murari]

Civil Appeal No. 7128 of 2022 **dated 17/11/2022**

Leelamma Mathew

Versus

Indian Overseas Bank & Ors

SUIT FOR RECOVERY OF DAMAGES

Transfer of Property Act, 1882 Sec. 54 - Limitation Act, 1963 Art. 113 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 14, Sec. 34 - Security Interest (Enforcement) Rules, 2002 Rule 8 -Suit for recovery of damages/ compensation with respect to 14.40 cents - Trial Court decreed the suit and directed the defendant - Bank to pay to the plaintiff a sum of Rs.58,10,000/- with future interest @ 12% pa from the date of suit till realization - High Court has allowed the said appeal preferred by respondent no.1 herein - Bank and has quashed and set aside the judgment and decree passed by the learned Trial Court - Held, Rule 8 of the 2002 Rules cast a duty on the authorized officer to take all precautions before putting the secured asset to sell - As per sub-rule 5 of Rule 8 before effecting sale of the immovable property (secured assets) the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor and fix the reserve price of the property and may sell the whole or any part of such immovable secured asset - Therefore, when the reserve price was fixed the same was for 54 cents - Therefore, it can be presumed that the Bank was aware

that the actual area of the secured asset is less than 54 cents - As per Section 54 of the Transfer of Property Act the seller was bound to disclose any buyer any material defect in the property of which the buyer is not aware and which the buyer could not ordinarily discover - Under the circumstances also the submission on behalf of the Bank that the property was put to auction on "as is where is" and "as is what is" condition, thereafter the plaintiff shall not be entitled to compensation of the less area cannot be accepted - Impugned judgment is quashed and set aside - Appeal is allowed

[Paras 4 and 5]

Law Point: Seller was bound to disclose any buyer any material defect in the property of which the buyer is not aware and which the buyer could not ordinarily discover

Acts Referred:

Transfer of Property Act, 1882 Sec. 54

Limitation Act, 1963 Art. 113

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 14, Sec. 34

Security Interest (Enforcement) Rules, 2002 Rule 8

Counsel:

M T George, Suvendra Kumar, Susy Abraham, Johns George, Kunal Tandon, Surendra Kumar, Kush Chaturvedi, Priyashree Sharma P H, Syed Faraz Alam, Atharva Gaur

JUDGEMENT

M.R. Shah, J.

[1] Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Kerala at Ernakulam in RFA No.379 of 2014 by which the High Court has allowed the said appeal preferred by respondent no.1 herein - Bank and has quashed and set aside the judgment and decree passed by the learned Trial Court dated 31.01.2014 in OS No.630 of 2012 directing the Bank to pay to the plaintiff a sum of Rs.58,10,000/- with interest at the rate of 12% per annum from the date of suit till realization, the original plaintiff has preferred the present appeal.

[2] That the defendant - Bank secured the property in Survey No.48/1 in Tirur Taluk, Tanur Village in exercise of powers under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (hereinafter referred to as 'SARFAESI Act, 2002')

2.1 That the Bank secured the possession and thereafter by notice for auction dated 23.01.2007 the secured asset admeasuring 54 cents was put to auction. The appellant - original plaintiff after inspection of the property submitted the quotation for

sale of 54 cents of land and offered Rs.32,05,000/. It appears that in the quotation the original plaintiff specifically stated that the offer of Rs.32,05,000/- is subject to the condition that absolute ownership and vacant possession of full extent of property without encumbrances is handed over. However, by communication dated 05.03.2007, the Bank replied that as in the invitation to the public for tenders, it is stated that the property would be sold in "as is where is" and "as is what is" condition, the original plaintiff may confirm that he is ready and willing to offer the bid and take the property in the present condition. It appears that vide communication dated 08.03.2007, the original plaintiff reiterated that she is ready to purchase the property only if, absolute ownership, vacant possession and full enjoyment of 54 cents of land, free from all encumbrances is given, otherwise, she is not ready to purchase the property, if the Bank is not able to assign absolute ownership, vacant possession and full enjoyment of the property admeasuring 54 cents.

2.2 It appears that thereafter the Bank took the possession of the property pursuant to the order passed by the CJM, Manjeri in an application under Section 14 of the SARFAESI Act. That thereafter the plaintiff paid a total sale consideration in the month of October, 2007. That thereafter the Tehsildar submitted the report dated 21.11.2007 submitting that the actual measurement of the land is 39.60 cents and that the debtor had already transferred 14.40 cents out of land admeasuring 54 cents prior to the creation of the mortgage with the Bank. Despite the above the Bank issued the sale certificate for 54 cents dated 21.11.2007 and handed over the possession of the secured property admeasuring 39.60 cents only however, the sale consideration is issued for 54 cents. That thereafter the sale deed on the basis of the sale certificate was actually executed in favour of the plaintiff only on 01.10.2010 for 54 cents. That thereafter the plaintiff instituted the suit for recovery of damages/compensation with respect to 14.40 cents. It was the case of the plaintiff that as the plaintiff paid a total sale consideration for 54 cents of the land and even the sale certificate and the sale deed was executed for 54 cents the plaintiff has been handed over the possession of 39.60 cents of the land only and therefore the plaintiff is entitled to the damages/compensation with respect to the 14.40 cents which was less than the area for which the plaintiff paid the amount i.e. 54 cents. It was the case on behalf of the plaintiff that it was the duty of the bank when accepted the total sale consideration for 54 cents, to hand over the peaceful and vacant possession of the land admeasuring 54 cents. It was also the case on behalf of the plaintiff that as the bank was aware of the true facts that the area of the property/land is less despite that the bank did not disclose the true facts to the plaintiff and suppressed the material fact and played a fraud.

2.3 The suit was resisted by the defendant - Bank by submitting that the sale was on "as is where is" and "as is what is" basis and that the plaintiff was aware that the area of the property is less than 54 cents and still she purchased the secured property. It was the case on behalf of the defendants that there was no fraud committed by them. It was submitted that the documents submitted to them by the borrowers were relating to

the total extent of 54 cents of land which was put to auction. That it was the case on behalf of the defendants that the plaintiff is not entitled to any compensation from the defendants. The learned Trial Court framed the following issues:

"(i) Whether the suit is maintainable?

(ii) Whether the plaintiff is entitled to get a decree as prayed for?

(iii) Reliefs and Costs?"

2.4 That the learned Trial Court decreed the suit and directed the defendant - Bank to pay to the plaintiff a sum of Rs.58,10,000/- with future interest @ 12% pa from the date of suit till realization.

2.5 Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned Trial Court, the defendant - Bank filed the present appeal before the High Court. By the impugned judgment and order the High Court has allowed the appeal preferred by the defendants and has quashed and set aside the decree passed by the learned Trial Court inter alia on the grounds (i) that as the fraud has not been established and proved the suit was barred in view of Section 34 of the SARFAESI Act; (ii) That the plaintiff was aware of the fact that the actual area of the secured property put to auction is less than 54 cents and therefore it cannot be said that there was any non-disclosure on the part of the Bank; (iii) that the property was put to auction "as is where is" and "as is what is" basis?

2.6 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court allowing the appeal and quashing and setting aside the decree passed by the learned Trial Court and consequently dismissing the suit, the original plaintiff has preferred the present appeal.

[3] Shri M.T. George, learned counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case the Hon'ble High Court has seriously erred in quashing and setting aside the decree passed by the learned Trial Court. It is submitted that as the suit was for damages/compensation the same cannot be barred under Section 34 of the SARFAESI Act.

3.1 It is submitted that therefore the Hon'ble High Court has materially erred in observing and holding that the suit was barred by Section 34 of the SARFAESI Act.

3.2 It is further submitted by learned counsel for the appellant that the appellant purchased 54 cents of the secured property auctioned by the defendant - Bank in exercise of the powers vested with it under the provisions of the SARFAESI Act. That the offer made by the bank through the auction notice dated 23.01.2007 was for sale of 54 cents of land in Survey No.48/1. That the appellant offered Rs.32,05,000/- specifically stating that the absolute ownership and possession of 54 cents of lands would be transferred without any encumbrances. It is submitted that as the offer was conditional the bank by letter dated 05.03.2007 informed the appellant that the bank had invited tenders on the basis of "as is where is" and "as is what is" condition and if

the appellant is willing to buy the property on the said condition, she has to inform the Bank. It is submitted that thereafter the appellant replied on 08.03.2007 the tender bid be considered only if the bank could transfer absolute ownership and possession over the entire 54 cents of land without any encumbrances and if not, she would withdraw her offer and the earnest money would be returned. It is submitted that the bank took the possession of the auctioned property through the intervention of the Court under Section 14 of the SARFAESI Act and asked the appellant to pay the balance sale consideration which was done by the appellant on 17.10.2007. Consequently, the bank issued certificate of sale for 54 cents of land on 21.11.2007 and thereafter the sale certificate was registered and the sale deed was executed on 01.02.2010 for 54 cents of land. It is submitted that therefore when the bank transferred to the appellant only 39.60 cents of land a fact which was known to the bank and the appellant paid an amount of Rs.32,05,000/- for 54 cents of land the appellant - original plaintiff is entitled to the remaining area of land i.e. 14.40 cents. It is submitted that therefore the Trial Court had rightly decreed the suit.

3.3 Learned Counsel appearing on behalf of the appellant has further submitted that the respondent - bank while exercising the powers provided under the SARFAESI Act failed to comply with Rule 8(6)(a) and (f) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as Rules 2002) and Section 55(1)(a) of the Transfer of Property Act (hereinafter referred to as 'TP Act'). It is submitted that the disclosures can be said to be fraudulent in view of Section 55(1)(a) of the TP Act and the relevant provisions of the Rules, 2002 a duty is cast upon the Authorised Officer to disclose to the auction purchaser any material defect in the title failing which it could be construed that the purchaser was misled. Reliance is placed on the decision of this Court in the case of **Haryana Financial Corporation and Anr. Vs. Rajesh Gupta**, 2010 1 SCC 655.

3.4 It is submitted that Rule 8(6)(a) and (f) of the Rules 2002 mandates additional duty on the Authorised Officer to make known to the bidders before auction any other thing which the Authorised Officer considers it material for a purchaser to know in order to judge the nature and value of the property. It is submitted that therefore the immunity claimed by the bank on the pretext “as is where is” and “as is what is” basis is no more a defence.

3.5 It is submitted that out of the total road frontage of 70.1 meters which portion consisted of 14.40 cents has captured 46.3 meters and remaining 39.60 cents were only 23.8 as road frontage which has a direct bearing on the market value of the property.

Making above submissions, it is prayed to allow the present appeal and confirm the judgment and decree passed by the learned Trial Court.

[4] Present appeal is vehemently opposed by Shri Kunal Tandon, learned counsel appearing on behalf of the Respondent - Bank. It is submitted that as the property in question was put to auction on “as is where is” and “as is what is” basis and the

plaintiff - auction purchaser was from the very beginning aware that the area of the land is less than what was advertised and despite that the offer was made which was accepted, the High Court has rightly set aside the judgment and decree passed by the learned Trial Court.

4.1 It is submitted that as rightly observed by the High Court it was not the case that the Bank had no saleable interest at all. It is submitted that the Tehsildar gave its report on 21.11.2007 about the exact extent of the auction property. Thus, no fault was said to the found with the Bank.

4.2 It is submitted that the Hon'ble High Court after looking at the evidence as concluded that the original plaintiff was fully aware of the deficiency in extent.

4.3 It is further submitted that even otherwise as observed and held by Hon'ble High Court the suit itself was barred under Section 34 of the SARFAESI Act.

4.4 It is submitted that in terms of Section 34 of the SARFAESI Act, the jurisdiction of the Civil Court is absolute barred except in case the plaintiff is able to show fraud or misrepresentation. It is submitted that in the present case from the communications on record and that the possession was handed over to the bank pursuant to the order under Section 14 of the SARFAESI Act on 08.10.2007 and thereafter the plaintiff made the payments on various dates, leading to the issuance of the sale certificate on 21.11.2007, which was registered almost 3 years later on 01.02.2010, it is very much clear that the plaintiff was aware of the extent of the property and no case of fraud is made out.

4.5 Even the claim of the plaintiff was barred by limitation. It is submitted that the suit was filed in the year 2012 while the auction sale took place on 05.02.2007 and the sale certificate was issued on 21.11.2007. The payments were made on October, 2007. It is submitted that thus the cause of action arose on 05.02.2007 and thereafter on 21.11.2007. It is submitted therefore as per Article 113 of the Limitation Act, the suit was barred by limitation being beyond three years from the first date of knowledge.

Making above submissions it is prayed to dismiss the present appeal.

[5] We have heard learned counsel appearing for the respective parties at length.

5.1 At the outset, it is required to be noted that after the Bank received the possession of the secured property in exercise of powers under the SARFAESI Act, the property in question admeasuring 54 cents was put to auction, by Auction Notice dated 23.01.2007. The plaintiff on the basis of the representation made and the auction notice in which the land was put to auction was stated to be 54 cents submitted her offer of Rs.32,05,000/- for sale of 54 cents. At this stage, it is required to be noted that in the quotation itself the plaintiff specifically stated that the offer of Rs.32,05,000/- is subject to the condition that the absolute ownership and vacant possession of full extent of property without encumbrances is handed over. However, the Bank replied that as in the invitation to the public for tenders, it is stated that the property would be sold on “as is where is” and “as is what is” condition, the plaintiff may confirm that

the plaintiff is ready to offer the bid and take the property in the present condition. However, immediately vide communication dated 08.03.2007 the plaintiff reiterated that she is ready to purchase the property only if, absolute ownership, vacant possession and full enjoyment of 54 cents of land, free from all encumbrances is given, otherwise, she is not ready to purchase the property, if the Bank is not able to assign absolute ownership, vacant possession and full enjoyment of the property admeasuring 54 cents. At this stage it is required to be noted that the Bank took the possession of the property auctioned on paper. However, the actual possession was handed over to the Bank in the month of October, 2007 pursuant to the order passed by the CJM, Manjeri in an application under Section 14 of the SARFAESI Act. That thereafter the Tehsildar submitted the report dated 21.11.2007 submitting that the actual measurement of the land is 39.60 cents and that the debtor had already transferred 14.40 cents out of land admeasuring 54 cents prior to creation of the mortgage with the Bank. Despite the above the Bank issued the sale certificate dated 21.11.2007 for 54 cents of land, however, handed over the possession of the secured property admeasuring 39.60 cents only. The sale consideration received by the Bank was for 54 cents. That thereafter the sale certificate was registered in the month of October, 2010. Thereafter the plaintiff filed the suit for recovery of damages with respect to 14.40 cents. The final certificate was registered on 01.10.2010 and thereafter when the suit was filed in the year 2012 it cannot be said that the suit was barred by limitation. At this stage, it is required to be noted that as such no issue was framed by the learned Trial Court on whether the suit is barred by limitation or not.

5.2 Now so far as the submission on behalf of the plaintiff and the finding recorded by the High Court that the suit was barred by Section 34 of the SARFAESI Act is concerned, at the outset it is required to be noted that the suit was for damages/compensation, with respect to the balance land, which could not have been decided by the DRT or Appellate Tribunal, Section 34 of the SARFAESI Act shall be applicable only in a case where the Debt Recovery Tribunal and/or Appellate Tribunal is empowered to decide the matter under the SARFAESI Act. The plaintiff was not challenging the sale/sale certificate. The plaintiff claimed the damages/compensation with respect to the less area. Therefore, the High Court has seriously erred in holding that the suit was barred by Section 34 of the SARFAESI Act.

5.3 Now so far as the submission on behalf of the Bank that as the property was put to auction on “as is where is” and “as is what is” basis and the plaintiff was aware that the actual area of the property auction is less and thereafter entered into the transaction and therefore the plaintiff cannot claim/pray compensation/damages with respect to the deficiency in the area is concerned, at the outset, it is required to be noted that right from the very beginning the plaintiff insisted for handing over the possession of the 54 cents. When the property was put to auction even the Bank was not in actual possession. The Bank got possession pursuant to the order passed by the District Magistrate and thereafter the measurement was done by Tehsildar in which it

was found that the actual area of the land auctioned was 34.60 cents and 14.40 cents was already transferred by the debtor much earlier. Therefore, at the relevant time when the property was put to auction even the Bank was not aware of the actual measurement and had gone by the document and 54 cents was put to auction. Considering the fact that the auction notice was for 54 cents; the plaintiff submitted the offer of Rs.32,05,000/- for 54 cents; the plaintiff paid the actual amount of sale consideration i.e. Rs.32,05,000/- for 54 cents; the sale certificate was issued for 54 cents and even the sale certificate which was registered in the year 2012 was for 54 cents, thereafter it was not open for the Bank to contend that though the Bank had handed over the possession of 34.60 cents still the sale consideration recovered would be for 54 cents. It was not open for the financial institution like the Bank to take such a plea. Even otherwise it is required to be noted that at least in the month of November, 2007 when the Tehsildar submitted the report, the Bank was aware that the actual area is 34.60 cents and not 54 cents. Thereafter the Bank ought not to have issued the sale certificate for 54 cents. The Bank ought to have been fair and ought to have issued the sale certificate only for 34.60 cents. This shows the conduct on the part of the bank.

5.4 Rule 8 of the 2002 Rules cast a duty on the authorized officer to take all precautions before putting the secured asset to sell. As per sub-rule 5 of Rule 8 before effecting sale of the immovable property (secured assets) the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor and fix the reserve price of the property and may sell the whole or any part of such immovable secured asset. Therefore, when the reserve price was fixed the same was for 54 cents. Therefore, it can be presumed that the Bank was aware that the actual area of the secured asset is less than 54 cents. As per Section 54 of the Transfer of Property Act the seller was bound to disclose any buyer any material defect in the property of which the buyer is not aware and which the buyer could not ordinarily discover. Under the circumstances also the submission on behalf of the Bank that the property was put to auction on “as is where is” and “as is what is” condition, thereafter the plaintiff shall not be entitled to compensation of the less area cannot be accepted.

[6] In view of the above and for the reasons stated above, the High Court has committed an error in allowing the appeal and quashing and setting aside the judgment and decree passed by the learned Trial Court. Consequently, the impugned judgment and order passed by the High Court is hereby quashed and set aside. The judgment and decree passed by the learned Trial Court decreeing the suit is hereby restored. The respondent - Bank to pay the decretal amount to the appellant with interest as per the judgment and decree passed by the learned Trial Court within a period of 8 weeks from today.

The present appeal is allowed with costs which is quantified at Rs.25,000/- which also shall be paid by the Bank to the original plaintiff within a period of eight weeks from today

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2023(1)MLPJ43

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

[Before Uday Umesh Lalit; Ajay Rastogi]

Civil Appeal; Contempt Petition (Civil); Special Leave Petition (Civil) No 8239 of 2022; 38 of 2021; 17009 of 2019 **dated 07/11/2022**

Municipal Corporation of Greater Mumbai & Ors

Versus

Property Owners Association & Ors

PROPERTY TAX

Constitution of India Art. 243X, Art. 14-Mumbai Municipal Corporation Act, 1888 Sec. 127, Sec. 140, Sec. 124, Sec. 61, Sec. 126, Sec. 139, Sec. 140A, Sec. 123, Sec. 125, Sec. 128, Sec. 154, Sec. 139A, Sec. 120 - Property tax can be levied on the basis of capital value of the land or building - 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 - For the purpose of determining capital value, only the present physical attributes and status of the land and build**ing can be considered and not the future prospects of the land - The levy and computation of property tax not with any retrospective operation - Governing principle must be the actual use and not the intended use in future - Till the potential of the property was translated into a habitable building, the land must be 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.**

[Para 36, 38, 39, 40]

Law Point- The capital value of the land and building must be based on situation "in presenti". Till the potential of the property was translated into a habitable building, the land must be 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.

Acts Referred:

Constitution of India Art. 243X, Art. 14

Mumbai Municipal Corporation Act, 1888 Sec. 127, Sec. 140, Sec. 124, Sec. 61, Sec. 126, Sec. 139, Sec. 140A, Sec. 123, Sec. 125, Sec. 128, Sec. 154, Sec. 139A, Sec. 120

Counsel:

Dhruv Mehta, Bhushan Deshmukh, Praral Arora, Chesta Arora, Aditya Ralhan, A Karthik, Neeraj Kishan Kaul, Y P Dandiwala, R K Satpalkar, Dhruv V Sharma, Saswat Pattnaik, Hasan Murtaza, V Sridharan, Ashsish Wad, Tamali Wad, Sidharth Mahajan, Sahil Parghi, M/S J S Wad And Co, H L Tiku, Vikas Kumar, Yashmeet Kaur, Manish Paliwal, M/S Corporate Legal Partners, D K Deshmukh, Hitesh Kumar Sharma, Akhileshwar Jha, Senha Deshmukh, Deepti S Rane, Kavya Lokande, Saandhya S Pawar, Abhishek Bharti, Aarti Mahto, Sandeep Jalan, Amit Dixit, Balaji Srinivasan, Kunal Vajani, Chirag M Shroff, Shubhay Tandon, P N Gupta, Rattan Lal, Bharti Gupta, Shailendra P Singh, Siddharth Dharmadhikari, Aaditya A Pande, Bharat Bagla, Kirti Dadheech, Sachin Patil, Udayaditya Banerjee, Aman Raj Gandhi, E C Agrawala, Shikhil Shiv Suri, Madhu Suri, T R B Sivakumar, K K Khurana, Adbhut Pathak, Chand Qureshi, Anand, Mohammad Usman Siddiqui, Aisha Siddiqui, Sakeena Quidwai

JUDGEMENT

Uday Umesh Lalit, C.J.I.

[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 ("MMC Act", for short) has been enacted by the State Government to consolidate and amend 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

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.

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.

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.
>
> xxx xxx xxx
>
> **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:
>
> 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.
>
> xxx xxx xxx
>
> **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-
>
> *****
>
> (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 XIIA; 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;

xxx xxx xxx

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.

xxx xxx xxx

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 nonresidential 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 nonresidential 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 (and) 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 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 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 subsection (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.

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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 subsection (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) flowerbed 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) OPEN LAND WHERE RESIDENTIAL BUILDING PLAN WITH HIGHER F.S.I. HAS BEEN APPROVED

		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**, 1962 AIR(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.**, 1963 AIR(SC) 1742. . 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**, 1989 3 SCC 132, **Delhi Race Club Limited v. Union of India & Ors.**, 2012 8 SCC 680 , **Devi Das Gopal Krishnan etc. vs. State of Punjab & Ors.**, 1967 AIR(SC) 1895 and **Avinder Singh & Ors. vs. State of Punjab & Ors.**, 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.**, 1974 2 SCC 198, it was submitted that till the potential of the property was translated into a habitable building, the land must be 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.**, 2014 13 SCC 627 to submit that the four components of incidence of tax as explained in Paragraphs 17 and 18 of 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.**, 1999 9 SCC 559, 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 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.,2016 SCCOnlineDel 80 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 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 Gordhandas4 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.**, 1974 2 SCC 198 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 ejusdem 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**, 1963 AIR(SC) 1742 and **Polychem Ltd.**, 1974 2 SCC 198 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.

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3 The expressions were added / substituted by 2010 Amendment. The erstwhile subsection (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)

2023(1)MLPJ92

IN THE SUPREME COURT OF INDIA

[From ALLAHABAD HIGH COURT]

[Before M R Shah; M M Sundresh]

Civil Appeal Nos. 8331 of 2022, 8332 of 2022, 8333 of 2022, 8334 of 2022, 8335 of 2022, 8336 of 2022, 8337 of 2022, 8338 of 2022, 8339 of 2022, 8340 of 2022, 8341 of 2022, 8342 of 2022, 8343 of 2022, 8344 of 2022, 8345 of 2022 **dated 17/11/2022**

New Okhla Industrial Development Authority

Versus

Rameshwar @ Ramesh Chandra Sharma

ENHANCEMENT OF COMPENSATION

Land Acquisition Act, 1894 Sec. 4 - Land acquisition - Enhancement of Compensation - Determination of - High Court has enhanced the amount of compensation for the lands acquired to Rs.149 per sq.yard - Held, to saddle with the liability to pay statutory benefits and interest for the delayed period upon the beneficiary/acquiring body would be a financial burden upon the public body and it may increase the project cost which shall be against the public interests - While condoning the delay and enhancing the amount of compensation at par with other land owners, the High Court ought not to have saddled the liability upon the appellant to pay statutory benefits and the interest payable under the Land Acquisition Act, 1894 for the delayed period - Impugned common judgment and order is modified - Appeals are partly allowed

[Para 5]

Law Point: To saddle with the liability to pay statutory benefits and interest for the delayed period upon the beneficiary/acquiring body would be a financial burden upon the public body and it may increase the project cost which shall be against the public interests.

Acts Referred:

Land Acquisition Act, 1894 Sec. 4

Counsel:

Sourav Roy, Kaushal Sharma, Prabudh Singh, Rameshwar Prasad Goyal

JUDGEMENT

M.R. Shah, J.

[1] Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 18.12.2018 passed by the High Court of Judicature at Allahabad in respective First Appeals No.657 of 2017 and other allied First Appeals by which after condoning the delay of 22 years in preferring the respective first appeals, the High

Court has enhanced the amount of compensation for the lands acquired to Rs.149 per sq.yard, the New Okhla Industrial Development Authority (NOIDA) has preferred the present appeals.

[2] Learned counsel appearing on behalf of the appellant (NOIDA) has vehemently submitted that there was a huge delay of 22 years in preferring the appeals by the land owners, which ought not to have been condoned by the High Court.

2.1 In the alternative, it is submitted that in any case the acquiring body - NOIDA shall not be saddled with the liability to pay the statutory benefits and the interest for 22 years, as it would cause financial burden upon the NOIDA and it may affect the project cost.

[3] Learned Counsel appearing on behalf of the land owners have submitted that as such the land owners shall be entitled to compensation at Rs.297/- per sq.yard as determined by this Hon'ble Court in the case of **Nanak (Deceased) through LRS. Vs. New OKHLA Industrial Development Authority and another** decided on 26.9.2018 in **Civil Appeal No.10013 of 2018.**

3.1 It is submitted that in any case when it has been found that the land owners shall be entitled to compensation at Rs.149/- per sq.yard considering the decision of this Hon'ble Court in the case of **New Okhla Industrial Development Authority (NOIDA) VS. Deo Karan & Ors.** decided on 01.05.2018 in **Civil Appeal No.4879 of 2018** and when the same was with respect to the acquisition of the year 1982 and the land owners are entitled to just compensation, no error has been committed by the High Court in entertaining the application for condoning the delay in preferring the appeals and awarding the compensation at par with other land owners whose lands came to be acquired in the year 1982.

[4] We have heard learned counsel for the respective parties at length.

[5] At the outset, it is required to be noted that in the present case the Notification under Section 4(1) of the Land Acquisition Act, 1894 was issued on 05.01.1982. The Reference Court determined the compensation at Rs.20/- per sq.yard by impugned judgment dated 15.12.1993. After a period of 22 years the land owners preferred the present appeals before the High Court. By the impugned common judgment and order the High Court after condoning the delay of 22 years in preferring the appeals has enhanced the amount of compensation to Rs.149/- per sq.yard at par with the land owners in the case of **Deo Karan & Ors.**(supra) by which this Court with respect to the acquisition of the year 1982 determined the compensation at Rs.149/- per sq.yard. Therefore, in the present case the land owners shall be entitled to compensation at Rs.149/- per sq.yard at par with other land owners whose lands were acquired in the year 1982. It cannot be disputed that the land owners, whose lands have been acquired under the provisions of Land Acquisition Act, 1984, are entitled to a reasonable and just compensation at par with the other similarly situated land owners.

5.1 Now so far as the submission on behalf of the land owners that they shall be entitled to compensation at the rate of Rs.297/- per sq.yard relying upon the decision of this Court in the case of **Nanak (Deceased) through LRS.** (supra) is concerned, at the outset it is required to be noted that as such the land owners have not preferred the appeals before this Court. It is the NOIDA who has preferred the present appeals. Under the circumstances in the appeals preferred by the NOIDA questioning the determination of the compensation at Rs.149/- per sq.yard, the land owners cannot be permitted to say that they are entitled to the enhanced amount of compensation over and above Rs.149/- per sq.yard. So far as the land owners are concerned, the impugned judgment and order passed by the High Court determining and/or awarding the compensation of Rs.149/- per sq.yard has attained the finality.

5.2 Even otherwise as rightly observed by the High Court, the land owners are not entitled to the compensation at Rs.297/- per sq.yard considering the decision of this Court in the case of **Nanak (Deceased) through LRS.** (supra). Nothing was pointed out that how the case of the land owners was comparable with that of the case of **Nanak (Deceased) through LRS.** (supra). On the contrary with respect to the acquisition of the year 1982, this Hon'ble Court determined the compensation at Rs.149/- per sq.yard in the case of **Deo Karan & Ors.** (supra).

5.3 However, at the same time the acquiring body and the beneficiary of acquisition shall not be saddled with the liability of statutory benefits and the interest which may be available under the Land Acquisition Act, 1894 for the delayed period. In the present case the delay of 22 years can be said to be a substantial delay. However, as the claimants are held to be entitled the enhanced amount of compensation, in the facts and circumstances of the case, the High Court can be said to be justified in condoning the delay. However, at the same time, the High Court has erred in awarding other statutory benefits and interest for the delayed period. To saddle with the liability to pay statutory benefits and interest for the delayed period upon the beneficiary/acquiring body would be a financial burden upon the public body and it may increase the project cost which shall be against the public interests. It cannot be disputed that the liability towards the statutory benefits and the interest under the Act, 1984 would be a huge liability considering the interest at the rate of 15% per annum, solatium, price rise etc. Therefore, while condoning the delay and enhancing the amount of compensation at par with other land owners, the High Court ought not to have saddled the liability upon the appellant to pay statutory benefits and the interest payable under the Land Acquisition Act, 1894 for the delayed period. To the aforesaid extent the impugned common judgment and order passed by the High Court is required to be modified and the present appeals are required to be partly allowed to the aforesaid extent.

[6] In view of the above and for the reasons stated above all these Appeals Succeed in part. The impugned common judgment and order passed by the High Court passed in respective appeals is hereby partly allowed to the aforesaid extent denying

the statutory benefits and the interest which may be payable under the Land Acquisition Act, 1894 for the period between the judgment and award passed by the Reference Court i.e. 15.12.1993 till the respective first appeals were filed after curing the defects. Meaning thereby the original land owners/claimants shall not be entitled to any statutory benefits including the interest payable under the Land Acquisition Act, 1894 on the enhanced amount of compensation for the period between 15.12.1993 till the respective first appeals after curing the defects were filed.

Present Appeals are Partly Allowed to the aforesaid extent. However, in the facts and circumstances of the case, there shall be no order as to costs

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2023(1)MLPJ95

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Dipankar Datta; Vibha Kankanwadi]

Writ Petition No 7584 of 2021 **dated 18/11/2022**

Padama W/o Shivchandra Mundada; Subodh S/o Shivchandra Mundada; Girish S/o Shivchandra Mundada

Versus

State of Maharashtra; Director of Town Planning; Deputy Director of Town Planning, Nashik Division; Chief Ofcer, Municipal Council, Chalisgaon

WRIT PETITION

Land Acquisition Act, 1894 Sec. 6-Maharashtra Regional and Town Planning Act, 1966 Sec. 127, Sec. 126, Sec. 23, Sec. 38, Sec. 31-writ petition- Were the petitioners deprived of their property in accordance with law- negative- reservation in terms of section 127- planning authority is not entitled to again reserve the same land in the revised development plan- reservation shall lapse- Lapsing of reservations- by reason having no steps as aforesaid are commenced for its acquisition - Petition allowed

[Para 19,23,24]

Acts Referred:

Land Acquisition Act, 1894 Sec. 6

Maharashtra Regional and Town Planning Act, 1966 Sec. 127, Sec. 126, Sec. 23, Sec. 38, Sec. 31

Counsel:

Dhananjay Mane, D M Pingale, S B Yawalkar, R S Shinde, D B Thoke

JUDGEMENT

Dipankar Datta, C.J.- [1] The frst petitioner is the mother of the second and the third petitioners. They claim to be owners of land bearing Survey No. 362/2B1, admeasuring 1 H 44 R, situated at Chalisgaon, Tq. Chalisgaon, District Jalgaon.

[2] The development plan for Chalisgaon sanctioned in the year 1989 provided reservation for a "play-ground" to the extent of 1813.43 square meters of Survey No. 362/2B1.

[3] Despite lapse of two decades after sanction of the said development plan, no proceedings were initiated by the respondents to acquire the part of Survey No. 362/2B1 which was reserved for a "play-ground". On 19th July, 2013, the petitioners invoked the provisions of section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereafter **"MRTP Act"** for short) by service of notice upon the planning authority, i.e., Chief Ofcer, Municipal Council, Chalisgaon, District Jalgaon, respondent no.4. He was called upon to initiate proceedings under section 126 of the MRTP Act read with section 6 of the Land Acquisition Act, 1894.

[4] Since no action was initiated by the respondent no.4 despite due receipt of the aforesaid notice on 19th July, 2013, the petitioners instituted a writ petition before this Court (WP No. 9897/2014), seeking an order on the respondents to de-reserve 1813.43 square meters of Survey No. 362/2B1 (Part) situated at Chalisgaon, District Jalgaon and for that purpose, issue necessary orders. It was also prayed that reservation of part of Survey No. 362/2B1 from the development plan be deleted.

[5] Such writ petition along with a companion writ petition instituted by separate land owners seeking similar de-reservation of their lands, which were reserved in the fnal development plan prepared by the Council, came up for consideration before a coordinate Bench of this Court on 4th February, 2015. It was noted by the Bench that the petitioners had issued due notice as contemplated under section 127 of the MRTP Act, calling upon the planning authority either to acquire the property under reservation within the time stipulated in the relevant section or to release the same. The Bench, for the reasons recorded while disposing of another writ petition (WP No. 9896/2014) allowed WP No. 9897 of 2014. The order that followed reads as under:

> "3. ..... Reservation, allotment or designation specifed in the development plan in respect of land belonging to the petitioners shall be deemed to have come to an end and the land shall be deemed to have come to an end and the land shall be deemed to have become available to the owner for the purpose of development or otherwise permissible in law of adjacent land under relevant plan.
>
> 4. The Respondents are directed to issue notifcation as contemplated by Section 127 (2) of the M. R. T. P. Act, as expeditiously as possible, preferably within a period of six months from today."

[6] In compliance with the order dated 4th February, 2015, the Government of Maharashtra in the Urban Development Department issued an order dated 26th July, 2016, in exercise of powers conferred by section 127 of the MRTP Act and all other powers enabling it in that behalf. It was notifed that reservation of part of Survey No. 362/2B1 to the extent of 1813.43 square meters, referable to "site no.99 'play ground' (partly)", had since lapsed from the sanctioned development plan of Chalisgaon Municipal Council (Revised) and the said land shall be available to the land owner for the purpose of development as otherwise permissible in the case of adjacent land under the said development plan.

[7] It is the pleaded case of the petitioners that with a mala fde intention, the respondent no.4 had in the meanwhile submitted a proposal for revised development plan and the same was sanctioned on 6th March, 2016. In such revised development plan, part of Survey No. 362/2B1 to the extent of 1813.43 square meters which was earlier reserved and reservation in respect whereof had lapsed, was again shown to be reserved for the purpose of housing people belonging to economically weaker section. A representation dated 16th January, 2018 was submitted by the petitioners before the Deputy Director of Town Planning, Nashik Division, Nashik, respondent no.3, pointing out the mala fde act of the respondent no.4 and a request was made to drop the reservation which was sanctioned in respect of the petitioners' land. Since 1813.43 square meters of land comprised in Survey No. 362/2B1 was not de-reserved in terms of the request so made, the petitioners instituted this writ petition on 2nd July, 2021 seeking inter alia, the following relief:

> "B) Writ Petition may kindly be allowed and the land of the petitioners to the extent of 1813.43 Sq. Meters from land bearing Survey No. 362/2B1 situated at Chalisgaon, Tq. Chalisgaon, Dist. Jalgaon in site no. 97 of the revised development plan of 2016 be directed to be released from the reservation and the said land shall not be treated as a reserved in the revised development plan brought into force on 07.05.2016."

[8] There are two afdavits-in-reply on record; one dated 13th December, 2021 sworn by the incumbent Assistant Director of Town Planning, Jalgaon District, Jalgaon on behalf of the respondents 1 to 3 and the other dated 13th December, 2021 on behalf of the respondent no.4 sworn by the incumbent Chief Ofcer of the Council.

[9] The respondents 1 to 3 countered the allegations of mala fde levelled by the petitioners by pleading as follows:

> "7. "I say and submit that, Chalisgaon Municipal Council had published the Notice under Section 26 of the said Act regarding preparation of 2nd revised draft Development Plan of Chalisgaon on dt. 13/04/2013 i.e. before fling the Petition No.9897/2014. The suggestions & objections were invited from the general Public on the said draft Development Plan, as per the provisions of said Act. Subsequently after following all legal formalities, Chief Ofcer, Chalisgaon

Municipal Council vide its letter dated 11.09.2014 had submitted the 2nd revised draft Development Plan of Chalisgaon to Government for sanction under Section 30 of the said Act. The said 2nd revised draft Development Plan of Chalisgaon had been sanctioned under Section 31 of the said Act on 06/04/2016, after following all legal formalities. Hence Petitioner's say regarding malafde intention of reserving the Petitioners land is hereby denied."

In paragraph 8 of such afdavit, it has signifcantly been averred as follows:

"8. ..... However, in the Second revised development Plan of Chalisgaon sanctioned by Government on dt. 06/04/2016 & came into force from 07/05/2016, the Petitioners land is mistakenly shown as reserved as Site No. 97 'Housing for EWS & Dishoused'. Hence requested to delete the said reservation Site No. 97 'Housing for EWS & Dishoused' on the said land. I say and submit that, there is no mention of mala fde intention of respondent no.4, Municipal Council, Chalisgaon, in the said letter as contended by the petitioner."

(emphasis supplied)

The aforesaid averments are followed by the below mentioned averments in paragraph 9:

"9. ..... the legal proceedings regarding the Second revised development Plan Started way before the fling the Writ Petition No.9897/2014. Further suggestions & objections were invited by publication of notice regarding preparation of second revised draft development plan as prescribed in the said Act, wherein reservation bearing Site No. 97 'Housing for EWS & Dishoused' was proposed. The Petitioners have not raised the objection on the proposed reservation. The Petitioners have brought this issue to the Notice of Respondent No.3 only after completion of all legal formalities and Sanction of second revised draft development plan of Chalisgaon by Government as per the provisions of the said Act. In view of above, Petitioners say that Planning Authority has included the reservation on the land, after the same has lapsed under provision of Section 127 is not correct."

The afdavit concludes with a prayer that upon consideration of the aforesaid facts as well as the say of the respondent no.4, the Court may pass appropriate order as it deems ft and proper.

[10] The respondent no.4, in his afdavit-in-reply, after referring to the previous round of litigation initiated by the petitioners and the order releasing Survey No. 362/2B1 from reservation, has averred as follows:

"3. Thereafter by issuing the necessary gazette by the Urban Development Department/Town Planning, the land was de-reserved. But while preparing the 2nd Revised Plan for the Chalisgaon city, it was again proposed to be kept under reservation for the Economically Weaker Section dishouse persons. It

is pertinent to note here that the said procedure began way back in the year 2013 and the draft reservation plan was kept in the Municipal Council for inspection and to raise the objections by the people at large of the Chalisgaon City. Although the petitioner was having ample opportunity to raise objection to the said proposed draft revised plan he did not opt to do so. Thereafter, in the year 2016, the 2nd Revised Plan was sanctioned and came into efect.

4. In view of the above referred factual score, it is apparent that, the petitioner although having the sufcient opportunity to raise the objection at the earliest possible opportunity i.e. in the year 2013 itself he did not do so. Since the petitioner was slumber, now he cannot raise such grievance at this stage. Therefore in the peculiar facts and circumstances of the case, it would be in the larger interest of the justice whatever order this Hon'ble Court passes in this petition same would be complied meticulously at the end of Respondent Municipal Council."

[11] Having noted the pleadings of the parties, we now proceed to record the rival contentions.

[12] Mr. Mane, learned advocate representing the petitioners, contends that once the subject property has been released from reservation by operation of section 127 of the MRTP Act and there being absence of any provision in such enactment or any other enactment empowering the respondents to re-reserve the same property which has been released from reservation, the Court may proceed to grant relief claimed in the writ petition.

[13] Mr. Mane has placed reliance on the decision of the Supreme Court in **Godrej and Boyce Manufacturing Company Limited Vs. State of Maharashtra and others**, 2015 11 SCC 554, as well as coordinate Bench decisions of this Court in **Kishor s/ o Siddheshwar Wadotkar (Dr.) Vs. Director of Town Planning and others**, 2007 3 MhLJ 399; Kishor Gopalrao Bapat & others Vs. State of Maharashtra & another,2005 4 MhLJ 468; and **Motiwala Land Agencies Vs. The State of Maharashtra,MANU/MH/1794/2014**. According to him, these decisions are authorities for the proposition that once a property (land) stands released from reservation by operation of section 127 of the MRTP Act, the planning authorities have no jurisdiction to re-reserve the same subsequently notwithstanding that such re-reservation could be required for a public purpose.

[14] The writ petition has been resisted by Mr. Yawalkar, learned AGP for the respondents 1 to 3. He has placed before us a notifcation dated 6th April, 2016 issued by the Government of Maharashtra in the Urban Development Department in exercise of power conferred by section 31 (1) of the MRTP Act and contended that there has been no occasion for the respondents to act mala fde in seeking to reserve the subject property after the order dated 4th February, 2015 was passed by this Court in WP No.9897/2014, as alleged by the petitioners. Inviting our attention to the recitals of the

notifcation dated 6th April, 2016, it is his contention that the process for preparation of the revised development plan had commenced as early as on 12th August, 2009, when the Council by its resolution no.918 had made a declaration of its intention to prepare a revised development plan for the entire Chalisgaon area under section 23 read with section 38 of the MRTP Act and notice of such declaration had been published in the ofcial gazette on 11th March, 2010. It is in pursuance of the process that had commenced with the notifcation dated 11th March, 2010 that the fnal notifcation dated 6th April, 2016 was published whereby part of Survey No. 362/2B1 was shown as reserved for the purpose of providing housing to people belonging to the economically weaker section.

[15] Mr. Yawalkar, however, was heard to lament that despite the process having been initiated as far back as in 2009, the same was not brought to the notice of the coordinate Bench while it had the occasion to decide WP No.9897 of 2014 by its order dated 4th February, 2015.

[16] Mr. Yawalkar has placed reliance on the decision of the Supreme Court in **Prafulla C. Dave and others Vs. Municipal Commissioner and others**, 2015 11 SCC 90, to contend that even after the land is released from reservation under section 127 of the MRTP Act, a further reservation is indeed permissible in law.

[17] Mr. Shinde, learned advocate holding for Mr. Thoke, learned advocate for the respondent no.4, adopted the submissions of Mr. Yawalkar.

[18] We have heard learned advocates for the parties and perused the materials on record together with the decisions cited at the Bar.

[19] Section 127 of the MRTP Act provides for lapsing of reservation. This provision, which has engaged the consideration of the Supreme Court as well as this Court on multiple occasions, reads as follows:

> **"127. Lapsing of reservations.** - If any land reserved, allotted or designated for any purpose specifed in any plan under this Act is not acquired by agreement within ten years from the date on which a fnal Regional plan, or fnal development plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority, or as the case may be, appropriate authority to that efect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan."

[20] The underlying principle envisaged in section 127 of the MRTP Act is either to have the land utilized for the purpose it is reserved in the development plan within a given time or to allow the owner or person interested in the land to utilize the same for the purpose it is permissible under the town planning scheme, upon compliance with the provisions thereof. By the very terms of the section, the land under reservation may not be put to use for the purpose it has been reserved at least for a period of ten years. No right accrues in favour of the owner or the person interested in the land during this period of ten years to reclaim it. However, if steps are not taken for its acquisition despite the requisite notice issued by the land owner or the person interested in the land, the reservation shall lapse.

[21] In this proceeding, our concern with section 127 of the MRTP Act is minimal since that stage is already over. Each case has its distinctive features. The distinctive feature of this writ petition, which is missing in the proceedings on which the reported decisions were rendered, is the order dated 26th July, 2016 (by which reservation of the subject property stood lapsed and it stood released for its development by the petitioners) issued in pursuance of the order dated 4th May, 2015 in WP No.9897 of 2014, at a point of time when the notifcation dated 6th April, 2016 had seen the light of the day.

[22] As would be evident from the factual narrative, adverted to above, the process contemplated by section 127 worked itself out with the issuance of the order dated 26th July, 2016 and the subject property stood released from reservation not having been utilized for the purpose for which it was reserved, i.e., for a "play-ground". The question which requires an answer is, what would be the efect of the notifcation dated 6th April, 2016? We are inclined to the view that once the order 26th July, 2016 under section 127 came to be issued, the petitioners acquired an indefeasible right to enjoy/use such property in any manner they like. The drastic power to restrict the use of the land by the owners thereof is no doubt available to the planning authority. Once the power is exercised, reservation or designation of the land and/or its enjoyment/use results in severe abridgement of the right to property. It is settled law that although the legislature may impose reasonable restrictions upon the owner of an immovable property in respect of its enjoyment/user, a restriction on enjoyment/user thereof, except in the mode and manner laid down under the statute, cannot be presumed. The statutory interdict of enjoyment/use of the property has to be strictly construed. However, what is of importance is that Mr. Yawalkar has not shown us any provision in the MRTP Act or any other enactment authorizing a planning authority to reserve a land after reservation thereof has lapsed under section 127.

[23] It is indeed true that in the present case steps were taken to include the subject property in the draft development plan (revised) even prior to the notice under section 127 of the MRTP Act having been issued by the petitioners; however, such fact was not brought to the notice of the coordinate Bench when it was considering WP No.9897 of 2014. We need not enter into the realm of conjecture as to what would

have been the outcome of WP No.9897 of 2014, had there been no omission or neglect or failure of the parties to such proceedings to place full facts before the Court. After all, the order passed on 4th February, 2015 granting relief to the petitioners having been duly complied with by the respondents by issuing the order dated 26th July, 2016, the issue attained fnality. The reservation of the subject property having lapsed and with issuance of the said order releasing the subject property from reservation, the petitioners' assertion that the subject property cannot form part of any revised development plan has to be accepted bearing in mind the law laid down in **Godrej and Boyce Manufacturing Company Limited** (supra), **Kishor s/o Siddheshwar Wadotkar (Dr.)** (supra), **Kishor Gopalrao Bapat** (supra), and **Motiwala Land Agencies** (supra) cited by Mr. Mane, notwithstanding the fact that the notifcation dated 6th April, 2016 sanctioning the draft development plan (2nd revised) intervened in the meanwhile, thereby seeking, inter alia, to reserve the subject property.

[24] Mr. Mane is right in his contention that in all the decisions cited by him the Courts have unambiguously held that after lapsing of reservation under section 127 of the MRTP Act the planning authority is not entitled to again reserve the same land in the revised development plan. Indeed, the right the land owner acquires after the subject property is released from reservation upon lapsing of the reservation in terms of section 127 cannot be defeated by reserving the property in the revised development plan for any public purpose in the absence of any statutory provision permitting such course of action. Article 300A could count as one of the articles in the Constitution with the fewest words but its commandment is signifcant: no person can be deprived of his property save by authority of law. Were the petitioners deprived of their property in accordance with law? The answer is an emphatic 'NO'.

[25] We have considered the decision in **Prafulla C. Dave** (supra), relied upon by Mr. Yawalkar. Such decision does not lay down any proposition of law as advanced by him. The issue under consideration of the Supreme Court was entirely diferent. The Court, in that decision, in fact, returned a fnding that continuation of reservation made for a public purpose in a fnal development plan beyond a period of ten years would get interdicted only after happening of events contemplated by section 127 of the MRTP Act, i.e., giving/service of notice by the land owner to the party to acquire the land and the failure of the authority to so act. It has also been held therein that if the land owner or the person interested himself remains inactive, the provisions of the MRTP Act dealing with the preparation of revised plan under section 38 would have full play. Although it is true that action on the part of such owner or the person interested as required under section 127 must be anterior in point of time to preparation of revised plan and that delayed action of the land owner, after the revised plan has been fnalized and published, will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan, the Court was not dealing with a case of the present nature where, upon the reservation lapsing, an order of de-reservation had been made under section 127 of the MRTP Act. It is in view of this factual

distinction that we hold the ratio of the decision in **Prafulla C. Dave** (supra) not to be applicable in the present case.

[26] On the basis of the judicial authorities that have been cited before us, we have no hesitation to accept the contention as advanced by Mr. Mane on behalf of the petitioners.

[27] We need to add just one more paragraph before we proceed to grant relief to the petitioners. What strikes at the root of Mr. Yawalkar's contention is the pleadings in paragraph 8 of the reply afdavit, highlighted in the extract (supra). There is a clear admission that reservation of the subject property has been mistakenly shown and that some request has been made for deletion of the reservation. In view of such admission, nothing much survives for the respondents to argue.

[28] For the reasons aforesaid, the writ petition succeeds. There shall be an order in terms of prayer clause (B). No costs

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2023(1)MLPJ103

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Sandeep V Marne]

Writ Petition No 11348 of 2021 **dated 14/10/2022**

Pravin Indarchand Jain

Versus

State of Maharashtra; Divisional Joint Registrar, Co-operative Societies; District Deputy Registrar, Co-operative Societies; Shantilal Tarachand Bothra; Rerkha Shantilal Bothra; Sharmila Sudhir Jain;

ADMINISTRATIVE AND JUDICIAL ORDER

Maharashtra Co-Operative Societies Act, 1960 Sec. 78A, Sec. 73CA - Maharashtra Co-Operative Societies Rules, 1961 Rule 58 - Administrative and judicial order - Examination of - Show cause of notice - Necessary to examine other grounds of challenge raised by invoking the provisions of Section 58 of Rule of 1961 or treating respondent as non-defaulter for being mere co-borrower, or whether a guarantor can be termed as a defaulter- Order passed by the DDR was patently illegal - Petition dismissed

[Para 19]

Law Point - It is a settled legal proposition that not only administrative but also judicial orders must be supported by reasons recorded in it.

Acts Referred:

Maharashtra Co-Operative Societies Act, 1960 Sec. 78A, Sec. 73CA

Maharashtra Co-Operative Societies Rules, 1961 Rule 58

Counsel:

Patil Vijay B, K N Lokhande, M V Salunke, V D Salunke, R N Dhorde, P S Dighe, V R Dhorde

JUDGEMENT

Sandeep V. Marne, J.- [1] Rule. Rule made returnable forthwith. With the consent of the learned Advocates for the respective parties, heard finally at the state of admission.

THE CHALLENGE

[2] Petitioner assails the order dated 29.04.2021 passed by the Divisional Joint Registrar of Co-Operative Societies, Nashik, Division Nashik (for short the 'DJR') passed in Appeal A-30/2020, by which the DJR has set aside the order darted 01.12.2020 passed by the District Deputy Registrar (for short the 'DDR') disqualifying respondent Nos. 4 to 7 as representatives of Managing Committee of Mahavir Nagari Sahakari Patpedhi Maryadit Chopda (for short 'Mahavir Society').

FACTUAL MATRIX

[3] Mahavir Society is a registered Co-Operative Society under the provisions of the Maharashtra Co-Operative Societies Act, 1960 (for short the 'Act 1960'). Petitioner claims to be a member of the Mahavir Society. He filed complaints before the DDR on 30.01.2020 and 06.03.2020 seeking disqualification of respondent Nos. 4 to 7, inter-alia on the ground that they were defaulters. A show cause notice was issued to respondent Nos. 4 to 7 on 26.08.2020, calling upon them to explain as to why they should not be disqualified. After hearing parties, DDR passed order dated 01.12.2020 disqualifying respondent Nos. 4 to 7 as being member of the Managing Committee.

[4] Respondent Nos. 4 to 7 filed appeal bearing No. A-30/2020 before DJR. By order dated 20.01.2021, DJR stayed the order passed by DDR. Petitioner filed Writ Petition No. 2952 of 2021 challenging the interim order dated 20.01.2021. The Writ Petition was disposed of by this Court by order dated 01.03.2021 directing DJR to dispose of the appeal within two months. After hearing parties, DJR was pleased to allow the appeal by order dated 29.04.2021 and set aside the order passed by DDR on 01.12.2020. Petitioner is challenging the order dated 29.04.2021 passed by DJR.

SUBMISSIONS ON BEHALF OF PETITIONER

[5] Appearing for petitioner Mr. Vijay Patil, the learned Counsel would invite my attention to the provisions of Section 73CA of the Act, 1960 and contend that the provisions contemplates disqualification of a member if he /she is a defaulter of any Society. He relies upon the reports of the Assistant Registrar and the Deputy Registrar dated 27.02.2020 and 25.08.2020 respectively to contend that the reports conclusively proved that Respondent No. 4 Mr. Shantilal Tarachand Bothra had defaulted on the credit facilities extended to him. He invited my attention to the findings recorded by

DDR in order darted 01.12.2020, to demonstrate the exact amounts of defaults by Respondent Nos. 4 to 7.

[6] Mr. Patil would then invite my attention to the various findings recorded by the DJR while passing the impugned order dated 29.04.2021. He fairly concedes to the position that the defaults in respect of Multi State Co-Operative Credit Society would not be covered under the provisions under Section 73CA of the Act, 1960. He would therefore concentrate only on defaults committed by respondent Nos. 4 to 7 in Mahavir Society. Mr. Patil raises strong objection to the findings recorded by the DJR about respondent No. 6 (Sharmila Sudhir Jain) being a coborrower, is not covered by the definition of the term 'defaulter'. He would submit that even a coborrower is covered by the definition of the term defaulter. Mr. Patil would further submit that even though in respect of respondent No. 7, finding is recorded by the DJR that he has committed default in respect of loan amount of Rs. 7 Lakhs, he is erroneously let off by the DRJ on twin grounds of (i)-not following the procedure of Rule 58 of the Maharashtra Co-Operative Societies Rules, 1961 (for short 'Rules 1961') and (ii) non-consultation with the Federal Society as provided for in Section 78A of the Act, 1960. So far as, the first ground is concerned, Mr. Patil would submit that the provisions of Rule 58 of the Rules,1961 cannot be construed to mean that, on expiry of period of 60 days of issuance of show-cause notice, notices would be automatically absolved of the consequent disqualification under Section 73CA. Inviting my attention to the order passed by the DDR, Mr. Patil, would contend that respondent Nos. 4 to 7 had sought adjournments from time to time which led to the order being passed beyond a period of 60 days. He would submit that respondent Nos. 4 to 7 cannot be permitted to take the benefit of their own wrongs. So far as the second ground is concerned, Mr. Patil would contend that the provisions of Section 78A of the Act, 1960 have no application as the same applies for suspension of a committee. Therefore for disqualification of member under Section 73CA of the Act, 1960, there would be no requirement of consult of Federal Society. Lastly, Mr. Patil would contend that even though, the tenure of respondent Nos. 4 to 7 as the members of Managing Committee was during the years 2015-20, that tenure has been extended from time to time on account of non-holding the elections due to Covid-19 Pandemic. He would further submit that once respondent Nos. 4 to 7 are disqualified, the consequences of disqualification would remain operative for further period of 5 years. He therefore, submits that the petitioner is still interested in seeking qualification of respondent Nos. 4 to 7.

[7] Mr. Patil, relies upon the following judgments in support of his contentions:

1. Pundlik Kadhav Vs.District Deputy Registrar, Co-Operative Societies, Chandrapur and others,1990 2 MhLJ 925.

2. **Narayan Gulabrao Bhoyar Vs. Yeotmal Zilla Parishad Karmachari Sahakari Path Sanstha Maryadit & Anr.**, 2009 6 MhLJ 500.

3. **Damodar Shamrao Pande Vs State of Maharashtra and Others**, 2017 1 AllMR 822.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 5

[8] Mr. R .N. Dhorde, the learned Senior Advocate appearing for respondent No. 5 submits that the intention and object of the petitioner in seeking disqualification of respondent Nos. 4 to 7 is far from bonafide. He would submit that the petitioner is an ex-employee of the Society who has committed misappropriation of the huge amounts leading to filing of the FIR No. 131 of 2020 against him. He would then contend that even though the term of the office of respondent Nos. 4 to 7 was during 2015-20, the petitioner chose to initiate disqualification proceedings only in the year 2020 after lodging of the FIR against him. He would therefore submit that initiation of disqualification proceedings is a counterblast to the Society's action of lodging FIR against him.

[9] Mr. Dhorde would then invite my attention to the show cause notice dated 26.08.2020 to contend that the only allegations against respondent No. 5 in the show cause notice was about the alleged defaults being committed in respect of the Bhaichand Hirachand Raisoni Multi State Co-Operative Credit Society, Ltd., Jalgaon. The petitioner has fairly conceded the position that defaults of Multi-state Co-Operative Society would not be covered under the provisions of Section 73-CA of the Act, 1960. Mr. Dhorde would contend that respondent No. 5 therefore could not have been disqualified. Mr. Dhorde then invited my attention to the complaint filed by the petitioner before the DDR to contend that respondent No. 5 was shown as mere guarantor and that therefore the guarantor cannot come within the definition of term defaulter. In support of his contention Mr. Dhorde would rely upon the decision of this Court in **Utrane Vividh Karyakari Seva Sahahari (V) Society Ltd. & Others Vs. Laxman Dalpat Patil & Others**, 1990 1 BCR 217 to contend that there was a provision for disqualification of a member committing default in his capacity as guarantor, which came to be deleted by way of amendment on 16.10.1987, after which date a guarantor cannot be disqualified as member of the Committee.

[10] Inviting my attention to the order passed by the DDR, Mr. Dhorde would contend that the order is cryptic, unreasoned and without any discussion on the various issues raised by respondent No. 5. In support of his contention that the DDR could not travel beyond the scope of the grounds stated in the show cause notice. Mr. Dhorde, would rely upon the decision of the Apex Court in **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others**, 1978 AIR(SC) 851. Mr. Dhorde, also relied upon the decision of the Apex Court in **Ravi Yashwant Bhoir Vs. District Collector, Raigad & Ors.,2012 DGLS(SC) 143**, in support of his contention that the elected member cannot not be removed from the office in a casual manner.

SUBMISSIONS ON BEHALF OF RESPONDENTS 4,6 & 7

[11] Mr. Salunke, the learned Counsel appearing for respondent Nos. 4,6 and 7 has adopted the submissions of Mr. Dhorde. In addition, he has submitted that petitioner did not raise any specific ground in his complaints dated 06.03.2020, the allegations therein were vague. Since the show cause notice was based on those complaints, there is denial of reasonable opportunity of defence. Mr. Salunke invited my attention to letter dated 24.12.2020 issued by the Mahavir Society to respondent No. 6 certifying that the Society had not granted any credit facility in her name and she was described as a joint borrower only because she had offered her property as security. Referring to the order passed by the DDR, Mr. Salunke would contend that the order passed by the DDR himself has based his order on Section 78A of the Act, 1960 and that therefore the DJR cannot be faulted for relying upon that provision. Referring to the provisions of Rule 58 of the Rules 1961, Mr. Salunke would lay stress on the words 'after giving an opportunity of being heard'. He would submit that on account of absence of necessary allegations in the show cause notice, respondent Nos. 4,6 and 7 were denied proper opportunity of being heard in the matter.

REASONING AND ANALYSIS

[12] It is undisputed that respondent Nos. 4 to 7 were elected as members of Managing Committee of Mahavir Society for the year 2015- 2020. The petitioner commenced his tirade against respondent Nos. 4 to 7 only towards the end of their tenure. This conduct of the petitioner is sought to be attributed to lodging of the FIR for taking action by Mahavir Society against him for alleged misappropriation of funds and lodging FIR against him. Though I do not wish to delve any further in this direction, I would only take notice of the fact that the proceedings for disqualification of respondent Nos. 4 to 7 were initiated towards the end of their tenure.

[13] Perusal of complaints made by the petitioner on 30.01.2020 and 06.03.2020 would show that the same were absolutely vague and lacked material particulars. DDR took cognizance of such vague complaints filed by him for the purpose of issuance of show cause notice dated 26.08.2020. The show cause notice refers to the complaints dated 30.01.2020 and 06.03.2020. It alleges that respondent No. 4 (Shantilal) and respondent No. 5 (Rehka) obtained credit facilities from Bhaichand Hirachand Raisoni Multi State Co-Operative Credit Society, Ltd., Jalgaon and they were defaulters as on 30.01.2020. The notice further alleged that respondent No. 6 (Sharmila) had obtained the credit facilities from Mahavir Society and she was a defaulter. It was further alleged that respondent No. 7 (Pandurang) also obtained credit facilities from Mahavir Society and he was a defaulter.

[14] So far as respondent Nos. 4 and 5 are concerned, the allegations in the show cause notice were restricted to obtaining credit facilities from the Bhaichand Hirachand Raisoni Multi State Co-Operative Credit Society, Ltd., Jalgaon. Mr. Patil has fairly conceded that the defaults committed in respect of credit facilities availed

from a Multi-state Co-Operative Credit Society would not be covered by the provisions of Section 73-CA of the Act, 1960. In view of this position, I need not labour more on this aspect. Suffice it to hold that there was no allegation of commission of default by respondent Nos. 4 and 5 in respect of credit facilities extended by the Society which is covered by Section 73-CA of the Act, 1960.

[15] So far as, respondent Nos. 6 and 7 are concerned, the allegations in the show cause notice were vague. It has been subsequently proved that respondent No. 6 (Sharmila) was never extended any credit facility by Mahavir Society for herself and that she was treated as a coborrower merely because she had offered her property as security to the credit facility availed by Sudhir Book Depot, Chopda. This aspect was not taken into consideration while issuance of the show cause notice, nor while passing of the order by the DDR. About respondent No. 7 show cause notice did not specify any details of credit facility availed or alleged default committed by him. Thus, the show cause notice issued to respondent Nos. 4 to 7 was quite vague and lacked of material particulars. The DDR, while passing the order on 01.12.2020 has arrived at a conclusion that respondent Nos. 4 to 7 were defaulters of Mahavir Society by specifying the amounts of defaults against their names. These allegations however, were totally absent in the show cause notice. In the notice, respondent Nos. 4 and 5 were accused of committing default in respect of credit facilities availed from Bhaichand Hirachand Raisoni Multi State Co-Operative Credit Society, Ltd., Jalgaon, however in the final order, DDR has held that respondent No. 4 is the defaulter of Mahavir Society of the amount of Rs. 50 Lakhs and 20 Lakhs and respondent No. 5 is defaulter of Mahavir Society in respect of loan amount of Rs. 17 Lakhs, Rs. 68 Lakhs and 3 Crore. The findings of committing default in respect of credit facilities from Mahavir Society by Respondent Nos. 4 and 5 are thus without any notice to them, thereby falling foul of the principles of natural justice.

[16] In addition to the improvements made in the final order dated 01.12.2020, the manner in which that order was passed by DDR is also free from blemish. I find that the order did not record detailed reasons for arriving at a conclusion that respondent Nos. 4 to 7 were defaulters. After mentioning the figures of the alleged defaults against the names of respondent Nos. 4 to 7, DDR has vaguely observed that the complainant had produced all the documents with his explanation, that respondent did not produce explanation/documents to prove that they are not defaulters and that the Society did not submit its reply. What was the exact material that was taken inti consideration by DDR for arriving at a finding that Respondent Nos. 4 to 7 were defaulters of Mahavir Society is unknown. Eventhough Mr. Patil has laid great stress on reports of the Assistant Registrar and the Deputy Registrar dated 27.02.2020 and 25.08.2020, DDR has not relied upon them for arriving at his findings. Assuming that the reports were relied upon by the Petitioner before DDR, he ought to have discussed contents of the same in his order.

There is absolutely no discussion by DDR on any of the issues emerging before him. On the basis of these vague findings, the DDR proceed to disqualify respondent Nos. 4 to 7. One must bear in mind that the DDR was removing elected members of committee of a society and ought to have been extremely careful while taking decision having consequences of ouster of a elected member. In this regard, reliance of Mr. Dhorde on decision of Apex Court in **Ravi Yashwant Bhoir** (supra) is apposite. The Apex Court has held thus:

"70.Thus, the instant case has been a crystal clearcut case of legal malice and therefore, the impugned orders are liable to be quashed. **The duly elected member/Chairman of the Council could not have been removed in such a casual and cavalier manner without giving strict adherence to the safeguards provided under the statute which had to be scrupulously followed.**

(emphasis supplied)

Emphasising the need to record reasons in support of orders, the Apex Court held thus:

"42. In **S.N. Mukherjee v. Union of India**, 1990 4 SCC 594 [: 1990 SCC (Cri) 669: AIR 1990 SC 1984] , it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

43. In **Krishna Swami v. Union of India**, 1992 4 SCC 605 [: AIR 1993 SC 1407] this Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne out from the record. The Court further observed: (SCC p. 637, para 47)

"47. ... Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21."

44. This Court while deciding the issue in **Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd.**, 2010 13 SCC 336 [: (2010) 4 SCC (Civ) 904] , placing reliance on its various earlier judgments held as under: (SCC pp. 345-46, para 27)

"27. It is a settled legal proposition that not only administrative but also judicial orders must be supported by reasons recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice.

'3. ... The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind.' [Ed.: As observed in **State of Rajasthan v. Sohan Lal**, 2004 5 SCC 573, p. 576, para 3.]

The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is the principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."

45. In **Institute of Chartered Accountants of India v. L.K. Ratna**, 1986 4 SCC 537 [: (1986) 1 ATC 714: AIR 1987 SC 71] , this Court held that on charge of misconduct the authority holding the inquiry must record reasons for reaching its conclusion and record clear findings. The Court further held: (SCC p. 558, para 30)

"30. ... In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under Section 22-A of the Act. To exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a 'finding'. Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding."

> **46.** The emphasis on recording reason is that if the decision reveals the "inscrutable face of the sphinx", it can by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out the reasons for the order made, in other words, a speaking out. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance."

[17] I have therefore no hesitation in concluding that DDR's order disqualifying Respondent Nos. 4 to 7 was in gross violation of principles of natural justice. His cryptic order having the effect of removing elected members of committee cannot stand the tests laid down by the Apex Court in **Ravi Yashwant Bhoir** (supra).

[18] There is yet another flaw in the show cause notice issued by DDR. In addition to the provisions of Section 73CA of the Act, 1960, DDR has also invoked the provisions of Section 78A of the Act, 1960 while passing the order dated 01.12.2020. However, the show cause notice was issued only under the provisions of Section 73CA of the Act, 1960 and the same did not refer to the provisions of Section 78A of the Act, 1960. Under Section 78A of the Act, 1960, a member of the Committee who stands disqualified for being a member of the Committee, can be removed after consultation with the federal society. Under Section 73CA, a member can acquire disqualification for being a member and under Section 78A and the Registrar can remove him from the Committee. Show cause notice was issued only under the provisions of Section 73CA. However, while passing final order, the DDR invoked powers under Section 78A as well and removed respondent Nos. 4 to 7 from the Managing Committee. This is yet another illegality committed by DDR. This is the reason why the DJR was required to be examine the provisions of Section 78A of the Act, 1960 and record a finding that consultation with the federal society was mandatory before removing respondent Nos. 4 to 7 from the Managing Committee.

CONCLUSION:

[19] I am therefore of the opinion that the order passed by DDR disqualifying respondent Nos. 4 to 7 and removing them from the Managing Committee was palpably illegal and was required to be set aside. The DJR has set it aside by his order dated 29.04.2021. I do not find any error being committed by the DJR in doing so. Therefore, I do not deem it necessary to examine other grounds of challenge raised by Mr. Patil by invoking the provisions of Section 58 of Rule of 1961 or treating respondent No. 6 (Sharmila) as non-defaulter for being mere co-borrower, or whether a guarantor can be termed as a defaulter, etc. The judgments relied on by Mr. Patil,

in **Pundlik** (supra), **Narayan** (supra) and **Damodar** (supra) is of no assistance to the petitioner in view of finding arrived at by me that the order passed by the DDR was patently illegal.

[20] Petition filed by the petitioner is thus devoid of any merits. It is dismissed without any orders as to the costs. Rule is discharged

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