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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2592 OF 2013

Property Owners Association and others. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1278 OF 2013

Mota Mandir Trust and others. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1812 OF 2013

Atash Behrams, Agiaries & Religious Institutions
& others. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
PUBLIC INTEREST LITIGATION NO. 46 OF 2014

Janhit Manch. … Petitioner.
V/s.
State of Maharashtra and another. ... Respondents.

WITH
WRIT PETITION NO. 142 OF 2014

Parsi Punchayat Funds & Properties and others. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 228 OF 2014

The Foundation for Medical Research and others. … Petitioners.

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V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 234 OF 2014

Parsi Punchayat Funds & Properties and others. ... Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 322 OF 2014

Hotels and Restaurant Association
(Western India). ... Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 539 OF 2014

The Indian Hotels Company Limited and others. ... Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 754 OF 2014

Dr.Sunil K. Kokane and another. ... Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 758 OF 2014

The Saraswat Co-operative Bank Ltd. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1076 OF 2014

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Shri Desmond John Nicholas D'Silva and another. … Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1262 OF 2014

Maheshwari Pragati Mandal and others. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1348 OF 2014

National Centre for Performing Arts and others. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1524 OF 2014

Narendra Amritlal Sheth and others. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1695 OF 2014

Empress Advertising and another. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1738 OF 2014

Kalpataru Garden Private Limited previously
known as Kiyana Properties Pvt.Ltd. & another. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1739 OF 2014

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WITH
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WRIT PETITION NO. 1772 OF 2014
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WRIT PETITION NO. 1774 OF 2014
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WRIT PETITION NO. 1784 OF 2014
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WRIT PETITION NO. 1785 OF 2014
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WITH
WRIT PETITION NO. 1832 OF 2014

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WITH
WRIT PETITION NO. 1843 OF 2014
WITH
WRIT PETITION NO. 1917 OF 2014

Narendra Amritlal Sheth and others. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1943 OF 2014

Juhu Beach Resorts Limited. … Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 2184 OF 2014
WITH
NOTICE OF MOTION (LDG.) NO. 130 OF 2015

Kalpataru Enterprises. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 2248 OF 2014

Ivory Properties and Hotels Ltd. and others. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 2266 OF 2014

Eih Limited and another. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 2389 OF 2014

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WITH
WRIT PETITION NO. 2392 OF 2014
WITH
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WITH
WRIT PETITION NO. 2396 OF 2014
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WRIT PETITION NO. 2397 OF 2014
WITH
WRIT PETITION NO. 2398 OF 2014
WITH
WRIT PETITION NO. 2399 OF 2014
WITH
WRIT PETITION NO. 2401 OF 2014
WITH
WRIT PETITION NO. 2468 OF 2014
WITH
WRIT PETITION NO. 2528 OF 2014
WITH
WRIT PETITION NO. 2659 OF 2014

Narendra Amritlal Sheth and others. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 2686 OF 2014

Arvind Properties Pvt.Ltd. and another. … Petitioners.
V/s.
The Municipal Corporation of Grater Mumbai
and others. ... Respondents.

WITH
WRIT PETITION NO. 2848 OF 2014

Terra Co-operative Housing Society Ltd.
and another. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH

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WRIT PETITION NO. 2855 OF 2014

B.D.Perit Parsi General Hospital and others. … Petitioners.
V/s.
Mumbai Municipal Corporation and others. ... Respondents.

WITH
WRIT PETITION NO. 2872 OF 2014

Electra Co-operative Housing Society Ltd.
and another. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 118 OF 2015

Mumbai Hoarding Owners' Association
and others. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 121 OF 2015

Poonam Chambers “B” Wing Commercial
Premises Co-operative Society Limited. … Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 275 OF 2015

Nisar Ahmad Abdul Rahiman Pathan. … Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 696 OF 2015
WITH
NOTICE OF MOTION (LDG.) NO. 795 OF 2015

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Spark Builders and Infra Projects Pvt.Ltd. … Petitioners.
V/s.
The Commissioner, Municipal Corporation
of Greater Mumbai and another. ... Respondents.

WITH
WRIT PETITION NO. 1045 OF 2015

P.S.Katakdhond. … Petitioners.
V/s.
Municipal Corporation of Greater Mumbai
and others. ... Respondents.

WITH
WRIT PETITION NO. 1197 OF 2015

Offbeat Developers Private Limited and another. … Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1200 OF 2015

M/s.R.M.Bhuther & Company and another. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1214 OF 2015

Spark Developers. … Petitioners.
V/s.
The Commissioner, Municipal Corporation
of Greater Mumbai and and others. ... Respondents.

WITH
WRIT PETITION NO. 1223 OF 2015

M/s.Navbharat Estates Condominium. … Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

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WITH
WRIT PETITION NO. 1253 OF 2014

Kalpataru Ltd. … Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1472 OF 2015

M/s.Navbharat Potteries Pvt.Ltd. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1488 OF 2015

M/s.Remi Elecktrotechnic Limited. … Petitioner.
V/s.
Municipal Corporation of Greater Mumbai
and others. ... Respondents.

WITH
WRIT PETITION NO. 1512 OF 2015

M/s.Navbharat Potteries Pvt.Ltd. … Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1622 OF 2015

Virendra Brijratan Mohatta. … Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1624 OF 2015

Rajendra Brijratan Mohatta and another. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

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WITH
WRIT PETITION NO. 1906 OF 2015

The Tata Power Company Limited. … Petitioner.
V/s.
Municipal Corporation of Greater Mumbai
and others. ... Respondents.

WITH
WRIT PETITION NO. 2089 OF 2015

Naageshwar Vitthal Neela. … Petitioner.
V/s.
Municipal Corporation of Greater Mumbai
and others. ... Respondents.

WITH
WRIT PETITION NO. 2118 OF 2015

M/s.Navbharat Potteries Pvt.Ltd. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 2205 OF 2015

Shri Sanjay S. Salunkhe. … Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 2310 OF 2015

Keystone Realtors Private Ltd. and another. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 2465 OF 2015
WITH
NOTICE OF MOTION NO. 272 OF 2018

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WITH
NOTICE OF MOTION NO. 376 OF 2018

Keystone Realtors Pvt.Ltd. and another. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 2751 OF 2015

The Tata Power Company Limited. … Petitioners.
V/s.
Municipal Corporation of Greater Mumbai
and others. ... Respondents.

WITH
WRIT PETITION NO. 2777 OF 2015

EIH Limited and another. … Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 2834 OF 2015

M/s.Tulsidas Khimji and others. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 2839 OF 2015

Indus Towers Limited. … Petitioner.
V/s.
Municipal Corporation of Greater Mumbai
and others. ... Respondents.

WITH
WRIT PETITION NO. 2881 OF 2015

M/s.Sumer Builders and another. … Petitioners.
V/s.

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The Municipal Corporation of Greater Mumbai
and others. ... Respondents.

WITH
WRIT PETITION NO. 2922 OF 2015

Mr.Sushilkumar N. Trivedi. ... Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 62 OF 2016

Real Gem Buildtech Pvt.Ltd. and another. ... Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 90 OF 2016

Kanakia Bhumi Construction Private Limited. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 129 OF 2016

St.Annes Church and another. ... Petitioners.
V/s.
Municipal Corporation of Greater Mumbai
and others. ... Respondents.

WITH
WRIT PETITION NO. 438 OF 2016

Ashok Gardens Co-operative Housing Society
Ltd. and another. ... Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 872 OF 2016

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Phoenix Mills Limited. … Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1063 OF 2016

Vardhan Developers. … Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1199 OF 2016

Kanakia Spaces Realty Private Limited
and another. … Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1672 OF 2016

The Indian Hotels Company Limited
and another. … Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1983 OF 2016
WITH
NOTICE OF MOTION NO. 283 OF 2017

Rustomjee Realty Pvt.Ltd. and another. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 2375 OF 2016

Central Mumbai Developers Welfare Association
and another. … Petitioners.

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V/s.
Municipal Corporation of Greater Mumbai
and others. ... Respondents.

WITH
WRIT PETITION NO. 40 OF 2017

Messrs. Shree Sai Samarth Developers and others. ... Petitioners.
V/s.
The Municipal Corporation of Greater Mumbai
and another. ... Respondents.

WITH
WRIT PETITION NO. 315 OF 2017

Anil Virendra Shah and another. ... Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 916 OF 2017

Shubham Dynamic Real Estate Developers LLP. ... Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1019 OF 2017

Moiz Abdulhusein Pardiwala and another. ... Petitioners.
V/s.
State of Maharashtra and another. ... Respondents.

WITH
WRIT PETITION NO. 1629 OF 2017

Yashoda Co-operative Housing Society Limited
and others. ... Petitioners.
V/s.
Municipal Corporation of Greater Mumbai
and others. ... Respondents.

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WITH
WRIT PETITION NO. 2087 OF 2017

Kiyana Ventures LLP … Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 2369 OF 2017

Anand Nagar Vishal Co-operative Housing
Limited and others. … Petitioners.
V/s.
Municipal Corporation of Greater Mumbai
and others. ... Respondents.

WITH
WRIT PETITION NO. 656 OF 2018

Crescent Realtors Private Limited and another. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1277 OF 2018

Centre for Digestive and Kidney Diseases (India)
Private Limited and another. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1297 OF 2018

The Secretary, Mithagar Road Swapnpurti Co-op.
Housing Soc.Ltd. and another. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1671 OF 2018

Heks Infrastructure and Developers. … Petitioners.

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V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 1791 OF 2018

Shri Vivek Madhavlal Pittie. … Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION (LDG.) NO. 2393 OF 2018

New Era Fabrics Limited. … Petitioners.
V/s.
Municipal Corporation of Greater Mumbai
and others. ... Respondents.

WITH
WRIT PETITION (LDG.) NO. 2482 OF 2018

Narli Agripada Co-operative Housing Society
Limited and others. … Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 2552 OF 2018

Ganpatraj Badanraj Mehta. … Petitioner.
V/s.
The Municipal Corporation of Greater Mumbai
and others ... Respondents.

WITH
WRIT PETITION NO. 3115 OF 2018

T-Square Co-operative Premises Society Ltd. … Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

WITH

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WRIT PETITION (LDG.) NO. 4394 OF 2018

Deepa Ramesh Chandra Mansukhani. … Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

Mr.Rafiq Dada, Senior Advocate with Mr.H.Daruwalla and Mr.H.N.Vakil i/b. M/s.Mulla & Mulla for petitioners in WP/2592/2013 & WP/1812/2013.
None for petitioners in WP/1278/2013.
Mr.Jehangir Jeejeebhoy i/b. Bharucha & Partners for petitioners in WP/2376/13.
Mr.Sandeep Jalan for petitioners in PIL/46/2014.
Mr.Akshay Patil with Mr.Mandar Soman i/b. Mr.A.R.Vaidya & Co for petitioners in WP/40/2017.
Mr.Zaid S. Ansari with Mr.Mangesh Kokare and Mr.Deep Morabia i/b Mr.Zaid S. Ansari for petitioners in WP/315/2017.
Mr.Karl Tamboly with Mr.Vaibhav Sugdare, Mr.Samsher Gharud and Ms.Radhika Nair i/b Jaykar & Partners for petitioners in WP/142/14 and WP/234/2014.
Mr.H.N.Vakil and Ms.S.K.Kapoor i/b. M/s.Mulla & Mulla & Craigie Blunt & Caroe for petitioners in WP/228/2014.
None for the petitioners in WP/322/2014.
Mr.Rafiq Dada, Senior Advocate with Mr.Rajesh Satpalkar & Ms.Shaheen Moghul I/b. M/s.Mulla & Mulla & Craigie Blunt & Caroe for petitioners in WP/539/14 and WP/1972/2016.
None for petitioners in WP/754/14, WP/758/14, WP/1076/14.
None for petitioners in WP/1262/2014.
Mr.H.N.Vakil and Ms.S.K.Kapoor I/b. M/s.Mulla & Mulla & Craigie Blunt & Caroe for petitioners in WP/1348/14.
Mr.Rafiq Dada, Senior Advocate with Ms.Kirtida Chandarana with Ms.Manasi Kalvit i/b. Mahernosh Humranwala for petitioners in WP/2248/14.
Ms.Prateeti Thakar and Mr.Shubham Mittal i/b. FF & Associates for petitioners in WP/1524/14, WP/1739/14, WP/1755/14, WP/1756/14, WP/1766/14, WP/1767/14, WP/1772/14, WP/1774/14, WP/1775/14, WP/1781/14, WP/1782/14, WP/1783/14, WP/1784/14, WP/1785/14,

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WP/1786/14, WP/1788/14, WP/1789/14, WP/1790/14, WP/1791/14, WP/1792/14, WP/1793/14, WP/1807/14, WP/1832/14, WP/1843/14, WP/1917/14 WP/2389/14, WP/2392/14, WP/2393/14, WP/2396/14, WP/2397/14, WP/2398/14, WP/2399/14, WP/2401/14, WP/2468/14, WP/2528/14, WP/2659/14.

Mr.Milind Sathe, Senior Advocate with Mr.H.Devrajan, Mr.H.N.Vakil, Ms.S.K.Kapoor i/b. Mulla & Mulla & Craigie Blunt & Caroe for the petitioners in WP/1738/14.

Mr.Milind Sathe, Senior Advocate with Mr.T.C.Deshpande i/b. Mr.V.B.Dhawan for the petitioners in WP/1943/14.

Mr.Vishal Kanade with Ms.Yasmin Bhansali & Ms. Kahmish Khan i/b. Yasmin Bhansali & Co for petitioners in WP/2686/14.

Mr.Swapnil Gupte i/b. Argus Partners for the petitioners in WP/2848/2014 and WP/2872/2014.

Mr.H.N.Vakil i/b. Mulla & Mulla & Craigie Blunt & Caroe for the petitioners in WP/2855/2014.

Mr.R.A.Dada, Senior Advocate with Mr.Rashmin Khandekar Mr.Shailesh Mendon with Ms.Smruti Kanade i/b. Negandhi Shah & Himayatullah for the petitioners in WP/118/2015.

Mr.Balakrishna Adyanthaya for the petitioners in WP/121/2015.

Mr.N.A.Pathan for the petitioner in WP/275/2015.

Mr.Sanjiv Sawant for the petitioners in WP/696/2015 and WP/1214/2015.

Mr.S.U.Kamdar, Senior Advocate with Mr.Yashesh Kamdar, Ms.Niyathi Kalra, Ms.Rujuta Patil i/b. Negandhi Shah & Himayatulla for the petitioners in WP/2465/2015, WPL/2482/2018 and WP/1983/2016.

Mr.R.M.Nakhwa with Mr.Vasant Dhavan for the petitioners in WP/1045/2015, WP/1223/2015, WP/1472/2015, WP/1512/2015, WP/2118/2015, WP/129/2016 and WP/1277/2018.

Mr.Rafiq Dada, Senior Advocate with Mr.Aniketh Nair i/b. Mr.Mustafa Motiwala for the petitioners in WP/1197/2015 and WP/872/2016.

Mr.Milind Sathe, Senior Advocate with Mr.B.H.Antia, Mr.H.N.Vakil, Mr.H.Devrajan, Ms.S.K.Kapoor, Mr.J.Shah i/b. Mulla & Mulla & Craigie Blunt & Caroe for the petitioners in WP/1200/2015.

Mr.Milind Sathe, Senior Advocate with Mr.Saket Mone and

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Ms.Neha Joshi and Mr.Subit Chakraborti i/b. M/s.Vidhii Partners for the petitioners in WP/2184/2014, WP/1253/2015 and WP/2087/2017.

Mr.Rafiq Dada, Senior Advocate with Mr.Zubair Dada, Ms.Kathleen Lobo and Ms.Aastha Arora i/b. Khaitan & Co. for the petitioners in WP/2266/2014 and WP/2777/2015.

Mr.Jagdish Reddy with Mr.Arvind D.Aswani for the petitioners in WP/1488/2015.

None for the petitioners in WP/1622/2015, WP/1624/2015.

Mr.Rafiq Dada, Senior Advocate with Mr.H.N.Vakil i/b. Mulla & Mulla & Craigie Blunt & Caroe for the petitioner in WP/1906/15 and WP/2751/15.

Ms.Nilima V. Sangvikar for the petitioner in WP/2089/2015.

None for the petitioner in WP/2205/2015.

None for the petitioners in WP/2310/2015.

Mr.Samshed Garud with Ms.Bijal Gandhi i/b. Jaykar & Partners for the petitioners in WP/142/2014 and WP/234/2014.

Mr.Hormaz Daruwala with Ms.Amruta A. Sawant i/b. Sonal Doshi & Co for the petitioners in WP/2834/2015 and WP/1695/14.

Mr.Amit Khairnar with Mr.Toufiq Kapadia, Mr.Prasad Dhande, Mr.T.Kapadia and Mr.Shahazad Irani i/b. D.H.Law Associates for the petitioner in WP/2839/2015.

None for the petitioners in WP/2881/2015 and WP/2922/2015.

Mr.S.U.Kamdar, Senior Advocate with Ms.Smisha Patel i/b. Wadia Ghandy & Co for the petitioners in WP/62/2016.

Mr.Virag Tulzapurkar, Senior Advocate with Mr.Nikhil Apte, Mr.Akshit Dedhia, Ms.Sowmya Srikrishna, Ms.Jasmine Kachalia and Mr.Abinash Pradhan i/b. Wadia Ghandy & Co for the petitioner in WP/90/2016.

Mr.A.G.Damle, Senior Advocate with Mr.Ranjieev Carvalho, Ms.Akanksha Patil i/b. Shah Legal for the petitioners in WP/438/2016.

Mr.Zainul Badami with Ms.Huda Diamondwala i/b. Diamondwala & Co for the petitioners in WP/1063/2016.

Mr.Akshit Dedhia with Mr.Bhushan Deshmukh i/b. Wadia Ghandy & Co for the petitioners in WP/1199/2016.

Mr.Rafiq Dada, Senior Advocate with Mr.R.K.Satpalkar and Ms.Shaheen Moghul i/b. M/s. Mulla & Mulla & Craigie Blunt & Caroe for the petitioners in WP/539/2014 and

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WP/1672/2016.

Mr.Milind Sathe, Senior Advocate with Mr.Bhushan Deshmukh, Mr.Sanjay Kadam, Ms.Apeksha Sharma, Mr.Sanjeel Kadam, Ms.Sayli Rajpurkar i/b. Kadam & Co. Advocates for the petitioners in WP/2375/2016, WP/1629/2017, WP/2369/2017 and WP/656/2018.

Mr.T.C.Deshpande i/b. Mr.V.B.Dhawan for the petitioners in WP/916/2017.

Mr.Jayom M. Shah with Ms.Pooja Shroff Dhandhukia, Ms.Shweta Rankhambe i/b. Aagam Doshi & Co. for the petitioners in WP/1019/2017.

Mr.Chintan Thakker i/b. Mr.Anilkumar Joshi for the petitioners in WP/1297/2018.

Mr.B.N.Shukla i/b. Mr.D.J.Kamdin & Co. for the petitioners in WP/1791/2018.

Ms.Pushpa Thapa i/b. Ms.Kavita Shah for the petitioners in WP/1278/2013, WP/1262/2014 and WP/1671/2018.

Ms.Prachi Khandge i/b. M/s.M.P.Vashi & Associates for the petitioners in WP/2393/2018 and WP/3115/2018.

None for the petitioners in WP/2552/2018.

Mr.Makarand Raut with Ms.Hima Khuman for the petitioner in WP/4394/2018.

Mr.T.C.Deshpande i/b. Mr.V.B.Dhawan for the respondent Nos.6 and 7 in WP/438/2016.

Mr.G.B.Walawalkar i/b. Mr.S.P.Thorat for the respondent No.5 in WP/2310/2015 and WP/1472/2015.

Mr.Nikhil Patil i/b. Mr.V.P.Sawant for the respondent Nos.2 to 4 in WP/1738/2014.

Mr.Jimmy Pochkhanawalla, Senior Advocate with Mr.V.Sridharan, Senior Advocate with Mr.S.S.Pakle, Mr.J.J.Xavier, Mrs.S.M.Modle, Mrs.Pallavi Thakar and Mrs. Rupali Adhate for the respondent MMC in all the matters.

Mr.A.A.Kumbhakoni, Advocate General with Mr.G.W.Mattos, AGP for the respondent- State in WPL/713/2018.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma and Ms.G.R.Shastri, Addl. GP for the respondent State in WP/1278/2013, WP/2376/2013, WP/2592/2013, WP/142/2014, WP/228/2014, WP/234/2014, WP/1739/2014, WP/1756/2014, WP/1786/2014, WP/2184/2014, WP/2248/2014, WP/2266/2014, WP/2392/2014, WP/275/2015, WP/1223/2015,

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WP/1253/2015, WP/1472/2015, WP/1512/2015 WP/1624/2015 WP/2839/2015 WP/2205/2015, WP/2310/2015, WP/2465/2015, WP/2777/2015, WP/2834/2015, WP/62/2016, WP/129/2016, WP/872/2016, WP/1063/2016, WP/1680/2016, WP/1672/2016 WP/1983/2016, WP/2375/2016, WP/1695/2014, WPL/1283/2015, WP/1199/2016, WP/1277/2018 and WP/1019/2016, WPL/2482/2018.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma and Mr.A.L.Patki, Addl. GP for the respondent- State in WP/1812/2013, WP/539/2014, WP/315/2017, WP/916/2017, WP/656/2018, WPL/912/2018 and WP/2552/2018.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma and Mr.Milind More, Addl. GP for the respondent- State in PIL/46/2014, WP/1348/2014, WP/1076/2014, WP/758/2014, WP/1783/2014, WP/1781/2014, WP/1790/2014, WP/2399/2014, WP/118/2015, WP/2855/2014, WP/1622/2015, WP/90/2016, WP/2087/2017 and WP/1671/2018.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma and Mr.H.S.Venegaonkar, Addl.GP for the respondent- State in WP/1214/2015, WP/1200/2015, WP/1197/2015, WP/1045/2015, WP/1488/2015, WP/2751/2015, WP/438/2016 and WP/1906/2015.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma and Ms.Uma Palsule-Desai, AGP for the respondent- State in WP/2767/2014, WP/1789/2014, WP/1807/2014, WP/1792/2014, WP/1767/2014, and WP/1774/2014.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma and Mr.M.A.Sayed, AGP for the respondent- State in WP/322/2014, WP/1524/2014, WP/1755/2014.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma & Mr.L.T.Satelkar, AGP for the respondent- State in WP/754/2014, WPL/1625/2018, WP/3115/2018 and WPL/4394/2018.

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Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma and Mr.Kedar Dighe, AGP for the respondent- State in WP/1774/2014, WP/1772/2014, WP/1788/2014, WP/1785/2014, WP/1832/2014, WP/1793/2014, WP/1791/2014, WP/2397/2014,& WP/2528/2016.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma and Mr.Dushyant Kumar, AGP for the respondent- State in WP/1775/2014, WP/2397/2014, WP/1784/2014.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma and Mr.R.J.Mane, AGP for the respondent- State in WP/2872/2014, WP/2881/2015 and WP/2922/2015.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma and Ms.Jyoti Chavan, AGP for the respondent- State in WP/1943/2014.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma and Mr.U.S.Upadhyay, AGP for the respondent- State in WP/1917/2014, WP/2396/2014 and WP/2401/2014.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma and Mr.Amar Mishra, AGP for the respondent- State in WP/2389/2014, WP/2396/2014 and WP/2393/2014.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma and Mr.S.B.Gore, AGP for the respondent- State in WP/629/2017, WP/1629/2017 and WPL/2393/2018.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma and Mr.Manish Upadhyay, AGP for the respondent- State in WP/1766/2014, WP/1782/2014, WP/2398/2014 and WP/2369/2017.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Ashutosh Kulkarni, 'A' Panel Counsel, Mr.Gaurav Sharma and Mr.Amit Shastri, AGP for the respondent- State in WP/3109/2015, WP/2089/2015 and WP/1791/2018.

Mr.V.P.Kakade with Ms.Akanksha Kalyanpur i/b. Mr.V.P.Sawant for the respondent No.5 in WP/2087/17 and for the respondent No.7 in PIL/104/2013.

Mr.Samarth Patel with Mr.Sahil Gandhi and Mr.Rishi Jha I/b. Markand Gandhi & Co. for the respondent No.6 in

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WP/2087/2017.
Mr.Rajiv Chavan, Senior Advocate with Mr.D.P.Singh for the respondent No.5 in PIL/79/2014.
Ms.Yashodee Deshmukh for the respondent- MMC in WP/549/2015.

CORAM : A.S. OKA AND RIYAZ I. CHAGLA, JJ.

RESERVED ON : 28th February 2019.

PRONOUNCED ON: 24th April 2019.

JUDGMENT : (Per A.S. Oka, J.)

By an administrative order dated 31st May 2018 passed by the Hon'ble the Acting Chief Justice, this group of writ petitions has been assigned to this Bench.

OVERVIEW

2. In the State of Maharashtra, there are three main legislations concerning municipalities. The first is the Mumbai Municipal Corporation Act, 1888 (for short "the BMC Act"), the second is the Maharashtra Municipal Corporations Act, 1949 and third is the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. These laws governing the municipalities provide for imposition of various taxes including the property tax on buildings and lands which include general tax, water tax, water benefit tax, sewerage tax, sewerage benefit tax, street tax etc. These enactments earlier provided for levy of property tax on the basis of certain percentage of rateable value of the buildings or lands. The basis for determination of rateable value as provided in the aforesaid enactments was the annual rent for which such buildings or lands might reasonably be expected to let from year to year. The rateable value was arrived by deducting 10% from annual rent. This deduction is

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on account of allowances for repairs or on any other account whatsoever. In the State, there were always various Rent Control Legislations right from the year 1939. Different legislations were applicable to different areas. There are decisions of the Apex Court holding that the annual rent calculated for the purpose of arriving at rateable value cannot exceed the standard rent as determined in terms of the Rent Control Legislations wherever it was applicable. With effect from 31st March 2000, all Rent Control Acts applicable to the State have been repealed and the Maharashtra Rent Control Act, 1999 has been brought into force which is applicable throughout the State. Perhaps, the restriction imposed in the form of upper limit on the annual rent for the purpose of determination of rateable value created certain difficulties in municipal administration. The standard rent was pegged down to a particular date under the Rent Control Legislations and, in the meanwhile, the municipal expenditure went on increasing.

3. It appears that the Municipal Corporation of Brihan Mumbai (for short "BMC") which was established under the BMC Act appointed Tata Institute of Social Sciences (for short "TISS") 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. TISS studied the practice followed in developing countries. Based on the recommendations of TISS, the BMC Act was amended by the Maharashtra Act No.XI of 2009. The amendment incorporated an option 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. Corresponding amendments were made to various provisions of the BMC

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Act. We have adverted to the said provisions in subsequent paragraphs of the judgment. The bill of Maharashtra Act No.XI of 2009 was introduced in the State Legislature in the year 2006. A part of the said Act No.XI of 2009 came into force with effect from 1st April 2010 and remaining part came into force on 26th August 2010. The objects and reasons appended to the said bill are relevant which read thus:

> "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 the 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 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**

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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 the 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 of property tax on account of switching over to the capital value base of levy.

6. It is modest attempt to enable the Corporation to augment its revenue so as to meet the ever-rising expenditure in providing appropriate and 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."

(emphasis added)

4. Thereafter, the State Legislature came out with the Maharashtra Act No.XXVII of 2010 which amended not only the BMC Act for giving further effect to the provisions introduced in the year 2009 for levy of property tax based on capital value but also amended the other two municipal laws providing for additional options for levy of property tax on capital value. It was brought into force on 2nd August 2010. The Maharashtra Act No.XII of 2011 was enacted which introduced certain amendments to all the three municipal laws. It came into force on 10th March 2011. Thereafter, the Maharashtra Act No.VI of 2012 was enacted which introduced further amendments to various provisions of the BMC Act concerning property taxes for giving effect to the earlier amendments

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of permitting levy of property taxes based on capital value. The said Act came into force on 12th March 2012. By a Resolution dated 27th January 2010, the BMC resolved to adopt the system of levy of property tax on lands and buildings on the basis of capital value with effect from 1st April 2010.

RELEVANT PROVISIONS OF BMC ACT

5. For the sake of convenience, we are reproducing relevant provisions of the BMC Act as amended up-to-date.

> **"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 III, the rates at which municipal taxes 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.
>
> **129. Final adoption of Budget estimates.** Subject to the requirements of sub-section (*1*) of section 128, the Corporation may

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refer Budget Estimate 'A' or Budget Estimate 'B' or Budget Estimate 'E' or all or any of those estimates back to the Standing Committee and Budget Estimate 'C' back to the Brihan Mumbai Electric Supply and Transport Committee and Budget Estimate 'E' back to the Education Committee for further consideration, or adopt the budget estimate, or any revised budget estimates submitted to them as they stand or subject to such alteration as they deem expedient:

Provided that the budget estimates finally adopted by the corporation shall fully provide for each of the matters specified in clauses (*b*), (*c*) and (*d*) of sub-section (*2*) of section 126 and for each of the matters specified in sub-section (3) of section 126B and clauses (*a*) and (*b*) of sub-section (*2*) of section 126D and sub-section (*2*) of section 126F, as the case may be.

129A. Estimates of expenditure and income deemed to be budget estimates. Notwithstanding anything contained in this Act, if for any reason the corporation has not finally adopted the budget estimates before the commencement of the official year to which they relate, the statement of expenditure and income prepared by the Commissioner under section 125 and estimate prepared by the General Manager under section 126A shall be deemed to be the budget estimates for the year until the corporation duly adopts the budget estimates as per the provisions of this Act.

130. Budget grant defined. The total sum entered under a major head on the expenditure side, which has been adopted by the Corporation, shall be termed as "budget grant".

131. Corporation may increase amount of budget grants and make additional grants. (*1*) On the recommendation of the Standing Committee in case of expenditure from the municipal fund for purposes other than clause (*q*) of section 61 and the Brihan Mumbai Electric Supply and Transport Committee in case of expenditure from the Brihan Mumbai Electric Supply and Transport Fund the Corporation may from time to time during an official year increase the amount of any budget grant, or make an additional budget grant for the purpose of meeting any special or unforeseen requirement arising during the said year, but not so that the estimated cash balance at the close of the year shall be reduced below one lakh of rupees in the case of either the municipal fund or the Brihan Mumbai Electric Supply and Transport Fund:

Provided that, in the case of expenditure from municipal fund for purposes of clause (*q*) of section 61, the estimated cash balance at the close of the year in the budget estimate 'E' shall not be reduced below twenty thousand rupees.

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(*2*) Such increased or additional budget grants shall be deemed to be included in the budget estimates adopted by the Corporation for the year in which they are made.

132. Rules as to unexpended budget grant. If the whole budget grant or any portion thereof remains unexpended at the close of the year in the budget estimates for which such grant was included and if the amount thereof has not been taken into account in the opening balance of the municipal fund or the Brihan Mumbai Electric Supply and Transport Fund, as the case may be, entered in the budget estimates of any of the next two following years, the Standing Committee or the Education Committee or the Brihan Mumbai Electric Supply and Transport Committee, as the case may be may sanction the expenditure of such budget grant or such unexpended portion thereof, as the case may be, during the next two following years, for the completion, according to the original intention or sanction, of the purpose or object for which the budget grant was made, but not upon any other purpose or object.

133. Reduction and transfer. Reductions in, and transfers from a budget grant shall be made as under:—

(a) Subject to the provisions of sub-section (*1*) of section 131, on the recommendations of the Standing Committee the Corporation may, from time to time, during an official year, sanction the transfer of any amount exceeding twenty lakh rupees from one budget grant to another budget grant.

(b) The Standing Committee may at any time during an official year,—

(i) reduce the amount of a budget grant;

(ii) sanction the transfer of any amount, not exceeding fifteen thousand rupees, from one budget grant to another budget grant;

(*c*) The Commissioner may, at any time during an official year sanction the transfer of any amount not exceeding five thousand rupees within a budget grant if such transfer does not involve a recurring liability:

Provided that, every transfer of an amount exceeding one thousand rupees made under this clause shall be reported forthwith by the Commissioner to the Standing Committee and the Committee may pass with regard thereto such order as they may think fit, and it shall be incumbent on the Commissioner to give effect to such order.

(d) When making any transfer under clauses (*a*), *(b)* or (*c*), due regard shall be had to all the requirements of this Act.

(e) If any such reduction as is referred to in sub-clause (*i*) of clause *(b)* is of an amount exceeding five lakh rupees, the Corporation may pass with regard thereto such order as they think fit; and it shall be incumbent on the Standing Committee and the

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Commissioner to give effect to such order.

(*f*) in case of expenditure for the purposes of clause *(q)* of section 61 the provisions of this section shall apply as if for the words "Standing Committee" the words "Education Committee" had been substituted.

(g) For the purposes of expenditure from the Brihan Mumbai Electric Supply and Transport Fund, the provisions of this section shall apply as if for the words "Standing Committee" and "Commissioner" the words "Brihan Mumbai Electric Supply and Transport Committee" and "General Manager" respectively, had been substituted.

134. Re-adjustment of income and expenditure to be made by the corporation during course of official year whenever necessary. (*1*) If it shall at any time during any official year appear to the Corporation, upon the representation of the Standing Committee or the Brihan Mumbai Electric Supply and Transport Committee, that notwithstanding any reduction of budget grants that may have been made by the appropriate committee under section 133, the income of the municipal fund or the Brihan Mumbai Electric Supply and Transport Fund, as the case may be, during the said year will not suffice to meet the expenditure sanctioned in the budget estimates of the said year as so reduced and to leave at the close of the year a cash balance of not less than one lakh of rupees in the case of either the municipal fund or the Brihan Mumbai Electric Supply and Transport Fund, it shall be incumbent on the Corporation to sanction forthwith any measure which shall be necessary for proportioning the year income to the expenditure.

(2) For this purpose the Corporation may diminish the sanctioned expenditure of the year, so far as it may be possible so to do with due regard to the provision of this Act or to the obligation pertaining to the Brihan Mumbai Electric Supply and Transport Undertaking, or have recourse to supplementary taxation or a revision of fares and charges levied in respect of the Bombay Electric Supply and Transport Undertaking, as the case may be or, with the previous sanction of the State Government and subject to such terms and conditions (if any) as the Corporation may deem fit to impose, transfer the whole or any portion of surplus cash balance from any budget-estimate to any other budget-estimate as an additional grant to make good any deficit which has arisen or is likely to arise in the latter budget estimate, whether covered by a budget grant or not.

Scrutiny and Audit of Accounts

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135. Monthly scrutiny of accounts by municipal chief auditor and scrutiny of account by the Standing Committee. (*1*) The Municipal Chief Auditor shall conduct the monthly examination and audit of the municipal accounts and shall report thereon to the Standing Committee who shall publish monthly an abstract of the receipts and expenditure of the month last preceding, signed by not less than two members of the said Committee and by the Municipal Chief Auditor. The Standing Committee may also from time to time and for such period as they think fit conduct independently an examination and audit of the Municipal Accounts.

(2) For these purposes the Standing Committee and the municipal chief auditor shall have access to all the municipal accounts and to all records and correspondence relating thereto, and the Commissioner shall forthwith furnish to the Standing Committee or the municipal chief auditor any explanation concerning receipts and disbursements which they may call for.

136. Duties and powers of the municipal chief auditor. The municipal chief auditor in addition to any other duties or powers imposed or conferred upon him under this Act shall perform the duties and may exercise the powers specified in Schedule EE.

137. Report by the municipal chief auditor. *(1)* The municipal chief auditor shall—

(a) report to the Standing Committee] any material impropriety or irregularity which he may at any time observe in the expenditure or in the recovery of moneys due to the corporation or in the municipal accounts;

(b) furnish to the Standing Committee such information as the said committee shall from time to time require concerning the progress of the audit.

(2) The Standing Committee shall cause to be laid before the corporation every report made by the municipal chief auditor to the Standing Committee and every statement of the views of the municipal chief auditor on any matter affecting the pursuance and exercise of the duties and powers assigned to him under this Act which the municipal chief auditor may require the Standing Committee to place before the corporation, together with a report stating what orders have been passed by the Standing Committee upon such report or statement, and the corporation may take such action in regard to the matters aforesaid as the corporation may deem necessary.

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(3) As soon as may be after the commencement of each official year the municipal chief auditor shall deliver to the Standing Committee a report upon the whole of the municipal accounts for the previous official year.

(4) The Commissioner shall cause the said report to be printed and forward a printed copy thereof along with the printed copy of the Administration Report and Statement of Accounts which he is required by sub-section *(3)* of section 124 to forward to each councillor.

137A. Application of section 135, 136 and 137 to accounts of the Brihan Mumbai Electric Supply and Transport Fund. Sections 135, 136 and 137 shall apply to the accounts of the Brihan Mumbai Electric Supply and Transport Fund as if—

(i) for the words "Standing Committee", wherever they occur, the words "Brihan Mumbai Electric Supply and Transport Committee" and for the word "Commissioner", wherever it occurs, the words "General Manager " had been substituted; and

(ii) for the words, brackets and figures, "sub-section *(3)* of section 124 in sub-section *(4)* of section 137, the words, brackets, figures and letters "sub-section (2) of section 460NN" had been substituted.

138. A special audit be directed by State Government. (*1*) The State Government may at any time appoint an auditor for the purpose of making a special audit of the municipal accounts, including the accounts of the Brihan Mumbai Electric Supply and Transport Undertaking, and of reporting thereon to the State Government and the costs of any such audit as determined by the State Government shall be chargeable to the municipal fund or to the Brihan Mumbai Electric Supply and Transport Fund, as the case may be.

(*2*) An auditor so appointed may exercise any power which the municipal chief auditor may exercise.

CHAPTER VIII
MUNICIPAL TAXATION
Municipal Taxes defined

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;

(*3*) a theatre tax;

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PROPERTY TAXES

Property taxes leviable on rateable value or capital value

139A. (*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. 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;

(*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;

(*c*) a general tax of not less than eight and not more than fifty

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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;

(*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 exceed,—

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

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

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

Provided further that, where the property taxes levied in respect of any residential or non-residential building or portion thereof were on the basis of annual letting value arrived at considering the leave and licence charges, by whatever name called, then for the purposes of the first proviso it shall be lawful for the Commissioner to ascertain such tax leviable during such immediately preceding year, as if such building or portion thereof were self-occupied and had been so entered in the assessment book:

Provided also that, the property tax levied on the basis of capital value of any building or land on revision made under sub-

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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.

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 forty per cent. of the amount of the property tax levied and payable in the year immediately preceding the year of the revision.

(*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

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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 whatsoever.

141. Water taxes on what premises to be levied. (*1*) Subject to the provisions of section 169, the water tax shall be levied only in respect of premises—

(a) to which a private water-supply is furnished from or which are connected by means of communication-pipes with, any municipal water works; or

(b) which are situated in a portion of Brihan Mumbai in which the Commissioner has given public notice that sufficient water is available from municipal waterworks for furnishing a reasonable supply to all the premises in the said portion.

(*2*) Subject to the provisions of section 169, the water benefit tax shall be levied in respect of all premises situated in *Brihan* Mumbai, except the buildings and lands or parts thereof vesting in,

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or in the occupation of, any consul de carriers, whether called as a consul general, consul, vice-consul, consular agent, pro-consul or by any other name of a foreign State recognised as such by the Government of India, or of any members (not being citizens of India) of staff of such officials, and such buildings and lands or parts thereof which are used or intended to be used for any purpose other than for the purpose of profit.

142. Sewerage taxes on what premises to be levied. (*1*) Subject to the provisions of section 170, the sewerage tax shall be levied only in respect of premises—

(a) situated in any portion of Brihan Mumbai in which public notice has been given by the Commissioner that the collection, removal and disposal of all excrementitious and polluted matter from privies, urinals and cesspools, will be undertaken by municipal agency; or

(b) in which wherever situate, there is a privy, water-closet, cesspool, urinal, bathing place or cooking place connected by a drain with a municipal drain.

(2) Provided that the said tax shall not be levied in respect of any premises situated in any portion of Brihan Mumbai specified in clause (*a*), in or upon which, in the opinion of the Commissioner, no such matter as aforesaid accumulates or is deposited.

(3) If the Commissioner directs, under sub-section (*2*) or (*3*) of section 248 that a separate water-closet, privy or urinal need not be required for any premises the sewerage tax shall nevertheless be levied in respect of the said premises, if but for such direction, the same should be leviable in respect thereof.

(*4*) Subject to the provisions of section 170, the sewerage benefit tax shall be levied in respect of all premises situated in *Brihan* Mumbai, except the buildings and lands or parts thereof vesting in, or in the occupation of, any consul de carriers, whether called as a consul general, consul, vice-consul, consular agent, pro-consul or by any other name of a foreign State recognised as such by the Government of India, or of any members (not being citizens of India) of staff of such officials, and such buildings and lands or parts thereof which are used or intended to be used for any purpose other than for the purpose of profit.

143. General tax on what premises to be levied. (*1*) The general tax shall be levied in respect of all buildings and lands in

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Brihan Mumbai except—

(*a*) buildings and lands or portions thereof exclusively occupied for public worship or for charitable purposes;

(b) buildings and lands vesting in Government used solely for public purposes and not used or intended to be used for purposes of profit or in the Corporation, in respect of which the said tax, if levied, would under the provisions hereinafter contained be primarily leviable from the Government or, the corporation respectively;

(*c*) such building and lands vesting in, or in the occupations of, any consul de carriers, whether called as a consul general, consul general, consul, vice-consul, consular agent, pro-consul or by any other name of a foreign State recognised as such by the Government of India, or of any members (not being citizens of India) of staff of such officials, and such buildings and lands or parts thereof which are used or intended to be used for any purpose other than for the purpose of profit.

(*2*) The following buildings and lands or portions thereof shall not be deemed to be exclusively occupied for public worship or for charitable purposes within the meaning of clause (*a*), namely:—

(c) those in which any trade or business is carried on; and

(d) those in respect of which rent is derived whether such rent is or is not applied exclusively to religious or charitable purposes.

(*3*) Where any portion of any building or land is exempt from the general tax by reason of its being exclusively occupied for public worship or for charitable purpose, such portion shall be deemed to be a separate property for the purpose of municipal taxation.

144. Payment to be made to the corporation in lieu of the general tax by the Central Government or the State Government as the case may be. (*1*) The Central Government or the State Government, as the case may be, shall pay to the corporation annually, in lieu of the general tax from which buildings and lands vesting in Government are exempted by clause (*b*) of section 143, a sum ascertained in the manner provided in sub-sections (*2*) and (*3*).

(2) The rateable value of the buildings and lands in Brihan Mumbai vesting in Government and beneficially occupied, in respect of which but for the said exemption, general tax would be leviable from the Central Government or the State Government, as the case may be, shall be fixed by a person from time to time appointed in this behalf by the State Government with the concurrence of the corporation. The said value shall be fixed by the said person, with a

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general regard to the provisions hereinafter contained concerning the valuation of property assessable to property-taxes, at such amount as he shall deem to be fair reasonable. The decision of the person so appointed shall hold good for a term of five years, subject only to proportionate variation, if in the meantime the number or extent of the building and lands vesting in Government in Brihan Mumbai materially increases or decreases.

(*2A*) Where the Corporation has adopted the levy of property tax on capital value of buildings and lands, the capital value of buildings and lands in *Brihan Mumbai* vesting in Government and beneficially occupied, in respect of which but for said exemption, general tax would be leviable from the Central Government or the State Government, as the case may be, shall be the book value of such buildings or lands in Government records and such capital value shall hold good for a term of five years, subject only to proportionate variation, if in the meantime the number or extent of the buildings and lands vesting in Government in *Brihan Mumbai* materially increases or decreases.

(3) The sum to be paid annually to the corporation by the Central Government or the State Government, as the case may be, shall be eight-tenth of the amount which would be payable by an ordinary owner or buildings or lands in Brihan Mumbai, on account of the general tax, on a rateable value or on capital value, as the case may be, of the same amount as that fixed under sub-section (*2*), or sub-section (*2A*), as the case may b.

144A. Concession in payment of property tax. Notwithstanding anything contained in this Act, a concession in payment of property tax in respect of building and land, wherein any such socially or ecologically beneficial scheme, as may be identified for the purposes of this section by the Municipal Corporation or the State Government, is being implemented, may be given to such extent of so many per centum of the property tax payable in respect thereof as the Corporation may, determine.

Explanation.— For the purposes of this section, "ecologically beneficial scheme" includes rain water harvesting system, vermi composting, use of solar energy and other non-conventional sources of energy, recycling and re-use of waste water, or any scheme for promoting environment friendly and ecologically beneficial building construction or the like as the Corporation or the State Government may identify.

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144B. Temporary provisions for levy of property tax at reduced rates in respect of certain buildings. Notwithstanding anything contained in section 140 or 140A or any other provisions of this Act, during the period of twenty years from the date of commencement of the Bombay Municipal Corporation and the Maharashtra Regional and Town Planning (Amendment) Act, 1995, or from the date of first occupation of the premises in a building used for residential purposes, whichever is later, the property tax on building shall be levied at such reduced rates as the State Government may, by notification in the *Official Gazette,* from time to time, fix and different reduced rates may be fixed for different periods and for different classes of buildings constructed, whether before or after such commencement. Such buildings are as follows:-

(a) buildings which are constructed under the Low Cost Housing Scheme for economically weaker sections and Low Income Group by the corporation, the Mumbai Metropolition Region Developments Authority or the Maharashtra Housing and Area Development Authority or under the Slum Rehabilitation Scheme declared under the Maharashtra Slum Areas (Improvement Clearance and Redevelopment) Act, 1971, or

(b) buildings constructed and wherein there is the component of the tenements constructed for project affected persons on plots allocated, designated or reserved in the development plan for Public Housing (PH) or High Density Housing (HDH), Housing the Dishoused (HD), and are developed or redeveloped by the Corporation or public authority or the owner, where the owner is required under the scheme for "Housing the Dishoused" or under the scheme "Public Housing or High Density Housing" to hand over to the Corporation free of cost at least fifty per cent., or as the case may be, ten per cent., of the built-up area for allotment to project affected persons or for rehabilitating the existing tenants on the plot or to both such persons or tenants; and to persons affected by the projects undertaken by the Corporation, respectively; or

(c) building which is destroyed by fire or which has collapsed or which has been demolished and is reconstructed; or

(d) cessed buildings reconstructed under the Urban Renewal Scheme undertaken by the Maharashtra Housing and Area Development Authoriry (MHADA) or the Corporation; or

(e) buildings constructed on lands belonging to public authority under rehabilitation project where there is a component of tenements for rehabilitating slum dwellers; or

(*f*) buildings constructed or reconstructed, for transit accommodation, that is to say transit camps, by the corporation, the Mumbai Metropolitan Region Development Authority or the Maharashtra Housing and Area Development Authority; or

(g) buildings constructed or reconstructed under the rental

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housing scheme by the corporation, the Mumbai Metropolitan Region Development Authority or the Maharashtra Housing and Area Development Authority:

Provided that, the concession of such reduced rates of tax shall not be available in respect of any building or part thereof constructed under any of the schemes mentioned herein, which is not utilised for residential purpose for rehabilitation of the concerned project affected persons or slum dwellers and which is a component available for sale or use for commercial purpose.

144C. Temporary provisions for levy of property tax at reduced rates in respect of buildings or tenements constructed for economically weaker sections of society, by certain institutions. Notwithstanding anything contained in section 140 or any other provisions of this Act, during the period of twenty years from the date of commencement of the Mumbai Municipal Corporation (Amendment) Act, 2005, or from the date of first occupation of the premises, whichever is later, the property tax in respect of the residential tenements constructed for economically weaker sections of the society with carpet area not exceeding 350 square feet, constructed before or after such commencement, by the institutions, as may be notified by the State Government, which have been allotted the land by the State Government at nominal rates for the purpose of constructing such tenements, shall be levied at such reduced rate, as the State Government may, by notification in the *Official Gazette,* from time to time fix, and different rates may be fixed for different period and for different classes of buildings or tenements.

144D. Temporary provisions for levy of property tax at reduced rates in respect of cessed buildings. Notwithstanding anything contained in section 140 or any other provisions of this Act, during the period of twenty years from the 23rd November 1995 or from the date of first occupation of the tenements hereinafter specified, whichever is later, the property tax in respect of the residential tenements having carpet area not exceeding 350 square feet, situated in a building, in the Island City of Mumbai, which,—

(a) is entitled to FSI benefit under regulation 33(7) of the Development Control Regulations for Brihan Mumbai, 1991; and

(b) is a cessed building governed by the Maharashtra Housing and Area Development Act, 1976 and is reconstructed or redeveloped by,—

(i) the co-operative housing society formed by existing tenants; or

(ii) the co-operative society formed by the occupiers (including owner occupier) of the building classified as Category 'A'

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under section 84 of the Maharashtra Housing and Area Development Act, 1976; or

(c) belongs to the Corporation, was first constructed prior to 1940 and is reconstructed or redeveloped, by the co-operative housing society formed by its occupiers;

shall be levied at such reduced rate, as the State Government may, by notification in the *Official Gazette,* from time to time, fix; and different rates may be fixed for different periods and for different tenements:

Provided that, no tax at reduced rate shall be levied in respect of the residential tenement, in the building reconstructed or redeveloped by the co-operative housing society of the existing tenants or occupiers, if the existing tenant or occupier ceases to occupy the tenement in the reconstructed or redeveloped building as a member of such co-operative housing society.

144E. Levy of property tax at reduced rates in respect of buildings and lands of Special Development Project. Notwithstanding anything contained in section 140 or any other provisions of this Act, the property tax in respect of buildings and lands belonging to the Special Development Project shall be levied at such reduced rate, as the State Government may, by notification in the *Official Gazette,* from time to time, fix; and different rates may be fixed for different periods and for different Special Development Projects.

Explanation.—For the purposes of this section, "Special Development Project " means,—

(i) a development project undertaken either by the Government or by the Planning Authority, within the meaning of clause (*19*) of section 2 of the Maharashtra Regional and Town Planning Act, 1966; or

(ii) "a Mega Project " within the meaning of the Package Scheme of Incentives, 2001,

approved by the High Power Committee under the Chairmanship of the Chief Secretary to Government and declared by the State Government, by notification in the *Official Gazette,* to be the Special Development Project.

144F. Additional stamp duty on certain transfers of immovable properties. (1) Without prejudice to the provisions of this Act, the stamp duty leviable under the Maharashtra Stamp Act, on the instruments of sale, gift and usufructuary mortgage,

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respectively, of immovable property shall, in the case of any such instrument relating to immovable property situated in the area of Brihan Mumbai Municipal Corporation in which one or more Vital Important Urban Transport Projects (hereinafter in this section referred to as "City having notified projects") and executed on or after such date as may be specified by the State Government, by notification in the Official Gazette, be increased by a surcharge at the rate of one per cent., in case of instrument of sale or gift, on the value of the property so situated and in case of an instrument of usufructuary mortgage, on the amount secured by the instrument as set forth in the instrument and shall be collected accordingly under the said Act.

(2) For the purposes of this section, section 28 of the Maharashtra Stamp Act shall be read and enforced as if, it specifically requires the particulars therein referred to be set forth separately in respect of the property situated in the City having notified projects.

(3) The State Government shall, every year, after due appropriation made by law in this behalf, pay to the Corporation or the agency which has undertaken the notified project, a grant-in-aid approximately equal to the amount of additional duty realized on account of surcharge levied and collected under this section in respect of the immovable properties situated in the City having notified projects and such grant-in-aid shall be utilised on such notified projects in the manner specified by the Government.

(4) The sum of money required to meet the expenditure by the State Government under sub-section (3), shall be charged on the Consolidated Fund of the State.

(5) The Government may, by notification in the Official Gazette, make rules to carry out the purposes of this section.

(6) All rules made under this section shall be subject to the condition of previous publication.

(7) Every rule made under this section shall be laid, as soon as may be, after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session or sessions immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the Official

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Gazette, the rule shall, from the date of publication of such notification, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

Explanation.—For the purposes of this section, the term "notified project" means a Vital Important Urban Transport Project related to Mass Rapid Transport System such as Metro Rail, Mono Rail, Bus Rapid Transport System and includes Freeway, Sea-link, etc., in respect of which the State Government has, by notification in the Official Gazette, declared its intention to undertake such project either by itself or through the planning authority, a New Town Development Authority, and other statutory authority, an agency owned and controlled by the Central Government or the State Government or a Government Company incorporated under the provisions of the Companies Act, 2013 or any other law relating to companies for the time being in force.

145. Amendment of section 36 of Bombay Act VI of 1879. For section 36 of the Bombay Port Trust Act, 1879, the following section shall be substituted, namely:—

See Supra
Liability for Property-taxes

146. Primary responsibility for property taxes on whom to rest. (*1*) Property-taxes shall be leviable primarily from the actual occupier of the premises upon which the said taxes are assessed, if such occupier holds the said premises immediately from the Government or from the corporation or from a fazendar:

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

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

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

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

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

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

(*e*) if the premises are held or developed by a developer or an

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attorney or any person in whatever capacity, such person may be holding the premises and in each of whom the right to sell the same exists or is acquired, from such holder, developer, attorney or person, as the case may be:

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

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

147. Appointment of responsibility for property tax when the premises assessed are let or sub-let. (*1*) If any premises assessed to any property-tax are let, and their rateable value or the amount of property tax levied on the basis of capital value, as the case may be, exceeds the amount of rent payable in respect thereof to the person from whom, under the provisions of the last preceding section, the said tax is leviable, the said person shall be entitled to receive from his tenant the difference between the amount of the property-tax levied from him, and the amount which would be leviable from him if the said tax were calculated on the amount of rent payable to him.

(*2*) If the premises are sub-let and their rateable value or the amount of property tax levied on the basis of capital value, as the case may be, exceeds the amount of rent payable in respect thereof to the tenant by his sub-tenant, or the amount of rent payable in respect thereof to a sub-tenant by the person holding under him, the said tenant shall be entitled to receive from his sub-tenant or the said sub-tenant shall be entitled to receive from the person holding under him, as the case may be, the difference between any sum recovered under this section from such tenant or sub-tenant and the amount of property-tax which would be leviable in respect of the said premises if the rateable value thereof were equal to the difference between the amount of rent which such tenant or sub-tenant receives and the amount of rent which he pays.

(*3*) Any person entitled to receive any sum under this section shall have, for the recovery thereof, the same rights and remedies as if such sum were rent payable to him by the person from whom he is entitled to receive the same.

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

Notice of transfer, etc. of premises assessable to property-taxes

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

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

150. Form of notice. (*1*) The notice to be given under the last preceding section shall be in the form either of Schedule E or Schedule F, as the case may be, and shall be accompanied by such fees as the Commissioner may, from time to time, with the approval of the Standing Committee prescribe and such notice shall state clearly and correctly all the particulars required by the said form.

(*2*) On receipt of any such notice, the Commissioner may, if he thinks it necessary require the production of the instrument of transfer, if any, or of a copy thereof obtained under section 57 of the Indian Registration Act, 1877.

(*3*) The transfer of title of any person primarily liable to the payment of property tax shall not be recorded by the Corporation in the assessment book unless the property taxes due in respect of the property sought to be transferred are fully paid before giving such notice.

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

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

152. Notice to be given to Commissioner of erection of a new building, etc. (*1*) When any new building is erected, or occupied or re-occupied or when there is change of user of part or whole of the building; the person primarily liable for the property-taxes assessed on the building shall within fifteen days give notice thereof, in writing, to the Commissioner.

(2) The said period of fifteen days shall be counted from the date of the completion or of the occupation whichever first occurs, of the building which has been newly erected or rebuilt, or of the enlargement, or of the re-occupation, or of the change of user of part or whole of the building, as the case may be.

152A. Levy of penalty on unlawful building. (*1*) Whoever unlawfully constructs or reconstructs any building or part of a building,—

(a) on his land without obtaining permission under this Act or any other law for the time being in force or in contravention of any condition attached to such permission;

(b) on a site belonging to him which is formed without approval under the relevant law relating to Regional and Town Planning;

(c) on his land in breach of any provision of this Act or any rule or bye-law made thereunder or any direction or requisition lawfully given or made under this Act or such rule or bye-law; or

(d) on any land, belonging to, or leased by, the Corporation, or the Central or State Government, or any statutory corporation or organization or company set up by any such Government, in breach of any provision of this Act or of any other law for the time being in

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force and the rules and bye-laws made thereunder,

shall be liable to pay a penalty, at such rate as may be decided by the corporation, or such building, so long as it remains unlawful construction without prejudice to any proceedings which may be instituted against him in respect of such unlawful construction:

Provided that, every such levy and collection of tax and penalty shall not be construed as regularization of such unlawful construction or reconstruction for any period whatsoever of its such unlawful existence.

Provided further that, the rates decided by the Corporation under this sub-section shall be deemed to have came into effect from the 1st April 2010, being the date of commencement of the Mumbai Municipal Corporation (Third Amendment) Act, 2006.

(*2*) Penalty payable under sub-section (*1*) shall be determined and collected under the provisions of this Act, as if the amount thereof were a property tax due by any such person.

153. Notice to be given to Commissioner of demolition or removal of building. (*1*) When any building or any portion of a building, which is liable to the payment of a property-tax, is demolished or removed, otherwise than by order of the Commissioner, the person primarily liable for the payment of the said tax shall give notice thereof in writing, to the Commissioner.

(*2*) Until such notice is given the person aforesaid shall continue liable to pay every such property-tax as he would have been liable to pay in respect of such building if the same, or any portion thereof, had not been demolished or removed.

(*3*) Provided that nothing in this section shall apply in respect of a building or portion of a building which has fallen down or been burnt down.

Valuation of property assessable to property-taxes

154. Rateable value for 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 a sum equal to ten per centum of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever.

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(*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 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 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 sub- section (*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.

(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.

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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 premise. (*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.

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Assessment book

156. Assessment book what to contain. The Commissioner shall keep a book, in such form and in such 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 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 building 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.

157. The assessment-book to be made separately for each ward and in parts, if necessary. (*1*) The assessment-book shall be made in separate books, called "ward assessment-books" one for each of the wards into which Brihan Mumbai is for the time being divided for the administrative purposes; and each ward assessment-book may, if the Commissioner thinks fit, be divided into two or more parts for such purposes and with such several designations as the Commissioner shall determine.

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(2) The ward assessment-books and their respective parts, if any, shall collectively constitute the assessment-book.

158. Treatment of property which is let to two or more persons in separate occupancies. (*1*) When any building or land is let to two or more persons holding in severalty the Commissioner may, for the purpose of assessing such building or land to the property taxes, either treat the whole thereof as one property, or, with the written consent of the owner of such building or land, treat each several holding therein or any two or more of such several holdings together, or each floor or flat, as a separate property.

159. Person primarily liable for property-taxes how to be designated if his name cannot be ascertained. (*1*) When the name of the person primarily liable for the payment of property taxes in respect of any premises cannot be ascertained, it shall be sufficient to designate him in the assessment-book and in any notice which it may be necessary to serve upon the said person under this Act, "the holder" of such premises, without further description.

(*2*) If, in any such case, any person in occupation of the premises shall refuse to give such information as may be requisite for determining who is primarily liable as aforesaid, such person shall himself be liable, until such information is obtained, for all property-taxes leviable on the premises of which he is in occupation.

160. Public notice to be given when valuation of property in any ward has been completed. (*1*) When the entries required by clauses (*a*), (*b*), (*c*) and (*d*) of section 156 have been completed, as far as practicable, in any ward assessment-book, the Commissioner shall give public notice thereof and of the place where the ward assessment-book, or a copy of it, may be inspected.

(*2*) Such public notice shall be given by advertisement in the *Official Gazette* and in the local newspapers, and also by posting placards in conspicuous places throughout the ward or by any other mode including electronic media as the Commissioner may think fit.

161. Assessment book to be open to inspection. (*1*) Every person who reasonably claims to be the owner or occupier of some premises entered in the assessment-book or the agent or any such owner or occupier shall be permitted, free of charge, to inspect and to take extracts from any portion of the said book which relates to the said premises.

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(*2*) Any person not entitled under sub-section (*1*) to inspect take extracts from any portion of the assessment-book free of charge shall be permitted to do so on payment of such fee as shall from time to time be prescribed in this behalf by the Commissioner, with the approval of the Standing Committee.

162. Time for filing complaints against valuations to be publicly announced. (*1*) The Commissioner shall, at the time and in the manner prescribed in section 160, give public notice of a day, not being less than twenty one days from the publication of such notice, on or before which complaints against the amount of any rateable value or the capital value, as case may be, entered in the ward assessment-book will be received in his office.

(*2*) In every case in which any premises have for the first time been entered in the assessment-book as liable to the payment of property taxes or in which rateable value, or capital value, as the case may be of any premises liable to such payment has been increased, the Commissioner shall, as soon as conveniently may be after the issue of the public notice under sub-section (*1*), give a special written notice to the owner or occupier of the said premises specifying the nature of such entry and informing him that any complaint against the same will be received in his office at any time within twenty one days from the service of the special notice.

163. Time and manner of filing complaint against valuation. (*1*) Every complaint against the amount of any rateable value or the capital value, as the case may be, entered in the assessment-book must be made by written application to the Commissioner, which shall be left at his office on or before the day or the latest day fixed in this behalf in the public or special notice aforesaid.

(*2*) Every such application shall set forth briefly but fully the grounds on which the valuation is complained against.

164. Notice to complainant of day fixed for investigating their complaints. The Commissioner shall cause all complaints so received to be registered in a book to be kept for this purpose and shall give notice in writing to each complainant, of the day, time and place when and whereat his complaint will be investigated.

165. Hearing of complaint. (*1*) At the time and place so fixed the Commissioner shall investigate and dispose of the complaint in the presence of the Complainant if he shall appear, and, if not, in his absence.

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(2) For reasonable cause, the Commissioner may from time to time adjourn the investigation.

(3) When the complaint is disposed of, the result thereof shall be noted in the book of complaints kept under section 164, and any necessary amendment shall be made in accordance with such result, in the assessment- book.

166. Authentication of ward assessment-book when all complaints have been disposed of. (*1*) When all such complaints, if any, have been disposed of and the entries required by clause (*e*) of section 156 have been completed in the ward assessment-book, the said book shall be authenticated by the Commissioner, who shall certify, under his signature, that except in the cases, if any, in which amendments have been made as shown therein, no valid objection has been made to the rateable values or the capital values, as the case may be, entered in the said book.

(*2*) Thereupon the said ward assessment-book subject to such alterations as may thereafter be made therein under the provisions of the next following section, shall be accepted as conclusive evidence of the amount of each property-tax leviable on each building and land in the ward in the official year to which the book relates.

167. Assessment-book may be amended by Commissioner during official year. (*1*) The Commissioner may, upon the representation of any person concerned, or upon any other information, at any time during the official year to which an assessment-book relates amend the same by inserting therein the name of any person whose name ought to be so inserted or any premises previously omitted or by striking out the name of any person not liable for the payment of any property-tax, or by increasing or reducing the amount of any rateable value or, the capital value, as the case may be, and of the assessment based thereupon, or by making of cancelling an entry exempting any premises from liability to any property-tax.

(*2*) Every such amendment shall be deemed to have been made, for the purpose of determining the liability or exemption of the person concerned in accordance with the altered entry, from the earliest day in the current official year when the circumstances justifying the amendment existed.

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168. New assessment-book need not be prepared every official year. (*1*) It shall not be necessary to prepare a new assessment-book every official year. Subject to the provisions of sub-section (*3*), the Commissioner may adopt the entries in the last preceding year's book with such alterations as he thinks fit as the entries for each new year.

(2) But public notice shall be given, in accordance with sections 160 and 162 every year and the provisions of the said sections and of sections 163 to 167, both inclusive, shall be applicable each year.

(3) A new assessment-book shall be prepared at least once in every five years.

Special provisions concerning the Water and Sewerage taxes and charges.

169. Rules for water taxes and charges. (*1*) Notwithstanding anything contained in section 128, the Standing Committee shall, from time to time, make such rules as shall be necessary for supply of water and for charging for the supply of water and for any fittings, fixtures or services rendered by the Corporation under Chapter X and shall by such rules determine—

(i) the charges for the supply of water by a water-tax and a water benefit tax levied under section 140 of a percentage of the rateable value or, the capital value, as the case may be, of any property provided with a supply of water; or

(ii) a water charge in lieu of a water-tax, based on a measurement or estimated measurement of the quality of water supplied; or

(iii) combined charges under clauses (*i*) and (*ii*); or

(iv) a compounded charge in lieu of charges under clauses (*i*) and (*ii*).

(*2*) A person who is charged for supply of water under clause (*ii*) or (*iv*) of sub-section (*1*) shall not be liable for payment of the water-tax, but any sum payable by him and not paid when it becomes due shall be recoverable by the Commissioner as if it were an arrear of property tax due.

(*3*) Notwithstanding anything contained in section 146, the water taxes and charges shall be primarily recoverable from person or persons actually occupying the premises.

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170. Rules for sewerage taxes and charges. (*1*) Notwithstanding anything contained in section 128, the Standing Committee shall from time to time make such rules as shall be necessary for removing human wastes, excrementitions, and polluted matters, liquid wastes and effluents and any other materials as shall from time to time be specified by the Committee in such rules and for charging any fittings, fixtures or services rendered by the Corporation under Chapter IX and shall by such rules determine-

(i) the charges for the supply of such services by a sewerage tax and a sewerage benefit tax levied under section 140 of a percentage of the rateable value or the capital value, as the case may be of any property in respect of which such services are provided; or

(ii) a sewerage charge in lieu of a sewerage tax, based on a measurement or estimated measurement of the quantity of water supplied for the premises or of the quantity of wastes discharges from the premises; or

(iii) combined charges under clauses (*i*) and (*ii*); or

(iv) a compounded charge in lieu of charges under clauses (*i*) and (*ii*).

(2) A person who is charged for sewerage services under clause (*ii*) or (*iv*) of sub-section (*1*) shall not be liable for payment of the sewerage tax, but any sum payable by him and not paid when it becomes due, shall be recoverable by the Commissioner as if it were an arrear of property tax due.

172. Rules for water taxes and charges and sewerage taxes and charges and amendment thereof. (*1*) The provisions of sections 140A and 154A, as amended by the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 2011, shall, *mutatis mutandis* apply, for the purposes of levy of water taxes and charges and sewerage taxes and charges for the years 2010-2011, 2011-2012 and 2012-2013.

(*2*) The Standing Committee may, from time to time, add to, amend or rescind any rules made or deemed to be made by it under sections 169 and 170 (both inclusive), but such revision of rules shall, subject to the provisions of sub-section (*1*), come into force on the date appointed by the Committee for this purpose so however that such date shall not be earlier than the 1st April of the official year during which the decision to make such revision is taken by the Standing Committee:

Provided that, the rules fixing the rates for the official years 2010-2011, 2011-2012 and 2012-2013 shall be effective from the first day of each respective official year.

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> (*3*) In case of the buildings and lands which are liable to be assessed for the first time on or after the 1st April 2010, the water taxes and charges and sewerage taxes and charges shall provisionally be levied on the basis of rateable value thereof, as if such buildings and lands are assessed in the year 2009-2010; and on ascertainment of the capital value of such buildings and lands, the corporation may issue final bill in respect of the years, for which provisional bills have been issued on the basis of rateable value, 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."

6. We may note here that in exercise of powers conferred by sub-section (1B) read with clause (e) of sub-section (1A) of section 154 of the BMC Act as amended, the Factors and Categories of Users of Buildings or Lands (Assignment of Weightages by Multiplication) Fixation of Capital Value Rules, 2010 (for short "the Capital Value Rules of 2010") were framed. The said Rules came into force on 20th March 2012. With effect from 1st April 2015, the Factors and Categories of Users of Buildings or Lands (Assignment of Weightages by Multiplication) Fixation of Capital Value Rules, 2015 (for short "the Capital Value Rules of 2015") were framed by the BMC. Thus, from 1st April 2015, the Capital Value Rules of 2015 will apply.

7. **FACTS OF THE CASES**

Writ Petition No.2592/2013 (Lead Petition) :

The lead petition in group is Writ Petition No.2592/2013 which is filed by the Property Owners Association which is an association of owners of properties and old buildings in the city of Mumbai. It was established in the year 1924 and is governed by the provisions of the Bombay Non-Trading Corporation Act, 1959. It is contended in the petition that the petitioners are supported by at least 610 property owners

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of the properties in Mumbai and that the said 610 owners have executed affidavits in support. The list of members is appended as Exhibit-W. The first challenge in this petition is to the constitutional validity of the amendments effected vide the Maharashtra Act No.XI of 2009. There is also a specific challenge to the validity of sections 128(3), 129A, 144, 144A, 144E, 146, 140(1)(a), 140(1)(b), 140(1)(ca) read with section 195E and 195(G), 140(1)(d) read with section 354(UA), 144B, 146, 154 and section 202 of the BMC Act. Thus, there is a challenge to some of the amendments made by the Act Nos.XXVII of 2010, XII of 2010 and VI of 2012. There is also a separate prayer for declaration that section 140A of the BMC Act is *ultra vires* Article 243-X of the Constitution of India. Further it is prayed that the rates of taxes of capital value fixed with effect from 1st April 2010 and 1st April 2015 are *ultra vires* section 140A. The rates of property taxes and capital value with effect from 1st April 2015 are also challenged on the ground that the same are violative of Articles 14 and 19(1)(g) of the Constitution of India. There are specific prayers incorporated in the petition for challenging the Capital Value Rules of 2010 and 2015. Without prejudice to the rights and contentions and, in the alternative, a prayer is made for declaring Rule 22 of both the Rules of 2010 and 2015 as *ultra vires*. In the alternative, a prayer is made for restraining the BMC from recovering property taxes as per notices served under sub-section (2) of section 162 without deciding the complaints filed by the owners after giving them an opportunity of being heard. There is a specific challenge incorporated to the bills issued and demand notices issued to certain members of the first petitioner in the said writ petition.

Writ Petition No.1278/2013:

The first petitioner in this petition is a public charitable trust. The first prayer in this petition is for a declaration that the State Legislature

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does not have legislative competence to levy property tax on the basis of capital value. The second prayer is for a declaration that the levy of property tax on the basis of capital value system is compensatory in nature as well as confiscatory in nature. Another prayer is for a declaration in the alternative that the levy of property tax under the BMC Act should take into account the paying capacity of the person liable to pay. There is a prayer for striking down various sections in the BMC Act as prayed in the Writ Petition No.2592/2013 (for short "the lead petition"). There are similar challenges to the Capital Value Rules of 2010 and 2015 and section 140A of the BMC Act. In this petition, there is no specific prayer containing a challenge to any bill or demand.

Writ Petition No.1812/2013:

This petition is filed by three trusts and its trustees. The said trusts own and run Parsi Fire Temples or Agiaries which are the places of worship for Zoroastrians. The contention is that Agiaries cannot be sold or disposed of and have no market value. The challenge in this petition is substantially the same as in the lead petition. In addition, there is a challenge to the subject assessment notices issued by BMC under sub-section (2) of section 162 of the BMC Act. The said notices are at Exhibits-E, F, I, K and M to FF. The case of the petitioners is that they have raised objections to the special notices in the form of complaints as contemplated by section 163 of the BMC Act. The allegation is that without making due investigation on the basis of the said complaints and without hearing the petitioners, the bills demanding property taxes were issued which are at Exhibits-A-2, A-6 and A-8. There is also a challenge to the said bills in this petition.

PIL No.46/2014:

This PIL is filed by the petitioner which is a society registered under

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the Societies' Registrations Act, 1860 and a trust under the Maharashtra Public Trusts Act, 1950. The prayers made in this PIL are limited. The first prayer is to strike down fourth proviso to section 140A of the BMC Act and the second prayer is to strike down sub-section (2A) of section 140A of the BMC Act.

Writ Petition No.142/2014:

This petition is filed by Parsi Punchayat Funds & Properties, a trust and its trustees. The first petitioner- trust is the owner of the property known as Doongerwadi- Tower of Silence. It is a resting place for Parsis and Iranis of the Zoroastrian communities who are consigned upon death, to a cylindrical tower which is known as the Tower of Silence. Apart from incorporating the same challenge which is contained in the lead petition, there is a challenge to the special assessment notices at Exhibits-E-1 to E-33 issued under sub-section (2) of section 162 of the BMC Act. The contention raised in the petition is that though complaints were filed by the petitioners on the basis of the said notices, without investigating into the complaints, bills were issued which are at Exhibit – A-2 to A-34. There is also a challenge to the said bills and a prayer is made for quashing and setting aside the said bills.

Writ Petition No.228/2014:

This petition is filed by the Foundation for Medical Research which is a public charitable trust and its trustees. It is stated in the petition that the petitioner No.1 is running a research institute on the property described in paragraph-2 of the petition. Even in this petition, there is a challenge similar to the one in the lead petition. There is also a challenge to the special assessment notices issued under sub-section (2) of section 162 of the BMC Act which are at Exhibits-E and G. It is contended that though complaints were filed, without complying with the procedure and

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without investigating into the complaints, the bills were issued at Exhibit A-2 and A-4. There is a challenge to the said bills as well.

Writ Petition No.234/2014:

This petition is also filed by Parsi Punchayat Funds & Properties, a public trust and its trustees. The said trust is the owner of various housing properties which are described in paragraph-3 of the petition. Here again, the challenge is the same as in the lead petition. There is also a challenge to the bills, the details of which are set out in Exhibit-A-2 to the petition. Even in this petition, the same contention is raised regarding the failure to make investigation on the complaints under section 163 in accordance with section 165 of the BMC Act.

Writ Petition No.322/2014:

This petition is tagged along with the group, but by order dated 14th February 2018, this petition has been disposed of. Hence, no order is required to be passed in this petition.

Writ Petition No.539/2014:

This petition is filed by the petitioners who are the owners of a property on which a hotel is built in Bandra, Mumbai. We must note here that in this petition, apart from a challenge to the constitutional validity of various provisions concerning property tax based on capital value, there is a challenge to the notification dated 6th December 2012 issued under the provisions of the Maharashtra Education Employment Guarantee (Cess) Act, 1962. By way of amendment, a challenge has been incorporated to the orders dated 18th January 2016 passed by the BMC. By the said orders, the complaints filed by the petitioners to the special assessment notices issued under sub-section (2) of section 162 of the BMC Act were disposed of by observing that the petitioners have not raised any objection relating to the data used for fixation of capital value. There is a prayer for

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quashing the bills issued on the basis of the said two orders dated 18th January 2016.

Writ Petition No.754/2014:

This petition relates to the property of the petitioners described in paragraph-3 of the petition. The challenge in the petition is to the resolution dated 27th January 2010 passed by the General Body of the BMC by which a decision was taken to levy property taxes based on the capital value system. The second challenge is to the validity of the Capital Value Rules of 2010 and 2015. Further challenge is to the order made on 13th February 2014 on a complaint filed by the petitioner No.1 on the basis of the notices under sub-section (2) of section 162 of the BMC Act. There is also a challenge to the constitutional validity of the provisions of the Maharashtra Act No.XI of 2009.

Writ Petition No.758/2014:

This petition has been filed by a co-operative bank which is registered under the Multi-State Co-operative Societies Act, 1984. It is holding several premises in the city of Mumbai. Here again the challenge is to the resolution dated 27th January 2010 passed by the General Body of the BMC. By which the capital value system is adopted. There is also a challenge to the Capital Value Rules of 2010 as well as to the provisions of the Maharashtra Act No.XI of 2009. However, there is no specific challenge to any particular notice or demand.

Writ Petition No.1076/2014:

This petition is filed by the petitioners who are individuals. They claim to be the promoters of a proposed co-operative housing society. They have filed the petition on behalf of themselves and on behalf of the members of the proposed co-operative society who are occupying various flats in the building. The first challenge is to the resolution dated 27th

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January 2010 passed by the General Body of the BMC. There are other prayers which are similar to the one in the lead petition. There is also a prayer for setting aside the order passed on the complaints which were filed by the petitioners and other holders of the flats. By the said order, the complaints were disposed of without making an investigation on the ground that the complainant has not raised any objection regarding data used for fixation of capital value. The prayer is that no demand shall be levied on the basis of the said order.

Writ Petition No.1262/2014:

This petition is filed by a charitable trust and its trustees. The first petitioner- trust is the owner of properties more particularly described in paragraph-5 of the petition. The first prayer in the petition is for challenging the legislative competence of the State Legislature for imposing property taxes based on capital value. A declaration is also sought that levy of property taxes on the basis of capital value system is compensatory and confiscatory in the nature. There is a challenge to the Capital Value Rules of the years 2010 and 2015. There is also a challenge to the rates of taxes fixed with effect from 1st April 2015 and consequent demand thereof. There is also a prayer for striking down section 140A of the BMC Act as prayed for in the lead petition.

Writ Petition No.1348/2014:

This petition is filed by the National Centre for Performing Arts and its trustees. The first petitioner in the petition is the owner of the property which is subject matter of the said petition. Apart from the challenge which is similar to the challenge in the lead petition, there is a specific challenge to the rates of taxes fixed with effect from 1st April 2015 by the BMC.

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Writ Petition No.1524/2014:

This petition is filed by first three petitioners who are the directors of the fourth petitioner- company which is an owner of the property described in the petition. Apart from challenge to the constitutional validity on par with the lead matter, there is a challenge to the demand of property taxes and the bill dated 25th December 2012. A prayer is made that no recovery should be made of the bill amount without holding investigation into the complaints as contemplated by section 165 of the BMC Act. There is a challenge to the demand made by the demand notices as well as letters of reminders for payment of property taxes.

Writ Petition No.1695/2014:

This petition is filed by the first petitioner which is a partnership firm and the second petitioner who is its partner. The subject matter of this petition is a demand of property tax in respect of hoarding of the first petitioner being a permanent steel structures on the cement concrete foundation at the site of 100 sq.ft. located at a terrace of the building. There is challenge to the constitutional validity of various provisions of the BMC Act in terms of the challenge made in the lead petition. There is a prayer for restraining the BMC from recovering tax as per the subject notice dated 20th April 2013 issued by the BMC under sub-section (2) of section 162 of the BMC Act without giving an opportunity of being heard on the complaint filed, a copy of which is at Exhibit-E to the petition.

Writ Petition No.1738/2014:

This petition is filed by the first petitioner- company and its directors in relation to the property of the first petitioner which is more particularly described in the petition. The challenge in the petition is similar to the challenge in the lead petition. There is also a challenge to the notices issued under section 162 of the BMC Act which are at Exhibits-

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M to M-3 and bills at Exhibits-N to N-4. According to the case of the petitioners, the bills have been issued without holding any enquiry in accordance with section 165 of the BMC Act.

Writ Petition No.1739/2014, 1755/2014, 1756/2014, 1766/2014, 1767/2014, 1772/2014, 1774/2014, 1775/2014, 1781/2014 to 1786/2014, 1788/2014 to 1793/2014, 1807/2014, 1832/2014, 1843/2014, 1917/2014, 2389/2014, 2392/2014, 2393/2014, 2396/2014, 2397/2014, 2398/2014, 2399/2014, 2401/2014, 2468/2014, 2528/2014, 2659/2014:

The petitioners in these petitions are the same. Apart from challenging the constitutional validity of various sections as in the case of the lead petition, there is a challenge to the percentage of property tax fixed. There is also a challenge to special notices issued under sub-section (2) of section 162 of the BMC Act and a prayer is made that the amounts as claimed therein should not be claimed or recovered without deciding the complaints filed by the petitioners under section 165 of the BMC Act.

Writ Petition No.1943/2014:

This petition is filed by a company which is running a five star deluxe hotel at Juhu in Mumbai. Apart from containing the challenge which is similar to the challenge in the lead petition, there is a challenge to the Capital Value Rules of 2010 and 2015. There is also a challenge to a special notice dated 25th December 2012 containing a demand of property taxes from 1st April 2010. There is also a prayer for restraining BMC from recovering taxes on the basis of the said notice without deciding the complaint in accordance with section 165 of the BMC Act.

Writ Petition No.2184/2014:

This petition is filed by a partnership firm. The petition relates to the property held by the petitioner which is more particularly described in Exhibit-A to the petition. Apart from the challenge which is similar to the

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challenge in the lead petition, there is also a challenge to the special assessment notices dated 25th November 2013 and four bills issued on the basis of the said notices demanding property taxes for the years 2010-11, 2011-12, 2012-13 and 2013-14. There is also a challenge to special demand notice dated 15th December 2015 under sub-section (1C) of section 154 of the BMC Act on the ground that without deciding the complaint filed by the petitioners, no recovery of the amount can be made on the basis of the subject demand notice. In this petition, Notice of Motion (Ldg.) No.130/2015 has been filed praying for interim relief restraining the BMC from withholding Occupation Certificate on the ground that 100% payment on the basis of the demand is not made.

Writ Petition No.2248/2014:

This petition has been filed by the petitioners in respect of a property at Malad, Mumbai on which a shopping mall has been constructed. The first petitioner is a private limited company. The challenge is to the order passed by BMC dated 20th January 2014 (Exhibit-E to the petition) by which a complaint filed by the petitioners to the special assessment notice has been disposed of without hearing the petitioners on the ground that objection has not been raised relating to data used for fixation of capital value. There is also a consequential challenge to four bills (Exhibit-F1 to F4) issued on the basis of the said order. There is also a challenge to the notification dated 6th December 2012 issued by the office of the Collector, Mumbai Suburban District for levy of State Education Cess and Employment Guarantee Cess on the capital value of the lands and buildings. This challenge is apart from the challenges similar to the lead petition. There is also a prayer made for declaration that the adoption of Stamp Duty Ready Reckoner (SDRR) is null and void.

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Writ Petition No.2266/2014:

This petition is filed by a limited company and one of its directors concerning the property of the first petitioner at Nariman Point, Mumbai on which a hotel has been set up. Apart from challenging the constitutional validity of various amended provisions of the BMC Act, there is a challenge to special notice under section 162 of the BMC Act dated 13th January 2014 and bills issued. The contention of the petitioners is that bills have been issued without complying with the provisions prescribed in section 165 of the BMC Act.

Writ Petition No.2686/2014:

This petition is filed by a limited company and one of its directors. The petitioners are claiming to be the lessees in respect of the property more particularly described in paragraph-7 of the petition. There is a challenge to the validity of Rule 17(3) and Rule 21 of the Capital Value Rules of 2010 apart from challenge to the order passed on the special assessment notice under section 162 of the BMC Act and the bills issued to the petitioners.

Writ Petition No.2848/2014:

This petition is filed by two co-operative housing societies in respect of the buildings which are described in paragraph-1 of the petition. In this petition, the first prayer is to issue a direction to the BMC to levy property tax only on the base value as taken in SDRR and not on enhanced value. There is a challenge to Rule 8 and Schedule-D of Capital Value Rules of 2010. There is challenge to the notices dated 5th March 2013 and 25th October 2013. A writ of mandamus is prayed for directing the BMC to fix capital value of the buildings of the petitioners on the basis of calculations provided in Exhibit-N to the petition.

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Writ Petition No.2855/2014:

This petition has been filed by the petitioners who are allegedly using their property subject matter of the petition for charitable purposes of medical relief. The first petitioner is a public charitable trust registered under the Maharashtra Public Trust Act, 1950 and is also a society registered under the Societies' Registration Act, 1860. The petitioner Nos.2 to 4 are the office bearers of the petitioner No.1. The petitioners are challenging Capital Value Rules of 2010 in so far as they have been applied to the premises of the first petitioner used for charitable purpose. There is a challenge to special assessment notices under sub-section (2) of section 162 of the BMC Act fixing capital value of the property of the first petitioner at Rs.271.30 crore and to the bills issued on the basis of said notices. There is a challenge to the notification dated 6th December 2012 issued by the Collector of Mumbai Suburban District for levy of education cess and employment guarantee cess on the capital value. There is also a challenge to the bills issued demanding property tax which are at Exhibits-H1 to H8. The contention of the petitioners is that their property is exempt from payment of property tax.

Writ Petition No.2872/2014:

This petition is filed by two co-operative societies in respect of the buildings which are mentioned in paragraph-1 of the petition. The challenge in this petition is similar to the challenge in Writ Petition No.2848/2014 and the prayers made are also more or less similar.

Writ Petition No.118/2015:

The first petitioner in this petition is a registered association of owners of the hoardings of the city of Mumbai. It is a company registered under the Companies Act, 1956. It is an organization of outdoor advertisers. The second and third petitioners are either the owners or

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licensees of the hoardings. The challenge in the petition is the same as the challenge in the lead petition. There are also prayers added for interim relief directing the BMC to accept renewal licences and accept fees in respect of hoardings. The first petitioner seeks to represent the cause of those who are having advertisement hoardings in the city of Mumbai.

Writ Petition No.121/2015:

This petition is filed by a co-operative society which is the owner of a building more particularly described in the petition. The challenge in this petition is same as in the lead petition. There are prayers incorporated in this petition for challenging special notices issued under sub-section (2) of section 162 of the BMC Act.

Writ Petition No.275/2015:

This petition is filed by an individual petitioner who claims to be an owner of a residential flat in a co-operative housing society. The challenge in the petition is to the bills of property taxes which are mentioned in the second prayer clause and the order dated 11th July 2014 disposing of the complaints made by the petitioner against the special notices. The case is that the complaints were disposed of without giving an opportunity of being heard to the petitioner. There is also a challenge to the special assessment notices. Validity of section 154(1A) and section 216B of the BMC Act is also challenged in this petition apart from challenging the Capital Value Rules.

Writ Petition No.696/2015:

This petition is filed by the petitioner which is a limited company. The petitioner is implementing a redevelopment scheme of municipal tenanted property. The petitioner is implementing the scheme under Regulation 33(7) of the Development Control Regulations of 1991. It is pointed out in the petition that a rehabilitation building consisting of 15

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floors for accommodating the tenants is nearing completion. There is a challenge to special assessment notices. It is pointed out that complaints were filed by the petitioner on the basis of the special notices, but the orders passed on the complaint have not been communicated to the petitioners. Subsequently, the petition was amended for incorporating a challenge to the order dated 23rd February 2015. One of the grounds taken is that the said order is in breach of principles of natural justice. A notice of motion is taken out in this petition seeking interim direction to the respondent No.2 to issue NOC and commencement certificate.

Writ Petition No.1045/2015:

This petition has been filed by the petitioner which is an undivided Hindu family in respect of a shop more particularly described in paragraph-1 of the petition. There is challenge to the special assessment notices as well as to the constitutional validity of the Maharashtra Act No. XI of 2011.

Writ Petition No.1197/2015:

This petition is filed by a private limited company which is carrying on business as a developer. The petition relates to the property more particularly described in paragraph-2 of the petition wherein a shopping mall has been established by the petitioner. There is a challenge to sub-section (2A) of section 140A and sub-section 1(A)(c) of section 154 of the BMC Act. There is a challenge to the special assessment notices and bills issued pursuant thereto. There is a prayer for refund of amount which is allegedly recovered in excess of the liability of the petitioner.

Writ Petition No.1200/2015:

The first petitioner in this petition is a limited company and the second petitioner is its director. The first two prayers in this petition are to declare that levy of property taxes is compensatory in nature as well as

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confiscatory in nature. There is challenge to the constitutional validity of section 140A as well as Capital Value Rules of 2010 and 2015. By way of amendment, the petitioners have challenged special assessment notice dated 22nd May 2015 and a bill of property tax for the year 2015-16.

Writ Petition No.1214/2015:

This petition is filed by a firm registered under the Indian Partnership Act, 1932 which has undertaken redevelopment of a municipal property more particularly described in paragraph-2 of the petition. The challenge in the petition is to the bills issued demanding property taxes on the basis that the land is under construction. There is also a challenge to a communication issued by the BMC dated 18th February 2015. It is contended that the objections raised by the petitioner have not been considered.

Writ Petition No.1223/2015:

This petition has been filed by a condominium registered under the Maharashtra Apartments Ownership Act, 1970. Relief is sought in respect of the property held by the petitioner. There is challenge to the Maharashtra Act No. XI of 2009 as well as various other sections on par with the challenge in the lead petition. There is challenge to the special assessment notice dated 2nd March 2013 and the letter dated 9th March 2015 issued without hearing the complaint filed by the petitioner.

Writ Petition No.1253/2015:

This petition is filed by a limited company which is carrying on business as a builder and developer. There is a challenge to special assessment notice dated 7th May 2014 issued by BMC and property tax demand made on the basis of the notice. There are similar challenges which are incorporated in the lead petition. There is also a challenge added by way of amendment to the special assessment notice dated 4th

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December 2017.

Writ Petition No.1472/2015:

This petition has been filed by a limited company which is claiming to be the owner of the property mentioned in paragraph-1 of the petition. Apart from a challenge to various statutory provisions on par with the challenge in the lead petition, there is also a challenge to the special assessment notices issued under sub-section (1C) of section 154 of the BMC Act and a prayer is made for restraining the BMC from recovering taxes on the basis of the said notices without deciding complaints filed by them in accordance with law.

Writ Petition No.1488/2015:

This petition has been filed by a limited company in respect of the property more particularly described in paragraph-2.1 of the petition. There is a challenge to 18 bills as set out in Exhibit-F as well as to the constitutional validity of sub-sections (1A), (1B) and (1C) of section 154 of the BMC Act. Subsequently, a challenge is incorporated to the Capital Value Rules of 2015.

Writ Petition No.1512/2015:

This petition is filed in respect of a property more particularly described in paragraph-1 of the petition. There is a challenge to the special assessment notice and the demand made on the basis thereof apart from challenging the validity of the Capital Value Rules and amendment made by the Maharashtra Act No. XI of 2009.

Writ Petition No.1622/2015:

This petition is filed by the petitioner who is claiming to be the owner of the property described in paragraph-1 of the petition. There is a challenge to the statutory provisions on par with the lead petition apart from a challenge to the Capital Value Rules. There is also a challenge to

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the bills at Exhibits-C, C-1 and C-2 demanding taxes on the basis of capital value.

Writ Petition No.1624/2015:

This petition is filed by an individual petitioner in respect of the property more particularly described in the petition. A declaration is also claimed that property taxes under capital value system are compensatory and confiscatory in nature. There is a challenge to the validity of statutory provisions as in the case of lead petition. There is also a challenge to the Capital Value Rules.

Writ Petition No.1906/2015:

This petition is filed by a limited company which is in respect of storage tanks for storage of oil. Apart from the challenge to the provisions of sub-section (1A), (1B) and (1C) of section 154 of the BMC Act and bills at Exhibits-C to C-20, there is specific challenge to Rule 18 of the Capital Value Rules of 2010. We may note here that as noted in the subsequent part of this Judgment, this Bench has already struck down the said Rule.

Writ Petition No.2089/2015:

This petition is filed by an individual in respect of a building which is described in paragraph- 3(iii) of the petition. The petitioner is carrying on business as a Developer. The challenge is to the special assessment notice and communications issued by BMC declining to deal with the complaints filed by the petitioner and consequent warrant of attachment. Apart from a challenge to the statutory provisions regarding capital value system, there is also a challenge to the Capital Value Rules of 2010 and 2015.

Writ Petition No.2118/2015:

This petition is filed by a limited company which is the owner of the property described in paragraph-1 of the petition. The challenge in this

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petition is similar to the one in the lead petition. In addition, there is a challenge to special assessment notices issued to the petitioner.

Writ Petition No.2205/2015:

This petition is filed by an individual who is the owner of a building more particularly described in paragraph-1 of the petition. The challenge is similar to the one in lead petition. In addition, there is a challenge to a bill issued demanding property tax.

Writ Petition No.2310/2015:

This petition is filed by a limited company and its director in respect of property more particularly described in paragraph-1.1 of the petition. There is a challenge to various statutory provisions concerning levy of property taxes on the basis of capital value. There is a challenge to the special notices issued in respect of the said property and warrant of attachment issued by the Municipal Corporation.

Writ Petition No.2465/2015:

This petition is filed by the first petitioner which is a company incorporated under the Companies Act, 2013 and its director. The first petitioner is a developer which claims to implement a slum rehabilitation scheme. It is claimed that commencement certificate has been issued by the Slum Rehabilitation Authority for construction of rehab buildings. The BMC assessed the land admeasuring 4,074.83 for assessment of property tax on the basis that the said area is required for rehab buildings. Special notice dated 2nd December 2014 was served upon the petitioners under sub-section (2) of section 162 of the BMC Act in response to which a complaint was filed by the petitioners. It is stated that no hearing was given on the said complaint and, thereafter a notice of attachment of property was issued for recovery of property taxes on the basis of Capital Value System. Apart from the same challenge which is incorporated in the

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lead petition, there is a challenge to the special assessment notice and warrant of attachment.

Writ Petition No.2751/2015:

This petition has been filed by a limited company in respect of tanks installed by it for storage of petrochemicals and lube based oil. There is challenge to the bills issued in respect of said storage tanks. There is challenge to sub-sections (1A), (1B) and (1C) of section 154. Apart from that, there is a challenge to Rule 18 of the Capital Value Rules of 2010 which has already been struck down by this Court.

Writ Petition No.2777/2015:

This petition is filed by a limited company and its director. This petition relates to a property of the first petitioner described in paragraph-1 on which a 5-star hotel has been set up. Apart from challenging various statutory provisions concerning levy of property tax on the basis of capital value and the Capital Value Rules, there is also a challenge to the bills issued by the Municipal Corporation demanding property taxes.

Writ Petition No.2834/2015:

This petition is filed by the first petitioner which is a partnership firm and second and third petitioners who are the partners of the first petitioner. They are the owners of the godowns described in paragraph-1 of the petition. In this petition, there is no specific challenge to any particular demand notice or special assessment notice or bill. The challenge is to the statutory provisions on par with the lead petition.

Writ Petition No.2839/2015:

This petition is filed by a limited company which has installed mobile/ cellphone towers. The contention is that the taxing of telegraphic tower and cellular antenna as building/ commercial shop under the Capital Value Rules of 2010 is illegal. There is a consequential challenge

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to the bills and demand notices.

Writ Petition No.2881/2015:

This petition is filed by the first petitioner which is a partnership firm and the second petitioner who is its partner. The petition relates to the demand of property tax in respect of properties mentioned in paragraph-7 of the petition. There is a challenge to special assessment notices and orders passed on the basis of the said notices. The contention is that the orders have been passed mechanically in the same format. There is a challenge to the validity of Rule 17(3) and Rule 21 of the Capital Value Rules of 2010 apart from challenge to the orders passed on the special assessment notices, *inter alia*, on the ground that personal hearing was not given to the petitioners.

Writ Petition No.2922/2015:

In this petition, the petitioner is an individual who is the owner of the property more particularly described in paragraph-1 of the petition. The challenge to the statutory provisions is on par with the lead petition. Apart from the challenge to the Capital Value Rules of 2010, there is also a challenge to the subject special assessment notice and the order passed on the complaint filed by the petitioner. The challenge is on the ground that no hearing was given.

Writ Petition No.62/2016:

The first petitioner is a private limited company and the second petitioner is its director. The petition relates to a property described in paragraph-2.1 of the petition. Apart from challenges which are similar to the challenges in the lead petition, there is a challenge to the validity of Rule 20 of the Capital Value Rules of 2010 and Rules 3 and 21 of the Capital Value Rules of 2015.

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Writ Petition No.90/2016:

This petition is filed by a limited company which is claiming to be the owner of properties described in paragraph-1 of the petition. There is challenge in the petition to the special assessment notices and the orders passed on the same and the consequent bills issued. The challenge to the statutory provisions is confined to sub-section (1A) and (1B) of section 154 of the BMC Act.

Writ Petition No.129/2016:

This petition is filed by the first petitioner which is a Church and a charitable trust and the second petitioner who is the trustee of the said trust. This petition relates to the property of the first petitioner of the building which is referred in paragraph-4 of the petition. The first prayer is for a declaration that the Capital Value Rules of 2010 and 2015 in so far as they have been applied to the petitioners' building used for charitable purposes are *ultra vires* the provisions of the BMC Act and Article 265 of the Constitution of India. It is alleged that the same are in violation of Article 14, 21 and 265 of the Constitution of India. Apart from this, there is a challenge to the other statutory provisions such as section 140A.

Writ Petition No.438/2016:

This petition has been filed by a co-operative housing society and its members in respect of their properties described in paragraph-1 of the petition. Apart from challenge to the provisions of the Maharashtra Act No. XI of 2009 and section 140A of the BMC Act, there is also a challenge to special assessment notices which are annexed to the petition.

Writ Petition No.872/2016:

This petition is filed by a limited company which is the owner of a hotel property described in paragraph-1 of the petition. There is a challenge to section 140A of the BMC Act, the Capital Value Rules of 2010

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and 2015 as well as special assessment notices and bills issued on the basis of the said notices.

Writ Petition No.1063/2016:

This petition is filed by a partnership firm in respect of a property described in paragraph-1 of the petition. Apart from challenges which are similar to the lead petition, there is a challenge to the special assessment notices and bills. The contention is that the bills are issued without deciding the complaints filed on the basis of the special assessment notices.

Writ Petition No.1199/2016:

This petition is filed by the first petitioner which is a private limited company and the second petitioner who is its director. The petition relates to a property described in paragraph-1 of the petition. The challenge in this petition is confined to the constitutional validity of sub-sections (1A) and (1B) of section 154 of the BMC Act. There is also a challenge to the special assessment notices and the bills issued on the basis of the said notices.

Writ Petition No.1672/2016:

This petition is filed by the first petitioner which a limited company and the second petitioner who is its director. Apart from challenge to the constitutional validity of the Maharashtra Act No. XI of 2009, there is also a challenge to the notification dated 6th December 2012 in respect of levy of State Education Cess and Employment Guarantee Cess on capital value of lands. There is also a challenge to the special assessment notices and bills issued on the basis of the same.

Writ Petition No.1983/2016:

This petition is filed by the first petitioner which is a private limited company and the second petitioner who is its director. The petition

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relates to a property of the petitioners described in paragraph-2.1. Apart from challenges on par with the challenges in the lead petition, there is also a challenge to Rule 17(1) and Rule 20 of the Capital Value Rules of 2015. There is a challenge to special assessment notices, property tax bills as well as warrant of attachment issued for the recovery of property taxes.

Writ Petition No.2375/2016:

This petition is filed by the first petitioner which is an association of developers and the second petitioner who is the Manager of the said association. The challenge in this petition is firstly to the Capital Value Rules of 2015 in so far as they relate to fixing of capital value of the open lands and the lands under construction. There is also a challenge to the recovery of water tax and sewerage tax.

Writ Petition No.40/2017:

This petition is filed by first and the second petitioners which are partnership firms. The third petitioner is a partner of both the partnership firms. Apart from challenge to the special assessment notices and warrants of attachment, there is a challenge to the validity of Rules 3, 17, and 21 of the Capital Value Rules of 2010.

Writ Petition No.315/2017:

This petition is filed by individuals who are the owners of the premises described in paragraph-3 of the petition. The challenge in this petition is confined to the Maharashtra Act No. XI of 2009 and special assessment notice issued to the petitioners.

Writ Petition No.916/2017:

This petition is filed by the petitioner which is claiming to be entitled to the property described in paragraph-1 of the petition. There is a challenge similar to the one in the lead petition. Apart from that, there

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is a challenge to the special assessment notices and the bills issued on the basis of the said notices.

Writ Petition No.1019/2017:

This petition is filed by the petitioners who are claiming to be the owners of certain properties. The prayer in this petition is for a declaration that the levy of property tax on the basis of capital value is compensatory and confiscatory. There is also a challenge to the relevant provisions regarding imposition of property tax on the basis of capital value. However, there is no specific challenge to any special assessment notice or bill.

Writ Petition No.1629/2017:

This petition is filed by the first petitioner which is a co-operative housing society, the petitioner Nos.2 to 7 are its members and the petitioner Nos.8 and 9 are the developers. The petitioner Nos.1 to 7 are claiming to be the owners of the property described in paragraphs-1.1 and 1.2 of the petition. The first challenge in the petition is to the Capital Value Rules of 2015 in so far as the same relate to fixation of capital value of open land and the land which is being built upon or the land under construction. There is challenge to the special assessment notice and the property tax bill issued on the basis thereof.

Writ Petition No.2087/2017:

This petition has been filed by the petitioner which is claiming to be the owner of a property described in paragraph-1 of the petition. The challenge is on par with the one in the lead matter. There is also a challenge to the special assessment notice and demand notice.

Writ Petition No.2369/2017:

This petition is filed by the first petitioner which is a housing society and the second and third petitioners who are the Developers. There is a

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prayer that water tax and sewerage tax are not payable in respect of the property subject matter of this petition. There is also a challenge to the Capital Value Rules of 2015. There is also a challenge to the property tax bills issued in respect of the subject property.

Writ Petition No.656/2018:

This petition is filed by a limited company and its director. There is a challenge to the validity of sub-sections (1A) and (1B) of section 154 of the BMC Act as well as to the validity of the Capital Value Rules of 2015. There is also a challenge to the special assessment notice, warrant of attachment and demand notice issued on the basis of special assessment notice.

Writ Petition No.1277/2018:

This petition is filed by a limited company and its director. The first petitioner is running a Super Speciality Hospital and Transplant Centre. Apart from the challenge to the Maharashtra Act No. XI of 2009, there is essentially a challenge to the Capital Value Rules of 2010 and there is also a challenge to the special notice.

Writ Petition No.1297/2018:

This petition is filed by a co-operative housing society and a Developer. There is a challenge in this petition to the statutory provisions on par with the challenge in the lead petition. There is also a challenge to the special assessment notice.

Writ Petition No.1671/2018:

This petition is filed by the petitioner which is carrying on business as Developers. The petitioner is implementing a scheme of redevelopment under Regulation 33(7) of the Development Control Regulations of Mumbai. Apart from the challenge to the statutory provisions on par with the lead petition, there is a challenge to the property tax bills issued in

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respect of the property claimed by the petitioner.

Writ Petition No.1791/2018:

This petition is filed by the petitioner wherein the challenge is the same as the challenge in the lead petition. There is also a challenge to the special assessment notices and the bills.

Writ Petition (Ldg.) No.2393/2019:

This petition is filed by a limited company which is claiming to be a tenant of the property described in paragraph-3 of the petition. Apart from the challenge to the statutory provisions on par with the lead petition, there is a challenge to the order passed on the complaint filed by the petitioner to the special assessment notices. In this case, before passing the order on the complaint, the petitioner was heard by the authorities.

Writ Petition (Ldg.) No.2482/2018:

This petition is filed by a co-operative housing society and developers in respect of the property described in paragraph-1.1 of the petition. The challenge is similar to one in the lead petition. There is also a challenge to the special assessment notice issued to the petitioner.

Writ Petition No.2552/2018:

This petition is filed by an individual who is claiming to be the owner of the property described in paragraph-1 of the petition. Apart from challenging the assessment made in respect of the property, there is also a challenge to the statutory provisions on par with the lead matter. In addition, there is a challenge to the order passed by the BMC laying down the modalities for recovery of outstanding property taxes.

Writ Petition No.3115/2018:

This petition is filed by a co-operative premises society which is the owner of the property mentioned in paragraph-3 of the petition. Apart from the challenge to the statutory provisions, there is a challenge to the

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special assessment notice.

Writ Petition (Ldg.) No.4394/2018:

This petition is filed by an individual who is claiming to be the owner of the property described in paragraph-1.1 of the petition. In this petition, there is a challenge to the validity of the Maharashtra Act No. XI of 2009. There is also a challenge to the special assessment notice issued by the BMC.

THE SUMMARY OF THE SUBMISSIONS MADE :

8. The main submissions have been made by Shri Rafiq Dada, the learned senior counsel in Writ Petition No.2592/2013 as well as in Writ Petition No.118/2015. Dr. Milind Sathe, learned senior counsel has also made detailed submissions. We have also heard Shri V.V. Tulzapurkar, learned senior counsel appearing for some of the petitioners. There are submissions made in individual cases by the learned members of the bar. The learned Advocate General has made detailed submissions to represent the State Government. Shri S.S.Pakale appearing for the BMC has made detailed submissions. Mr. Pochkhanwala, learned senior counsel appearing for the BMC has made submissions in a writ petition. We note here that after submissions were completed by Shri Pakale, Shri V.Shridharan, the learned senior counsel sought to appear on behalf of the BMC and make submissions in the same matters in which Shri S.S.Pakale had already made very detailed submissions. When we pointed out to Shri V.Shridharan that it is inappropriate for any litigant to appoint a new counsel after that litigant's earlier counsel has made full submissions, he fairly accepted what fell from the Bench. We have, however, permitted him to file copies of the decisions on which he was relying upon. We must note here that the learned counsel Mr. Rafiq Dada, Dr. Milind Sathe, Mr.

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S.S. Pakale, the learned Advocate General and some other members of the Bar have given written submissions containing summary of the submissions made by them. We must note that there are many submissions made which are common in this group of petitions. We must note that what we have reproduced in this judgment is only a gist of relevant submissions.

SUBMISSIONS ON BEHALF OF SHRI DADA, THE LEARNED SENIOR COUNSEL ON THE CHALLENGE ON THE BASIS OF PROVISION OF ARTICLE 243X OF THE CONSTITUTION OF INDIA

9. The provisions of Article 243X require the State Legislature to provide by law an authority to the Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits, as may be prescribed in the law. It is submitted that the authority to levy, collect and appropriate tax can be given by law only to a Municipality. It is the elected body that is collectively known as the Municipality.

10. The Corporation is also defined in the BMC Act. The "Corporation" means the Municipal Corporation of Brihan Mumbai constituted or deemed to be constituted under the Act. [section 3(b)]. The Corporation is one of the Municipal Authorities charged with carrying out the provisions of the Act and the Standing Committee and the Commissioner are two other authorities [section 4(a), (b) and (h)]. The Commissioner is appointed by the State Government [section 54]. He placed reliance on the decision of the Apex Court in the case of ***Marathawada University v. S.B.R. Chavan***[1] (paragraph 19). It is submitted that this tax must be collected in accordance with a procedure

1 AIR 1989 SC 1582

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and the limits or conditions under which the tax is to be imposed should be specified in the law.

11. A Municipality is defined under Article 243P(e) to mean an institution of self-Government constituted under Article 243Q. It is submitted that although a Committee of the Municipal Corporation is a part of the Municipality, the authority to levy, collect and appropriate tax cannot be given to a Committee. The Corporation is different from the Standing Committee. The Corporation has perpetual succession, whereas one-half of the members of the Standing Committee retire every year and newly elected. It is submitted that the provisions of the impugned amendment are invalid, since the Standing Committee is empowered to impose the relevant taxes Section 140(1)a(i) and (ii) and Section 140(1)b (i)and (ii).

12. It is submitted that the following provisions are invalid since no limits are laid down. Section 140(1)a (i) and ii, Section 140(1)b (i) and (ii), Sections 170, 195E and 195G.

13. The provisions of Article 243(W) which confer a general power and authority as may be necessary to carry on the responsibility, including those in relation to a matter listed in the 12th Schedule of the Constitution do not include the power to levy, collect and appropriate tax. It is submitted that this is for two reasons. The first is that the power to levy tax must be expressly conferred and cannot be part of a general power; ***Hoechst Pharmaceuticals Ltd. v. State of Bihar***[2] (para 74 and 76); ***State of West Bengal Vs. Kesoram Industries Ltd.***[3] (para 81 to 83).

2 AIR 1983 SC 1019
3 AIR 2005 SC 1646

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The second is that the power to levy tax, has in fact, been conferred on the Municipality and cannot be read to confer any power on the Standing Committee or any other authority like the Commissioner.

14. Article 243X only empowers the State Legislature to authorize a Municipality to levy, collect and appropriate such taxes and subject to such limits and procedure as may be prescribed by the law. Following provisions of BMC Act violate Art. 243-X.

S.No.	Provision	How violated
	s. 128	No Limits have been prescribed for the different rates of tax to be levied for different categories of users of land or building or part thereof.
	s.140(1) (a) and (b)	No Limits have been prescribed for the rates of tax; Standing Committee has been given the power to decide.
	s. 140 (1) (c)	The procedure has not been specified as to when and in what manner the authority will decide whether to levy tax on Rateable Value basis or on Capital value basis.
	140A	No Limits have been prescribed in 140A(1) Lower limit has not been prescribed in the first proviso to s. 140A (1). Lower limit has not been prescribed in the third proviso to s. 140A (1). In the explanation the lower limit has not been prescribed.
	154(1) read with 155(1)	Rateable Value is to be arrived at by the Commissioner Procedure not set out Authority given to Commissioner
1	154(1A)	Commissioner to fix the capital value by having regard to the value in the SDRR (Authority).

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		After taking the approval of the Standing Committee, the Commissioner is to frame Rules for fixing the rules regarding categories of users and weightage to be assigned for various categories. (Authority).
	169	Standing Committee would frame Rules for water taxes and Water charges based on percentage of Rateable value or Capital Value. (Authority).
	170	Standing Committee would frame Rules for sewerage taxes and sewerage charges based on percentage of Rateable value or Capital Value. (Authority).
	172	Standing Committee could amend Rules made by it under section 169 or 170.
	195E	Limits have been prescribed for the rates of education cess for levy on RV basis but not for CV basis.
	195G	Limits have been prescribed for the rates of street tax for levy on RV basis but not for CV basis.
	354UA	Improvements Committee would decide the betterment charges and the Commissioner will declare that the betterment charge so approved would be leviable. (Authority)

A reliance was placed on the decisions in the cases of ***Cantonment Board, Secunderabad V/s G. Venketram Reddy and Others***[4]; ***Asstt. Collector of Central Excise, Calcutta V/s National Tobacco Co. of India Ltd.***[5]; and ***Collector of Central Excise, Chandigarh V/s M/s. Smithkline Beecham Consumer Health Care Ltd & others***[6].

SUBMISSIONS ON BEHALF OF SHRI DADA, THE LEARNED SENIOR COUNSEL ON VIOLATION OF ARTICLE 14 OF THE CONSTITUTION OF INDIA

4 AIR 1995 SC 1210
5 AIR 1972 SC 2563
6 AIR 2003 SC 829

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15. It is settled law that Tax Laws should also confirm to the fundamental rights of equality under Article 14 of the Constitution of India. Any laws which are arbitrary or capricious are liable to be struck down as violative of Article 14 of the Constitution of India. It is submitted that there are various aspects which show that the impugned provisions are clearly in violation of Article 14 of the Constitution of India. It is evident that each of the categories of property taxes are specific for reimbursement of expenses to be incurred by the Municipal Corporation. The taxes may be called expense specific. It is submitted that since the taxes in question are expense specific, they cannot be unequal in their application. The Report of the Chartered Accountants who were employed to recommend the rates of taxation would show that several persons had benefited from the capital value system and many are losers. It is submitted that property tax cannot be exorbitant or confiscatory. In the judgment of the Hon'ble Supreme Court in ***Patel Gordhandas Hargovinddas & Ors. Vs. Municipal Commissioner, Ahmedabad***[7] (para 34), the Supreme Court held that a tax which was 250% of the annual value was confiscatory and would be impossible to justify. In this connection, the attention of the Hon'ble Court is drawn to page 82 of the petition (last row) where the rate of tax on residential premises under the ratable value system was 181.50% of the Ratable Value or 201.67% of the annual letting value. The rate of tax on non-residential premises under the ratable value system was 305.50% of the Ratable Value or 339.44% of the annual letting value. On the basis of the capping provision as per the proviso to Section 140A, the rate works out to 1018.50% of the annual letting value for non-residential premises and 403.34% of the annual letting value for residential premises. This clearly makes the taxes imposed as confiscatory. A statement of the tax break up as on 2000 [Exhibit F at

7 AIR 1963 SC 1742

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page 82]. It is submitted that the Corporation has a large surplus as is evident from paragraph 19 at page 14 of Writ Petition No.2592/2013. The Auditors' Certificate [Ex.G at page 84 of the petition] shows that the Corporation has a large surplus and there was no occasion to impose exorbitant taxes. It is submitted that there is no nexus between the basis of the levy and the object of the tax. The object of the tax is to meet expenses. It is submitted that this cannot be based on capital value. As expenses with regard to each property for water, sewerage and other expenses, which are required to be met cannot depend upon the value of the property. The value would depend upon the area where it is located, the date of construction and other factors. None of these are relevant to determine the expenses for the items for which the taxes are being imposed.

16. He referred to the Bombay Stamp (Determination of Free Market Value of Property) Rules, 1995 (for short "the said Rules of 1995') and the SDRR prepared under the said Rules of 1995 from time to time. The requirement to base the capital value on the SDRR makes it unfair and unjust for the various reasons. The rate in the SDRR are with respect to the market value of the property. They account not just for the capital value of the property, but also for the profit made thereon by the developer/seller of the property in question. The capital value of a property is only one component of the market value of the property. Under the guise of the impugned amendments, the property tax though styled to be on the capital value of properties, in effect is actually a tax on the market value of the properties. These rates proceed on the basis that the property is vacant. The SDRR rates do not take into account leasehold properties in respect of which leases have expired. The SDRR rates also do

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not take into account properties which are encumbered, heritage properties under the Archaeological Survey of India, or in respect of which litigations are pending, thereby overlooking the fact that in some cases such properties are not marketable and/or in any event that the market value of these properties stands greatly reduced. Even in respect of charitable institutions, the same criteria is made applicable even though such properties by their very nature are not marketable and therefore, have no market value.

SUBMISSIONS ON BEHALF OF SHRI DADA, THE LEARNED SENIOR COUNSEL ON EXCESSIVE DELEGATION

17. It is respectfully submitted that it is a settled law that when a legislative power is conferred, guidelines will have to be prescribed under which the delegate can exercise its powers. It is further submitted that under Article 243-X of the Constitution of India, it is incumbent upon the legislature to confer a precise power upon a Municipality and lay down the limits in the law under which such power is conferred. Under Section 140A, the Corporation has got the power to pass a resolution to adopt the levy of property tax on buildings and lands in Brihan Mumbai on the basis of the capital value of such lands and buildings. The other provisions specially contained in Section 140, as also Sections 169 and 170 show that a Corporation as also the Standing Committee has a choice of levying property tax on capital value or rateable value. The choice which is given to select capital value as opposed to rateable value is without any guidelines. It is submitted that an arbitrary uncanalised and unfettered discretion has been given to the Corporation to adopt either the capital value or to continue with rateable value. It is respectfully submitted that on that account, the provisions of the impugned amendment are void and

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illegal for excessive delegation of legislative power. The learned senior counsel relied upon the decisions of the Apex Court in ***Hamdard Dawakhana Anr. V. Union of India & Ors***[8] (paras 29 to 38), ***M/s. Devi Das Gopal Krishnan V. State of Punjab & Ors.***[9] (paras 10 to 17, 22 and 23) and ***Krishna Mohan (P) Ltd. V. Municipal Corporation of Delhi & Ors.***[10] (paras 44 to 50).

SUBMISSIONS ON BEHALF OF SHRI DADA, LEARNED SENIOR COUNSEL ON SCHEME OF TAXATION UNDER MUNICIPAL CORPORATION ACT AND VIOLATION/BREACH THEREOF IN THE MATTER OF FIXATION OF PROPERTY TAX

18. It is respectfully submitted that under the Scheme of Taxation under the BMC Act, accounts are required to be prepared and budget finalized under the Scheme prescribed under Sections 125 to 127 of the Act. The Budget is required to be considered by the Corporation under Section 127 of the Act. Under Section 128, the Corporation shall before the 20th day of March after considering the proposals of the Standing Committee determine the rate at which the Municipal taxes shall be levied in the next ensuing official year. Under Section 128(3), a 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 on the 1st of April of those three years and the taxes for the said three years shall be leviable and payable at the rate so determined.

8 AIR 1960 SC 554
9 AIR 1967 SC 1895
10 (2003) 7 SCC 151

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19. It is submitted that the provisions of Section 128(3) give the powers to the Corporation to approve the rates of property taxes even after the commencement of the respective official years. It is submitted that the Corporation cannot approve a tax at the end of 2012-2013 for the official year 2010-2011 or 2011-2012 or 2012-2013. The rate of tax is required to be approved in each of the three official years.

20. The Scheme of the Act clearly requires that an assessment book be prepared as prescribed under Section 156 of the Act. The Scheme of the Act also requires that the provisions of Sections 157 to 159 be complied with. Public Notice has to be given of the value of any property in any ward (Section 160). Assessment Book is to be kept open for inspection (Section 161). Time for filing complaint is to be publicly announced (Section 162) and special notice is to be issued in certain cases [Section 162(2)]. A procedure is prescribed for filing of complaint and hearing of the Complainant (Sections 163 to 165).

21. Under Section 166, an authentication is required of the ward assessment book. Under Section 166(2), the Ward Assessment Book subject to such alterations as may be made therein, shall be accepted as conclusive evidence of the amount of each property tax leviable on each building and land in the official year to which the book relates. Likewise, under Section 167, the assessment book may be amended during the official year. Under Section 167(2), every such amendment shall be deemed to have been made for the purpose of determining the liability or exemption of the person concerned in accordance with the altered entry from the earliest date in the current official year, when the circumstances

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justifying the amendment existed. A new assessment book need not be prepared in every official year. However, the Commissioner may adopt the entries in the last preceding year's book with such alterations as he thinks fit for each new year. However, public notice is required to be given in accordance with Sections 160 and 162 every year and the provisions of the said Sections and of Sections 163 to 167 both inclusive shall be applicable each year. It is respectfully submitted that in view of the legal provisions cited above, it is not open to impose any tax by accepting it after the official year is over.

22. He relied upon the decision of the Apex Court in the case of ***Municipal Corporation of the City of Hubli v. Subha Rao Hanmanthrao Prayag.***[11] (paras 5 to 11). In this case, the Supreme Court held in connection with the Bombay Municipal Boroughs Act, 1925 that in order to be effective in levying tax, the assessment list must be authenticated before the expiry of the official year for which it is prepared, otherwise it would be void and inoperative. He also relied upon the decisions in the cases of the ***Sholapur Municipal Corporation v. Ramchandra Ramappa Madgundi***[12] at (pg472 to 480) and ***Municipal Corporation, Indore v. Rai Bahadur Seth Hiralal & Ors.***[13] (pg131)

23. It is submitted that the rules framed by the Commissioner as also the rates which have been finalized and sought to be operative after the directions are given to the Assessment Department (see page 703 of Writ Petition No. 2592 of 2013) cannot be retrospectively applied from 1st April 2010. The said rules can only be prospective as even on the reading

11 AIR 1976 SC 1398

12 1971 (74) Bom LR 469

13 1968 2 SLR 125 : AIR 1968 SC 642

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of the tax of the rules, it is provided that they shall come into force forthwith. This would obviously mean from and after the date when they have been approved. It is respectfully submitted that unless there is a provision which enables the Commissioner to give retrospective operation to the rules, the rules can only be prospective. He relied upon the decision of the Apex Court in the case of ***the Accountant General & Anr. v. S. Doraiswamy***[14] (paragraph 7). In this connection, he also relied upon the decision in the case of ***Income Tax Officer, Alleppey v. M.C. Ponnoose***[15] (para 5). He pointed out that in paragraph 5 of the judgment, the Supreme Court approved the proposition that a subordinate legislative function cannot make a rule, regulation or bye-law, which can operate with retrospective effect. He pointed out that the Court approved the dicta laid down by Subba Rao J. in ***Dr.Indramani Pyarelal Gupta v. W.R. Nathu***[16] (paragraphs 37 and 38). He also relied upon ***M/s. Shree Sidhbali Steels Ltd. & Ors. V. State of U.P. & Ors.***[17] (para 12, page 1187 right-hand column middle of the paragraph).

24. It is respectfully submitted accordingly that the Respondent Corporation cannot impose the final tax calculated on the basis of the rates finalized by the Standing Committee in 2012 and directed to be operative from 13th March 2013 (page 703) for the years starting from 2010-11 and 2011-12. In this connection, the Corporation was empowered to issue a provisional bill for the period 2010-11, 2011-12 and 2012-13. After final assessment, an adjustment could be made against the amounts so paid under the provisional bill. Under Section 140A(3), a

14 AIR 1981 SC 783 : 1981 (4) SCC 93

15 AIR 1970 SC 385

16 AIR 1963 SC 274

17 AIR 2011 SC 1175

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non-obstante clause is provided with reference to Section 163 or 217 or any other provisions of the Act on the basis that such provisional bill shall not be questioned before any forum.

25. There is no such provision in respect of a final bill, nor is there any provision which enables the Corporation to finalise the assessment of any official year viz., 2010-11 or 2011-12 or 2012-13 after the respective official year is over.

SUBMISSIONS ON BEHALF OF SHRI DADA, SENIOR COUNSEL THAT THE RULES FOR FIXATION OF CV ARE *ULTRA VIRES* THE ACT IN AS MUCH AS THE SDRR HAS BEEN BY-PASSED

26. It is submitted that the rules for fixation of capital value for lands and buildings, framed by the Commissioner under Section 154(1A) and approved by the Standing Committee under Section 154(1B) are *ultra vires* the provisions of Section 154 of the Act. The taxes are calculated on the built-up area instead of the carpet area of the land or building. (Calculation on carpet area is the mandate of Section 154(1A). The rules framed for determination of capital value have by-passed and ignored important guidelines laid down in the Stamp Duty Ready Reckoner. The mandate of Section 154 requires the Stamp Duty Ready Reckoner to be taken into account which has been consciously by-passed. Certain provisions of the SDRR have not been taken into account by the Commissioner in framing the rules for fixing capital value for the period 2010 to 2015. A reliance is placed on the judgment in the case of ***Indian Express Newspaper v. Union of India***[18] (paras 73 to 78).

SUBMISSIONS ON BEHALF OF SHRI DADA, SENIOR COUNSEL IN RELATION TO RULES OF 2015 BEING ILLEGAL AND VOID

18 (1985) 1 SCC 641

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27. It is submitted that the Respondents acted in a highhanded manner and did not give any hearing on the objections raised by the Members of the Petitioner No.1 and forwarded the bills for the year 2015-2016. It is further submitted that Respondent No.4 had caused special Notices to be issued to the Members of the Petitioner No.1 indicating revision in capital value and calling upon the Members to submit their complaints in a prescribed format. Some of the Members of the Petitioner No.1 had submitted their complaints by objecting to the demand that the objection should be raised in the particular format. The Respondent No.4 had forwarded copies of the property tax bills along with the Notice under Section 164. It is respectfully submitted that such an action on the part of the Respondent No.4 was illegal as Respondent No.2 could not have raised any bills until and unless the capital value was finally determined, after due investigation as provided in section 165 of the Act. By virtue of Section 166 of the Act, it is only after the complaints have been disposed of that the capital value could be entered in the Ward Assessment Book. In the absence of the hearing on the complaints, any action on the part of the Respondent No.2 or Respondent No.4 in respect of levy of property tax would be without the authority of law and contrary to Article 265 of the Constitution of India.

28. It is submitted that the BMC Act as amended provides that capital value should be based on the carpet value of building or flat. However, the said rules take into consideration the base value as provided for the Ready Reckoner which in turn relies on the built-up value. No multiplier has been provided to convert this base value on the basis of built up area to a base value on the basis of carpet area, which ought to

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have been done. It is submitted that the rules are on that account *ultra vires* the BMC Act and void;

29. Dr. Milind Sathe, the learned counsel made following submissions:

ON LEGISLATIVE COMPETENCE

(i) Articles 245 is the fountain source of legislation power and 246 of the Constitution provide the extent of legislative powers of Parliament and State Legislature and broadly prescribe that the State Legislature may make laws on the subject enumerated in List II of Seventh Schedule of the Constitution and also make laws on the subject enumerated in List III subject to provisions of Article 254. The three Lists in Seventh Schedule enumerate various fields on which the respective legislatures can legislate.

(ii) The power to levy taxes is a specific power enumerated with reference to specific entries in all the three lists. Residuary power of legislation as well as Taxation vests in Parliament alone.

(iii) The legislative competence of the impugned provisions of BMC Act, 1888 can be examined with respect to the Entries 5 of List II, 49 of List II and Entry 86 List I .

(iv) Articles 245 and 246 prescribe the source of the powers of competent legislature for making laws in relation to the subjects enumerated in Lists I, II and III. Part IXA does not confer the source of power of legislation, but in fact it further regulates such source. Article 243-X does not authorise the State Legislature to impose tax. This is for the reason that Article 243-X authorises the State Legislature to make a law to authorise municipalities to impose taxes. Such a law must satisfy the test of Legislative Competence with reference to Articles 245, 246 and Seventh Schedule.

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(v) The State Legislature can only authorise municipalities to impose taxes by a State Law which the State Legislature is competent to legislate upon. Thus, if the State Legislature itself is not competent to legislate upon a particular subject in List II, it cannot constitutionally authorise municipality to impose tax by such a law.

(vi) Therefore, Article 243X for the purpose of determining legislative competence of a State Law is not relevant and such competence has to be only determined with reference to taxing entries in the Seventh Schedule.

(vii) The Petitioners submit that the BMC Act is in pith and substance falling under Entry 5 List II of Seventh Schedule of the Constitution. Entry 5 List II is a general entry and not a taxing entry.

(viii) The Supreme Court in the case of ***Hoescht Pharmaceuticals v. State of Bihar***[19] has laid down a clear distinction between the general entries in Lists I and II and the entries authorising imposition of tax in Lists I and II in Seventh Schedule.

(ix) The Supreme Court in the case of ***All India Federation of Tax Practitioners v. Union of India***[20] (para 33) and also in the case of ***State of Bihar v. Shri Baidyanath Ayurved Bhawan***[21] (paras 17-23) has made it clear that there is a distinction between a general entry and a taxing entry mentioned in Lists I and II of Seventh Schedule. Though the entries in Lists I, II and III are legislative fields and widest possible interpretation has to be given to the subjects fields enumerated in these Lists, even the widest possible interpretation given to the general entries under these Lists cannot authorise the imposition of tax and the power to impose tax has to be specifically conferred by a respective taxing entries in Lists I and II.

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19 AIR 1983 SC 1019
20 2007 (7) SCC 527 : AIR 2007 SC 2990
21 2005 (2) SCC 762

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(x) The Supreme Court in the case of ***Second Gift Tax Officer, Mangalore v. D.H. Hazareth***[22] (para 10) has held that there are three categories of legislative entries in Lists I and II and the Constitution has divided the topics of legislation into three broad categories, that is –

(a) Entries enabling laws to be made – field of general legislation;

(b) Entries enabling taxes to be imposed – field of taxation;

(c) Entries enabling fees and stamp duties to be collected – field of tax are separately mentioned. Unless tax is specifically mentioned, it cannot be imposed except by Parliament in exercise of residuary field, i.e. Entry 97 List I.

(xi) In any case, it is absolutely made clear by a judgment of the Supreme Court in the case of ***Rama Krishna Ramanath v. Janpad Sabha***[23] (Constitution Bench) that Entry 5 List II of Seventh Schedule of the Constitution does not authorise levy of tax and it is a general entry. A Division Bench of this Court in ***Hirabhai Patel v. State of Bombay***[24] (para 4) has also expressly held that Entry 5 List II is a general entry and does not authorise imposition of tax by a municipality.

(xii) The provisions of the BMC Act are therefore in pith and substance relate to Entry 5 List II which does not authorise tax and therefore the taxing provisions in the BMC Act, (impugned provisions) cannot be related to a general legislative field in List II. The taxing provisions in BMC Act would have to relate to one of taxing entries in List II and if they are not so relatable, the State Law (BMC Act) would be unconstitutional for want of legislative competence.

(xiii) It has been settled by a series of judgments of the

22 AIR 1970 SC 999
23 AIR 1962 SC 1073
24 AIR 1955 Bombay 185

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Supreme Court that the nomenclature of levy in a particular statute is not determinative of the real nature and character of levy. He relied upon the decision ***All India Federation of Tax Practitioners V/s. Union of India*** (supra). Therefore, a mere reference to the impugned levy in the BMC Act as "property tax" does not by itself make it a property tax.

(xiv) The scheme of BMC Act would show that the nature of levy in the impugned amendment in the BMC Act is for the purpose of rendering services by the Municipal Corporation and therefore is a fee and not a tax. This is evident from the following:-

(a) The BMC Act under Section 139 provides the kind of taxation which shall be imposed by the Municipal Corporation which inter-alia includes –

(i) Property tax

(ii) Tax on vehicles and animals

(iii) Theatre tax

(iv) Octroi

The above taxes would be referable to entries 49, 58, 62 and 56 of List II) i.e. 49- Taxes on Lands and Buildings; 58- Taxes on animals and boats; 62- Taxes on entertainment and amusement to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council; and 56- Taxes on goods and passengers carried by road or on inland waterways.

(b) Section 139A (part of the impugned amendment) and Section 140 provides that property taxes leviable on "Lands and buildings" shall include:

(i) Water tax
(ii) Water benefit tax

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(iii) Additional water tax
(iv) Sewerage tax
(v) Sewerage benefit tax
(vi) Additional sewerage tax
(vii) General tax
(viii) Education cess
(ix) Street tax
(x) Betterment charges

(c) Thus, first six kinds of taxes are in relation to water and sewerage charges or services. A property tax, which could possibly be urged as falling under the category of general tax, is leviable at percentages either of capital value or rateable value added thereto in order to provide for the expense necessary for fulfilling the duties of the Corporation arising under clause (k) of Section 61 (Fire Brigade) and Chapter XIV (Municipal Fire Brigade). The above provisions may therefore be considered as "Charging Sections".

(d) The general tax is for the purpose of implementation of the two objects under Section 61(k) (which is the entertainment of fire brigade and the protection of life and property in case of fire, and Chapter XIV relates to Municipal Fire Brigade.

(e) Thus, the property tax is not a tax on "land and building", but it is a tax for a specified object of providing the fire brigade services as well as fees for recovering expenditure incurred by the Municipal Corporation for providing services in relation to water and sewerage as is evident from clauses (a) and (b) of Section 140(1). Entry 66 of List II authorizes imposition of levy of fees by a law made by State Legislature. Entry 96 reads thus:

"96. Fees in respect of any of the matters in this list,

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but not including fees taken in any Court."

(f) Even though, Sections 139 and 140 use the words "tax on lands and buildings", it is clear that the tax is in relation to the Municipal Services that are required to be provided by the Corporation inter alia under the provisions of Section 61 of the Act.

(xv) The Supreme Court in the case of ***State of Bihar v. Indian Aluminium***[25], ***Union of India v. Harbhajan Dhillon***[26] and ***Buxa Dooars Tea Company Ltd. v. State of West Bengal***[27] has interpreted the meaning of the word "Tax on Land and Building" in Entry 49 List II. The Supreme Court in no uncertain terms has clearly held that for a levy to be a tax on land and building, it has to have a direct and definite relation to the land and building.

(xvi) The Supreme Court in the case of ***Lt. Col. Sawai Bhavani Singh v. State of Rajasthan***[28] has in no uncertain terms laid down the three essential conditions for a law relating to Entry 49 List II which are as follows:

(i) It must be a tax on land and building separately as units.
(ii) The tax cannot be a tax on totality, i.e. it is not a composite tax on the value of all land and building.
(iii) Tax is not concerned with the division of interest in the building or land. In other words, the tax was not concerned whether one person occupies the land and building or two or more persons occupy or own it.

(xvii) It is therefore abundantly clear that the levy under the BMC Act is not "a tax on land and building" and the real nature of levy

25 AIR 1997 SC 3592
26 AIR 1972 SC 1061
27 AIR 1989 SC 2015
28 (1996) 3 SCC 105

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demonstrated above makes it clear that it is in fact not a tax at all and it is a fee charged for rendering services. In the fiscal legislation charge must be created. Taxable event is required to be defined which is the one, on occurrence of which liability to tax is attracted.

(xviii) It is further made clear by a judgment of the Supreme Court in the case of ***Union of India v. State of U.P.***[29] wherein while interpreting the provisions of Water Tax and Sewerage Tax in a Municipal Corporation Act, the Supreme Court has held that the Water Tax and Sewerage Tax is in fact "a fee" and not "a tax" and the property belonging to Union of India under Article 285 is saved from a tax and not fee and therefore held that the Railways will be bound to pay fee to the Municipal Corporation for the services rendered.

(xix) Article 277 provides for saving of any taxes, duties, cess etc. which were being lawfully levied before commencement of the constitution. It provides that even though such taxes would now be leviable under the Constitution only by Law of Parliament, such taxes would continue till contrary law is made by the Parliament. This provision has no relevance while determining the legislative competence of the State Legislature or the Parliament. The Supreme Court in ***The Town Municipal Committee v. Ramchandra Vasudeo Chimote***[30] has held that the sole objective of Article 277 was to avoid dislocation of finances of the State and Local Authorities. It did not permit or give any authority to expand the range of taxation by subjecting new items to tax or by increasing the rates of duty.

(xx) Thus, a tax can be levied on the Capital Value of a property only by a law made by Parliament under Entry 86 List I. The impugned amended provisions of the BMC Act which has adopted Capital

29 (2007) 11 SCC 324 : AIR 2008 SC 521
30 AIR 1964 SC 1166

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Value as the basis of so-called taxation is therefore a direct encroachment on Entry 86 List I. The law made by the State Legislature therefore on a subject relating to Entry 86 List I has to be struck down for want of legislative competence. It may be argued that the impugned levy is not on the Capital Value of whole of the assets of the owner, but on a particular property, i.e. land or building, then such an argument would not be valid. This is for the reason that the tax titled "Property Tax" essentially is the tax on Capital Value of the property as the measure of tax adopted in the impugned amendment (as percentage of Capital Value) makes it a tax on Capital Value and therefore encroachment upon Entry 86 List I. The provisions of the impugned amendment in the BMC Act making Capital Value as the basis of impugned levy is therefore liable to be struck down for want of legislative competence of the State Legislature.

SUBMISSIONS ON VIOLATION OF CHAPTER IX-A OF THE CONSTITUTION OF INDIA

30. Article 13(1) of the Constitution mandates that all existing laws at the time of commencement of the Constitution, insofar as they are inconsistent with Part III of the Constitution, shall be void. This applies to laws in force on the date when the Constitution came into force. Article 13(2) provides that any law made after the commencement of the Constitution, which is violative of Part III of the Constitution, shall be void.

Thus, a pre-constitutional law, if it violates the provisions of the Constitution, shall be void to the extent of inconsistency with the provisions of Constitution. In other words, the provisions in the existing law inconsistent with the Constitution get eclipsed by the Constitution till the time it so remains inconsistent.

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However, the law enacted after the commencement of the Constitution, if it violates any provisions of the Constitution, is "void". Such a law to the extent of inconsistency with the Constitution is 'stillborn' and does not take effect at all. Likewise, the laws existing on the date when Chapter IX-A was inserted in the Constitution by Constitution Seventy Fourth (Amendment) Act, 1992 with effect from 1st June 1993, if it violated the provisions of Chapter IX-A, would be eclipsed by the constitutional provisions in Chapter IX-A.

However, Article 243-ZF allows the existing laws, which were inconsistent with Chapter IX-A, to continue to be in force till the expiry of one year. The laws therefore in existence as on 1st June 1993, which were inconsistent with the provisions of Chapter IX-A, would cease to operate after 1st June 1994.

However, applying the analogy of Article 13 to the provisions of Chapter IX-A, the laws made after the Constitution Seventy Fourth (Amendment) Act, if it violates any provisions of Chapter IX-A, would be a stillborn law and it would be void right since its inception as it could not have been enacted in breach of injunctions under Part IXA and hence would be "stillborn". The Supreme Court in the cases of ***Bhanumati v. State of U.P.***[31] and ***Bondu Ramaswamy v. Bangalore Development Authority***[32] has held that the laws relating to municipality before the Ninety Third Amendment would cease to operate if not brought in line with Chapter IX-A within one year and the laws made after the amendment would be void and stillborn.

Therefore, the existing provisions in the BMC Act relating to levy on the basis of Rateable Value, if it violated Chapter IX-A, would cease to operate from 1994. However, the impugned levy on the basis of

31 AIR 2010 SC 3796
32 (2010) 7 SCC 129

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Capital Value inserted by Maharashtra Act 11 of 2009, 27 of 2010, 12 of 2011 and 6 of 2012, if it violates Chapter IX-A, would be absolutely void since its inception and a stillborn law.

Article 243X of the Constitution authorizes the State Legislature by law to authorize the municipality to levy, collect and appropriate the taxes. The Petitioners submit that the impugned amendment in the BMC Act violates Article 243-X. The scheme of provisions of the BMC Act makes it abundantly clear that the 'Municipal Corporation' is the 'municipality' referred to in Articles 243X and 243Q. It is therefore only the Municipal Corporation consisting of 227 councillors directly elected at ward elections and five nominated councillors constituting Municipal Corporation can be authorised by the State Legislature to impose taxes. He relied upon sections 4 and 5 of the BMC Act. The constituent of the Municipal Corporation, i.e. Standing Committee or Improvement Committee or Municipal Commissioner, cannot therefore be authorised by a law made by the State Legislature to impose tax, much less can be authorised by "Municipality' by delegation.

However, the provisions of the impugned amendment in the BMC Act authorises the Standing Committee to impose certain taxes from varieties of taxes which are referred to as property tax in the BMC Act.

31. Though Section 140A of the BMC Act provides that the 'Corporation' may pass resolution adopting Capital Value basis for the property tax on lands and buildings as the 'Corporation' may determine in accordance with Section 128, the components of property tax under Articles 139A and 140 are left to be decided by the Standing Committee. The provisions authorising the Standing Committee (not the Corporation) to levy components of so-called property tax, are as follows:

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Following Property Taxes shall be levied (14)	
Water Tax S.140(1)(a), S.141(1) and S.169	SC by rules decide notwithstanding S.128 (S.169) Specified Percentage of CV.
Water Benefit Tax S.140(1)(a), S.141(2) and S.169	SC by rules decide notwithstanding S.128 (S.169) Specified Percentage of CV.
Sewerage Tax S.140(1)(b), S.142 and S.170	SC by rules decide notwithstanding S.128 (S.170) Specified Percentage of CV.
Sewerage Benefit Tax S.140(1)(b), S.142 and S.170	SC by rules decide notwithstanding S.128 (S.170) Specified Percentage of CV

Other components of property tax i.e. Education Cess and Street Tax are decided by Corporation under Section 195E read with 61(a) and Section 195G read with Section 61(m) respectively and there is no provision as to who decides the general tax. Therefore, the authorisation in the impugned amendment in favour of Standing Committee and not the Corporation is therefore directly in teeth of Article 243X of the Constitution and liable to be declared unconstitutional.

32. The provisions of BMC Act have authorised Municipal Commissioner (a) to fix the Capital Value of land and building [S. 154(1A)]; (b) to frame rules for specifying details of categories of building or land and weightage by multiplication for fixing Capital Value with approval of Standing Committee [S.154(1B)]; and (c) to undertake revision of Capital Value every five years [S.154(1C)]. The levy of property tax is calculated as percentage of Capital Value. The Capital Value is to be fixed by Municipal Commissioner considering factors which Municipal Commissioner himself (with Standing Committee approval) will

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prescribe by Rules and will also initiate revision of Capital Value.

Thus, Municipal Commissioner, in effect decides the property tax payable in respect of lands and buildings without any limit or guidance or check on his power. These provisions empowering Municipal Commissioner to fix CV, frame Rules for factors to be considered while determining CV and to undertake revision are violative of Article 243-X as these powers could have been validly delegated only to 'Municipality' which means Municipal Corporation and not to an officer, who is administrative head and a constituent of the Corporation. A constituent of a larger body cannot function as the larger body itself, particularly when the Constitution uses the nomenclature of only the larger body.

The Municipal Corporation / Municipality is a permitted delegate of the State (as taxing authority to levy taxation). No further delegation is possible / permissible, not even by the state much less by the Municipality.

33. The Supreme Court in the case of ***Rajendra Shankar Shukla v. State of Chattisgarh***[33] has held that once the constitution under Part IX-A has provided for a democratically elected body to carry out a certain function, a nominated body cannot take the role of that elected body and consequently usurp the power of the local authority; any action by such a nominated authority is contrary to the Constitutional mandate under Part IX and IX-A of the Constitution.

Article 243X providing for the State Legislature by law authorising municipality to levy tax also provides that such law should prescribe a procedure and limit subject to which such levy can be imposed by the municipality. The provisions of the BMC Act do not provide any such limit for the levy that can be imposed by municipality. The provisions

33 (2015) 10 SCC 400

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of capping under Section 140A of the BMC Act cannot be considered as having provided a limit on municipal taxation as even the limit provided is two times and three times for residential and commercial properties respectively and it is for a limited period of time. Therefore, in effect the Municipal Corporation has been given unlimited power of municipal taxation without providing any limit on its power and therefore the provisions of the BMC Act on that count are also violative of Article 243X of the Constitution and are liable to be declared unconstitutional.

For fixation of Capital Value, the impugned provisions have conferred powers on Municipal Commissioner who will decide CV in accordance with Rules, which he himself will make (with Standing Committee approval). The rate of components of property tax will be decided by Standing Committee. There is neither a guidance nor an outer limit provided for fixing Capital Value or rate of tax. The scheme of impugned provisions of BMC Act is thus contrary to Article 243-X as it provides no limits on power to levy.

The decision to levy tax on capital value basis is ultra vires Article 243Y and the delegation of function of assessment of tax to private parties in violative of Article 243Y of the Constitution of India. That the levy of taxes, the basis for taxation and rates thereof must only be based on the recommendations of the Finance Commission and not otherwise. In the instant case it is accepted (MCGM Affidavit Pg. 264 and 473) that this decision is based on the recommendations of two private parties i.e. Tata Institute of Social Sciences (TISS) and a firm of Chartered Accountants (Singrodiya and Goyal). In the teeth of the constitutional provision, the Corporation could not have appointed either the Tata Institute of Social Sciences (TISS) or the University of Mumbai (Mumbai University) to either review the financial position of the Corporation or to recommend

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the measures needed to improve the financial position. Clause (1) (a) (ii) of Article 243-Y further makes it the duty of the Finance Commission to make recommendations to the Governor as to the determination of taxes which may be assigned to or appropriated by the municipalities. Article 243X provides for authorising a municipality to levy, collect and appropriate taxes and also to assign to a municipality taxes, duties, etc.,. In other words, the term "determination of taxes" in Article 243Y(1)(a)(ii) should be read in conjunction with clauses (a) and (b) of Article 243X and it is only the Finance Commission that could have recommended the rates of tax that are to be levied by the Corporation and not any private body. It was for the Finance Commission to review the finances of the Corporation and recommend the limits of taxation under various heads/categories as well as the procedure to be adopted for ensuring that the Corporations have adequate finances to carry out their obligations under the Act. When the Constitution has empowered an authority to do a particular thing, no other authority could do it.

Keeping the provisions of Article 243-I in view, the Finance Commission would recommend the limits of taxation which would be incorporated in the law made by the State Legislature in respect of the authorization to be given to the Municipalities to levy taxes. The Municipal Commissioner would make his recommendations under Section 125(1)(d) regarding the proposals for taxation by keeping in mind the limits prescribed in the law. When the Standing Committee considers the proposals made by the Commissioner under Section 126(1) and proposes the rates of taxes under Section 126(2)(a), it should do so by taking into account the limits set out in the law which has authorised the Corporation to levy taxes. If any other interpretation is adopted, the provisions of sections 125(a)(d) and 126(2)(a) would become inconsistent with the

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provisions of Article 243Y read with Article 243X and would cease to be in force after 1st June 1994. In so far as the Act does not contain any "limits' or "procedure", the provisions would be inconsistent with Article 243X and by virtue of Article 243-ZF, the provisions would cease to be in force after 1st June, 1994. In view of violation of Article 243Y, the levy of taxes by the Corporation under the impugned amendment is without the authority of law and hit by Article 265.

SUBMISSIONS ON EXCESSIVE DELEGATION

34. The law made by the State Legislature relating to imposition of levy can delegate the powers to impose, collect and appropriate tax to the 'Municipality' in view of the Scheme of Part IXA of the Constitution of India. However, the provisions authorising the imposition of levy cannot delegate this important legislative function without providing appropriate guidance to the delegated authority. The Petitioners submit that there is absolutely no guidance provided in the provisions of the BMC Act for levying the property tax. There is no guidance as to whether or not and in what circumstances the Capital Value as a measure of property tax can be adopted. There is also no guidance in the provisions of the BMC Act as to when and how the Corporation would be entitled to adopt the Capital Value as a measure of property tax, what would be the rate of tax, how will the rate be determined etc. The Supreme Court in the case of ***Corporation of Calcutta V/s. Liberty Cinema***[34] has held that the prescribing rate of tax is an effective legislative function and it can be delegated provided that there is enough guidance to the delegated authority to prescribe such a rate.

35. The Supreme Court in the case of ***Municipal Corporation of***

34 AIR 1965 SC 1107

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Delhi v. Birla Cotton[35] laid down the following factors which will operate as a limit on the delegation of power to impose tax to save it from the vice of excessive delegation which were noted in the judgment of the Supreme Court in ***Gulabchand Modi v. Municipal Commissioner of Ahmedabad***[36]:-

(1) that the delegation was to an elected body responsible to the people, including those who pay taxes and to whom the councillors have every four years to turn to for being elected;

(2) that the limits of taxation were to be found in the. purposes of the Act for the implementation of which alone taxes could be raised and though this factor was not conclusive, it was nonetheless relevant and must be taken into account with other relevant factors;

(3) that the impugned Section 150 itself contained a provision which required that the maximum rate fixed by the. Corporation should have the approval of the Government;

(4) that the Act contained provisions which required adoption of budget estimates by the Corporation annually; and

(5) that there was a check by the courts of law where the power of taxation-is used unreasonably or in non compliance or breach of the provisions and objects of the Act.

Section 140 of the BMC Act at the first glance seems to provide for only three factors i.e. factors 1, 4 and 3 which are –

(1) Authorisation in favour of elected body which is Municipal Corporation.

(2) Providing for preparation of a budget and imposition of levy as per such body.

35 AIR 1968 SC 1232
36 (1971) 1 SCC 823

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(3) Provisions of capping, that is putting on limit on maximum tax.

However, the Petitioners submit that the provisions of Section 140A of the BMC Act providing for imposition of property tax on the basis of Capital Value "at such rate and from such date" by the "Corporation" have been rendered absolutely nugatory by the provisions which have authorised the Standing Committee to decide the components of property tax and provision which have authorised Municipal Commissioner to fix CV as per rules framed by him.

The limit on the delegated power of imposition of property tax has therefore disappeared firstly because the power is delegated to a constituent of Corporation, i.e. Standing Committee/ Municipal Commissioner, and secondly because the provisions which have authorised the Standing Committee/ Municipal Commissioner have been given an overriding effect over the provisions relating to budget, i.e. Section 128. Thus, two provisions as to the budget under Section 128 and decision by the 'Corporation' under Section 140A have been rendered otiose by the provisions in the impugned amendment which has authorised the Standing Committee / Municipal Commissioner to decide the rates of components of property tax. There is no limit prescribed for 'maximum rate of tax'; Section 140A caps the 'tax payable' for initial five years only. The outer limit on tax payable is also twice the tax payable for residential properties and thrice for commercial properties of the tax which was payable before introducing CV system. This cannot be construed as an outer limit for tax payable.

The limit therefore discussed in the above judgment has ceased to exist by virtue of these provisions which suffer from vice of excessive delegation and the effect of provisions which would have

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operated as limit on such delegation have been taken away. The impugned amendment in the BMC Act in Sections 169 and 170 insofar as it authorises the Standing Committee to decide the components of property tax and insofar as it gives overriding effect to these provisions over Section 128 suffer from excessive delegation and are contrary to Section 140A (which is one of the charging section) and therefore liable to be declared unconstitutional. While the Corporation is an elected body which is now a Constitutional Authority [see sections 5, 5A and 5B], the Commissioner is appointed by the State Government and is not an elected representative. The provisions of the Act in so far as it empowers the Commissioner to arrive at the Capital Value of the lands and buildings is not only ultra-vires Article 243X but it deprives the elected representatives of having a say in the taxes to be levied and collected by the Corporation. This directly or indirectly amounts to interference by the State Executive in the matters of taxation and runs counter to the very purpose of introducing Part IXA and particularly Article 243X in the Constitution.

SUBMISSIONS ON ARTICLE 14 OF THE CONSTITUTION

36. The impugned provisions of the BMC Act are absolutely arbitrary and manifestly unreasonable. The adoption of Capital Value as a basis and measure of taxation has absolutely no rational nexus with the object of levy. The scheme of the BMC Act makes it clear that the object of levy is to allow Municipal Corporation to augment its revenue and to allow Corporation to effectively render services to the people in the municipal areas. However, the basis of taxation for rendering such service is sought to be made Capital Value of the property which is absolutely irrational as the basis of taxes which are in the nature of fees for municipal services must have rational nexus to the cost and quantum of

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services and therefore the provisions of the BMC Act are arbitrary and violative of Article 14 of the Constitution. As noted earlier, as there are no limits whatsoever on the tax which the Municipal Corporation can levy and collect, the tax imposed is highly excessive and manifestly unreasonable which is evident from the following:-

(a) In accordance with such an interpretation, the Corporation has passed a resolution whereby they decided to levy property tax on Capital Value basis with effect from the official year 2009-2010. Furthermore, the rates of taxes that they have fixed are such that the tax on Capital Value has increased, in certain cases, to over 200 times the tax on Rateable Value basis.

(b) The Corporation has treated the first proviso as empowering it to give concessions to certain categories of assessee whereby they would charge two times the tax on Rateable Value basis for Residential Premises and three times the tax on Rateable Value for Non-Residential Premises.

(c) A perusal of Exhibit “F” to the Writ Petition 2592 of 2013 shows that between 1936 and 1945, the total tax that was levied by the Corporation was 17% out of which 11% was General Tax including Fire Tax. By the year 2010, the Corporation was charging 181.5% of Rateable Value for Residential Premises and 305.5% of Rateable Value for Non-Residential Purposes.

(d) By virtue of the interpretation given by the Corporation, the tax for Residential Premises has been capped at 363% of Rateable Value and for Non-Residential Premises at 916.5% of the Rateable Value. This is contrasted with the tax on Capital Value basis, as calculated by the Corporation, by which, as aforesaid, the tax on Capital Value has increased from anything between 17.68 times to 212.0 times (as per the data provided in Exhibit “I” of Writ Petition No. 2592 of 2013. The

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provisions which permit such high taxation which is far greater than the amounts received by the owners as rent would be grossly unreasonable and expropriatory and would be violative of Article 19(1)(g) of the Constitution of India.

(e) In ***Patel Gordhandas Hargovindas v. Municipal commissioner, Ahmedabad*** (supra), a Constitution Bench came to the conclusion that if a tax is levied as a percentage of the Capital Value, it could camouflage the correct situation. A rate at the percentages fixed by the Corporation may not appear extortionate but a rate at 250% of the Annual Value would be impossible to sustain and might even be considered as confiscatory taxation (para 34).

(f) As shown above, even the levy at 2 times and three times of the existing taxes for residential and non-residential premises respectively would, in fact make the levy 326% of the Annual Letting Value for Residential Premises and 825% of the Annual Letting Value for Non-Residential Premises. These figures show the gross unreasonableness of the levy.

(g) A figure of two times and three times may not seem to be very large. However, a proper appreciation of the impact of the levy would show the gross unreasonableness of the provision and that too in circumstances where the rent receivable by the landlords is frozen at 1940 levels (with meagre increases as set out before).

Therefore, this clearly demonstrates that in the absence of any limit, the tax imposed is manifestly unreasonable. The Supreme Court in the case of ***Shayra Bano v. Union of India***[37] Case (Triple Talak case) and a nine Judge Bench judgment in the case of ***Navtej Singh Johar v. Union of India***[38], has struck down the provisions of the statute on the

37 (2017) 9 SCC 1
38 2018 SCC Online SC 1350

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ground that they were manifestly unreasonable and violative of Article 14 of the Constitution. The provisions of the BMC Act which allows imposition of a tax, which is highly unreasonable, are also therefore liable to be struck down as violative of Article 14 of the Constitution.

The scheme of BMC Act, i.e. Sections 125 to 128, and the provisions relating to assessment, i.e. Sections 156 to 166, clearly provides that the rate of tax and assessment has to take place each year depending upon the needs of Corporation in the ensuing year. However, the provisions have allowed the Corporation to keep a constant rate of taxation for a period of five years. The Petitioners submit that this is mechanical exercise and flouting the express provisions of deciding the rate of tax each year and therefore apart from being *ultra vires* the BMC Act are arbitrary and violative of Article 14 of the Constitution.

As stated above, the owners of the building receive rents of 1940 levels with meagre increases and they would not have the capacity to pay a tax which, in the case of residential premises is nearly three times the rents received by them and nearly nine times for non-residential premises. In ***Malpe Vishwanath Acharya & Ors. v. State of Maharashtra***[39], the Court recorded the findings in the report filed in the year 1979 the Maharashtra State Law Commission which submitted its 12th report "It was pointed out to the Commission that 46 per cent of the lands belong to low income group, 27 per cent belong to middle income group, and only 25 per cent belong to the higher income group. These figures will indicate that 75 per cent of the so-called landlords are really people who depend upon the rent of the property for their livelihood. To designate them as 'landlords' itself is undesirable. When one considers the financial position of the tenants, compared to the positions in 1940s, one clearly sees that the monthly income of these tenants has gone up from

39 AIR 1998 SC 602

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100 to 400 at least. However, there has not been a proportionate increase in the rents." Section 140A providing for revision of property tax by 40% every five years is far too excessive which means that the property tax will go up by 8% each year. This revision of property tax by 40% therefore is manifestly unreasonable and therefore liable to declared unconstitutional.

SUBMISSIONS ON THE CHALLENGE TO THE PROVISIONS OF MUMBAI MUNICIPAL CORPORATION ACT, 1888 WHICH ARE RETROSPECTIVE IN OPERATION

37. If the law made by the State Legislature is relating to a subject enumerated in List II, the State Legislature obviously as the power to make the law retrospective in operation. However, assuming that the State Government has legislative competence to legislate, it has to be still in compliance with Article 243X, when law is made to implement Part IXA. The provisions of Article 245, 246 and entries in List II and III of the Seventh Schedule have to be now read in the context of Part IXA. Article 243X does not authorise the State Legislature to make a law authorising municipality to levy tax with retrospective effect and therefore the provisions of Sections 154A and 140A(2) of the BMC Act, insofar as they have been given retrospective effect, are without any authority to the State Legislature under Article 243X and therefore are liable to be struck down.

Further, Sections 154A and Section 140A(2) of the BMC Act provide that for the period between 2011 and 2013 the provisional bills will be issued to the assessees on the basis of Rateable Value taking it as a temporary Capital Value till finalisation of Capital Value and after such finalisation of Capital Value, fresh bills will be issued and the assesses will

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be liable to pay the bills. The Petitioners submit that these provisions are manifestly arbitrary and unreasonable as it levies the tax with retrospective effect. Such a retrospective imposition of tax at a future date for past year results in chaos and confusion and operates unduly harshly on every assessee who is entitled to arrange and clearly arranges his finance on the basis of law as it exists. As held by the Supreme Court in the case of ***Lohia Machines v. Union of India***[40], such retrospective levy is manifestly unreasonable and violative of Article 14 of the Constitution.

The retrospective provisions of the BMC Act, i.e. Sections 154A and 140A(2) also make the whole scheme of the BMC relating to fixing the rate of property tax completely nugatory. These provisions, since they operate retrospectively, will have no regard for the budget of Municipal Corporation and therefore are clearly in breach of the scheme of Sections 125 to 128 and Section 140A.

It also renders the assessment process nugatory under Sections 166 and 167 and seeks to impose tax for the preceding three years without there being an assessment in that year at the relevant time. The Supreme Court in the case of ***Municipal Corporation of City of Hubli v. Subha Rao Hanumantharao Prayag***[41] (supra), has held that unless the tax is determined by assessment in each official year, it cannot be recovered from the assessee subsequently. The provisions of Section 154A proviso and Section 140A(2) relate to the first time assessment after the Capital Value regime post 2010. These provisions also are manifestly arbitrary and unreasonable as the provisional bills would be issued on the basis of old Rateable Value till fixation of Capital Value and therefore to that extent operate retrospectively and therefore liable to be struck down.

40 (1985) 2 SCC 197
41 AIR 1976 SC 1398

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SUBMISSIONS ON PROPERTY TAX BOARD

38. The Maharashtra Municipal Property Tax Board Act, 2011 sought to replace the Maharashtra Municipal Property Tax Board Ordinance, 2011 and was brought into force with effect from 10th March 2011 even though it was notified in the Gazette on 21st April 2011. The Ordinance was promulgated on 10th March 2011 as the Governor was satisfied that it was necessary for him to take "immediate action" to establish the Maharashtra Municipal Property Tax Board.

Section 4 sets out the composition of the Board and it includes a retired Judge of the Supreme Court or High Court and has experts in the field of Municipal administration or valuation of properties etc.

The functions of the Board includes the review of the property tax system [when required by the Government] and to recommend periodic revision of taxes [section 12].

By virtue of section 30, section 219A was introduced in the BMC Act to provide that every rateable value or capital value shall be subject to the valuation or revision by the Board and the Appeal to the Court of Small Causes was curtailed/or prohibited if the same was under the consideration of the Board.

Any appeal from the decision of the Board lies to the High Court [sec. 21]

Till date, the Board has not been constituted or notified under section 3 of the Act. Thus due to the inaction of the Government, the Petitioners have been deprived of having the capital value revised or tested by the expert body that is to be constituted under the Act and grave prejudice has been caused to the Petitioners.

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SUBMISSIONS ON VALIDITY OF 2010 AND 2015 RULES

39. Even assuming that the impugned amended statutory provisions are not violative of Part IX-A of the Constitution or that the statutory provisions are not violative of Article 14 and 19(1)(g) of the Constitution for grant of excessive delegation, even then the actual operation of capital value system, which left to the discretion of the Commissioner under 2010 and 2015 Rules, these Rules are clearly unconstitutional on the following counts:

(i) The Rules are *ultra vires* the parent Act;

(ii) The Rules are clearly arbitrary and unreasonable and violates Articles 14 and 19(1)(g) of the Constitution; and

(iii) The Rules have conferred excessive power by way of delegation upon the Municipal Commissioner.

Section 140A provides for SDRR while determining the Capital Value of the property. However, Rule 22 of 2010 and 2015 Rules giving overriding effect even to SDRR is therefore clearly *ultra vires* the parent statute and is liable to be so declared. The Rules seek to create further categories apart from lands and buildings for the purpose of imposition of tax and therefore to that extent the Rules are *ultra-vires* BMC Act and also suffer from excessive delegation. 2010 and 2015 Rules provide for taking into account the development potential of vacant land for the purpose of fixation of Capital Value of that land. The Petitioners submit that this is clearly impermissible under the parent Act and taking into account the development potentials of land for fixing Capital Value is absurd and *ultra vires* the BMC Act. The Supreme Court in the case of ***State of Kerala v. Haji K. Kutti Naha***[42] (Pg. 649), while interpreting the provisions of Kerala

42 1969 1 SCR 645

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Building Act, 1961 struck down the provisions of Municipal Act which adopted the Floor Area Ratio as a measure for fixing Capital Value of the property without considering the class, nature of construction, user, situation and capacity of profitable user as violative of Article 14 of the Constitution and manifestly unreasonable.

The Rules have provided for fixation of Capital Value and consequently the levy of tax on the basis of Land, Land being built upon taking into consideration its potential are alien to the Concept of Capital Value and contrary to the decisions of the Supreme Court and this Court. The "property tax" is leviable only on "lands" and "buildings" which phrases are defined in Sections 2(s) and 2(r). Thus, there is no category of 'Land Under Construction' for assessment. Reliance was placed on the following decisions: (i) ***The Municipal Corporation of Greater Bombay v. M/s Polychem Limited***[43]; (ii) ***Rialto Cooperative Housing Society Ltd. v. Municipal Corporation of Greater Bombay***[44]; (iii) ***Naman Developers Pvt. Ltd. v. Municipal Corporation of Greater Mumbai***[45]; (iv) ***Shri Saurashtra Patel Samaj v. Brihanmumbai Municipal Corporation***[46]; (v) ***National and Grindlays Bank Ltd. v. The Municipal Corporation of Greater Bombay***[47]

40. First of all, the Petitioners submit that under the provisions of the BMC Act, the levy of property taxes, whether based on rateable value or capital value, is of only two things, i.e. land and building. Land and building have been defined in section 3(r) and 3(s) of the BMC Act, which read as follows :

"3(r) "land" includes land which is being built upon or is built

43 AIR 1974 SC 1779 : (1974) 2 SCC 198
44 1998 (1) BCR 397
45 2002 (6) Bom CR 561 : 2002 SCC Online Bom 777
46 2004 (1) Mh.LJ 27
47 (1969) 1 SCC 541

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> upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street;
>
> 3(s) "building" includes a house, outhouse, stable, shed, hut tank (except tank for storage of drinking water in a building or part of a building) and every other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatever"

Under sections 154 to 156 of the BMC Act, buildings and lands are separately mentioned and hence the basis for property taxes, whether rateable value or capital value, will be calculated separately for land or building. Thus, the property can be assessed to property tax only as land or building and not in any other category as 'Plot of land" "land under construction". The proposed revision in respect of property taxes of the Petitioners' properties is solely based on the factor that existing buildings have been demolished and new construction is proposed. Such a revision is clearly impermissible in light of the decision of the Supreme Court in ***Municipal Corporation of Greater Mumbai v. Polychem Limited*** (supra) (paragraphs 22 and 23). In view of the above, it is submitted that 2015 Rules creating a separate category i.e. "LUC" and/or "open land being built upon" is therefore clearly *ultra vires* the provisions of BMC Act, which does not recognize this category for levy of taxation. The Petitioners therefore submit that the 2015 rules insofar as they apply to LUC properties are clearly *ultra vires* the provisions of BMC Act, 1888 and therefore are liable to be quashed and set aside. The Petitioners therefore submit that the revision of capital value undertaken by the Respondents in respect of LUC properties of Petitioners' members which is solely based on the fact that the building existing on the properties being demolished and the planning permission for construction of new building has been granted

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is therefore clearly impermissible under the provisions of BMC Act and is based on 2015 Rules, which are *ultra vires* BMC Act. The revision therefore undertaken in respect of LUC properties based on rules which are *ultra vires* the parent statute i.e. BMC Act is consequently therefore liable to be quashed and set aside. The impugned special notices and the bills issued on that basis to the Petitioners in the present Writ Petition are therefore liable to be quashed on that basis.

Earlier, the rules framed under Section 154 (1B) of the BMC Act, were framed by Municipal Commissioner in Circular dated 28th March 2012, which were applicable for five years i.e. from 1st April 2010 to 31st March 2015 ('the 2010 Rules') [Exhibit B, page 87 of the Writ Petition]. In 2015, the new rules have been framed i.e. the said 2015 Rules which are applicable from 1st April 2015 to 31st March 2015 [Exhibit C, page 107 of the Writ Petition].

41. The Hon'ble Supreme Court in the case of Polychem was concerned with the following question- "when a building constructed upon land previously assessed to Municipal tax is demolished for construction of a new building, is it open to Municipal Corporation to assess the rateable value of the land till the construction of the building by taking the market value of the land?" The Hon'ble Supreme Court has held that it is impermissible for BMC to consider market value of land under construction as a basis for fixation of rateable value. The Petitioners submit that although this judgment is in respect of fixation of rateable value, the principle would remain the same in respect of fixation of capital value as well and the ratio of this judgment is also applicable to the facts of the present case. The Petitioners therefore submit that the impugned 2015 Rules insofar as they relate to the fixation of capital value of LUC as

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a separate category are therefore clearly contrary to the ratio of the aforesaid judgment and are therefore liable to be quashed and set aside.

42. Assuming for the sake of argument that the 2015 Rules are intra vires the parent BMC Act, even then the impugned 2015 Rules are absolutely arbitrary, unreasonable, illogical, erroneous and the classification of properties invented by the 2015 Rules has no rationale nexus with the object sought be achieved by such classification. The 2015 Rules have invented a new category for the purpose of computation of capital value which is called LUC or land being built upon. The effect of Rules 21 and 22 of the 2015 Rules is therefore the increase of capital value (and the resultant tax) of a plot of land after the demolition of existing building. This is completely misconceived, as the capital value of the land after the demolition of existing building in fact should reduce and should not increase The 2015 Rules therefore are clearly arbitrary, unreasonable, and therefore violative of Article 14 of the Constitution of India.

43. Schedule 'A' Part I of 2015 Rules prescribe user categories of open and their corresponding weightages by multiplication to the base value as per the said Schedule, multiplication factor. As per the said schedule, the multiplication factor for the land beneath partly demolished/collapsed structure until the issuance of IOD is 0.10, multiplication factor for open land not built upon until issuance of IOD is 0.25 and multiplication factor for open land for residential purpose is 1.00. The 2015 Rules in effect creates three categories, land beneath, partly demolished / collapsed structure until issuance of IOD, open land not built upon till issuance of IOD and open land for residential purpose.

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The 2015 Rules by providing a separate multiplication factor in respect of all these three categories runs therefore counter to express provisions of Section 154 of the BMC Act and therefore are liable to be quashed and set aside.

44. The 2015 Rules provides for the computation of capital value of an open plot of land which is being built upon / LUC by taking into consideration the Floor Space Index (FSI) available on the assessed land. This is absolutely illogical, impermissible under the parent Act. In any case, the FSI denotes the plot potential of a plot, which is subject matter of assessment and therefore cannot form the basis of computation of capital value of open plot of land till the time the construction is complete and a planning permission for completion of such construction is issued by MCGM. The 2015 Rules providing for the plot potential to be taken into account in the form of FSI for computation of capital value of LUC properties is therefore not only *ultra vires* the provisions of BMC Act, but also are erroneous, illogical, arbitrary and unreasonable.

45. Section 154 (1A) of BMC Act, provides the parameters for fixation of capital value. The powers therefore delegated to Municipal Commissioner under section 154 (1B) to frame rules for fixation of capital value ought to be exercised as per the parameters prescribed by section 154 (1A). The power vested by BMC Act, 1888 with the Municipal Commissioner who is the executive head of MCGM is therefore a delegated power and as such he must exercise such powers within the parameters of the provisions of the BMC Act. The impugned 2015 Rule framed by Municipal Commissioner are blatant violation of section 154(1A), 141 (1) and 142 (1) of the BMC Act and therefore liable to be

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quashed and set aside.

SUBMISSIONS ON THE CHALLENGE TO THE LEVY AND DEMAND OF WATER TAX AND SEWERAGE TAX IN RESPECT OF LUC PROPERTIES.

46. In the city of Mumbai, in case of existing buildings/ premises, BMC levies property tax at the rates mentioned in Table '1', '2' and '3' in the impugned 2015 Rules. The note under Table '1' categorically states that the water tax and sewerage tax are not applicable to properties with metered water supply. Thus, when the building is existing on plot of land, it has a metered water supply and resultantly the water tax and sewerage tax is not levied, which in turn results in reduction of percentage of property tax. However, the moment redevelopment is undertaken by owner / developer, BMC first disconnects the water supply to that building. Therefore, it ceases to be the metered water supply. After that BMC changes the category from metered to unmetered and then starts levying water tax and sewerage tax on such plot of land at the percentages provides in the Rules, which resultantly leads to increase of property tax. After the construction is complete with Occupation Certificate, BMC once again changes the category from unmetered to metered and stops levying the water tax and sewerage tax thereby reducing the property tax. The Petitioners submit that this exercise is completely arbitrary, unreasonable, *ultra vires* the express provisions of the BMC Act and ought not to be countenanced.

47. The Petitioners submit that the increased property tax because of actions of BMC requiring payment of water tax and sewerage tax in respect of LUC properties on the specious plea that it has ceased to

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be a metered water supply is absolutely arbitrary, unreasonable and unconstitutional and violative of Article 14 of the Constitution of India. The Petitioners submit that in effect this would mean that a plot of land on which there is an existing building which has been using the water through metered supply will pay lesser property tax and the plot of land with no existing building without using any water supply from BMC would pay a more property tax. The Petitioners submit that this can never be the intention of Section 154 of BMC Act and therefore the Rules are clearly contrary to the intention of the parent statute and therefore are liable to be quashed and set aside.

48. The Petitioners submit that insofar as LUC property is concerned there can be no water tax / sewerage tax, as there is no service rendered by BMC to LUC properties of whatsoever nature. There is no doubt that the water tax and sewerage tax is in the nature of compensatory tax, which only means that this tax can be levied and collected only if there is a proportionate service provided by the tax levying authority. The Hon'ble Supreme Court in case of ***Municipal Corporation of Greater Mumbai v. Nagpal Printing Mills***[48] has held that charge for supply of water has to be dependent upon the measurement of quantity of water supply. This has been so held by this Hon'ble Court in the decisions in respect of water tax and in the decision in sewerage tax. In any case, it is expressly made clear by section 141(1) and 142(1) that water tax and sewerage tax cannot be levied in the absence of service rendered by BMC. The Petitioners therefore submit that in the absence of any service provided by BMC for LUC property, levying and collecting water tax and sewerage tax is contrary to the provisions of section 141, 142 and a series of judgments of this Hon'ble Court.

48 (1988) 2 SCC 466

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REFERENCE TO READY-RECKONER IN THE RULES.

49. The Petitioners submit that Rule 22 of the 2015 Rules is ex-facie *ultra vires* of section 154A and arbitrary and illegal 154(1A) requires BMC to fix capital value by having regard to the value indicated in SDRR where SDRR is not available /possible on the basis of market value of the land even in respect of LUC properties. However, BMC instead of adopting the value as per SDRR has given an overriding effect to the 2015 Rules to SDRR. The 2015 Rules are therefore clearly *ultra vires* the provisions of Section 154 of the BMC Act and directly contrary to the provisions of parent statute. Rule 22 is therefore liable to be quashed and set aside.

All the aforesaid issues have not been dealt with in the Affidavit in Reply of BMC dated 5th September 2018. The reply only says that the Petition is not maintainable as it is filed by Association, which is not the correct position in law as explained above. Except saying one line in paragraph 9 that the land is being assessed as an open plot of land, Affidavit in Reply does not explain a newly invented category of "land under construction" as that is the only basis of revision of property tax. This category has been held by the Supreme Court as impermissible category for property taxation in the case of ***Polychem Limited*** (supra).

BRIEF SUBMISSIONS IN WRIT PETITION NO.1738 OF 2014

50. The assessment of property tax leviable under Section 140 of the BMC Act is only on "land and building". Section 140 opens thus: "The following property taxes shall be levied on building and land in Brihanmumbai, namely:-" "Land" and "building" are defined in Section 2(r) and 2(s) respectively as follows:

> "2(r) 'Land' includes land which is [being built upon or is built upon or covered with water, benefits to arise put of land,

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> things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street."
>
> "2(s) 'Building' includes a house, out-house, stable, shed, hut and every other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatever."

Section 154 provides the methodology for fixation of Rateable Value or Capital Value and opens with the words "In order to fix the rateable value of any building or land, assessable to property tax....."

Thus, the assessment is of land or building. There is no other category except land and building like "land under construction". When land with constructed building is assessed, that assessment is of both land as well as building and every component of either the Rateable Value or the Capital Value of that property, which consists of land and building, is taken into consideration in fixation of such Rateable Value or Capital Value. [See: (i) ***National and Grindlays Bank Ltd. v. Municipal corporation for Greater Mumbai*** (supra) and (ii) ***Mumbai Municipal Corporation of Greater Mumbai v. Solar Developers***, First Appeal No. 832 of 2002 – Judgment of Bombay High Court dated 13/8/2002]

Thus, when a property is assessed which has constructed building, it is assessed on land and building and, as a corollary, when a building is demolished, the assessable value either rateable or capital, must necessarily come down.

While interpreting the provisions of Section 154 of the BMC Act, the Supreme Court has in case of ***Municipal Corporation of Greater Mumbai v. Polychem Industries Limited*** (supra) has in no uncertain terms held that there is no category as "land under construction".

In the instant case, the property was assessed as "plot of land" post 1/4/2010. That assessment must continue for a period of 5 years till

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2015.

Submission of a plan for development on the property is no ground, justification or reason for revision of capital value. Taking into account the potential of the property on the basis that the Development Plan has been submitted and construction has commenced or will commence is no basis for revision of capital value and taking into consideration such a basis, is even *ultra vires* the provisions of Section 154A of the BMC Act which stipulates the factors which can be taken into consideration for fixation of capital value even assuming Section 154 to be valid.

51. In Writ Petition No.2777 of 2015, the learned counsel appearing for the petitioners has tendered synopsis of the submissions which contains gist of facts which we have already set out. It is pointed out that initially rateable value was finalised at Rs.592,22,47,425/- which by notice dated 23rd May 2015 was proposed to be increased to Rs.1060,05,15,070/-. Correspondingly, there was a substantial increase in the demand of the property tax.

52. In Writ Petition No.1197 of 2015, the learned counsel appearing for the petitioners has submitted a note containing factual aspects. It is pointed out that the petition pertains to a shopping mall. It is contended that the Municipal Corporation has levied 246% direct tax on the subject property in comparison to some other buildings assessed as shopping centre. The contention is that the building can be assessed as a shopping centre and not as a mall. Various submissions are made on the ground that in the Capital Value Rules, built up area is taken into consideration which is contrary to clause (b) of sub-section (1A) of section

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154 of BMC Act. There is a critism made for multiplying ready recknor rate by 1.25. The submissions made in the lead matters by the petitioners therein have been reiterated apart from raising of additional factual grounds.

53. In Writ Petition No.129 of 2016, written submissions have been filed generally adopting submissions made in the lead matters. Reliance is placed on various factual aspects. The submission is that the rule of capping has been completely ignored. It is submitted that the building subject matter of the petition is occupied neither for residential use nor for commercial use. It is contended that the building has been used for charitable purposes and hence, exempted from the payment of property taxes. Reliance is placed on the following decisions of the Apex Court :-

(i) ***Cristian Children Fund incorporated Vs. Municipal Corporation of Delhi and Ors.***[49]; (ii)***All India Soverdia Sangan Trust v. Municipal Corporation of Greater Mumbai***[50]; (iii) ***Christ King Cathedral Vs. John and Anr.***[51]; (iv) ***NCK Tourist Home Private Limited Vs. Kozhikode Nagar Sabha***[52]; (v) ***Harbanslal Malhotra & Sons Pvt. Ltd. Vs. Kolkata Municipal Corporation and Ors.***[53]

54. In Writ Petition No.2089 of 2015, written submissions have been tendered in addition to the submissions made by Shri Dada and

49 (1994) 4 SCC 337
50 2004 (2) Bom CR 261
51 (2001) 6 SCC 170
52 (2016) 13 SCC 265
53 (2017) 9 SCC 418.

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Dr.Milind Sathe. It is pointed out that the petitioner has undertaken SRA Development Scheme. It is contended that as the said land is vesting in BMC it is exempt from payment of general taxes in view of clause (b) of sub-section (1) of section 143 of the BMC Act. It is contended that the construction has been stopped at plinth level and therefore, assessment sought to be made is completely illegal and contrary to the law laid down by the Apex Court in the case of ***M/s. Polychem Limited*** (supra). Reliance is placed on Regulation 33(10) of the DCR for Greater Mumbai 1991.

55. In Writ Petition No.1253 of 2015, written submissions have been placed on record. It is pointed out how Capital Value Rules of 2015 are operating. Reliance is again placed on the decision in the case of the ***Polychem Limited*** (supra). It is contended that the effect of Rules 21 and 22 of the Capital Value Rules is that the Capital Value of a plot of land after demolition of existing building increases which should normally reduce. Reliance is placed in this behalf on the decision of the Apex Court in the case of ***National & Grindlays Bank Ltd.*** (supra). Various decisions which are relied upon by Shri Dada in support of his contention that the property taxes are compensatory in nature are relied upon in the written submissions.

56. In Writ Petition No.2376 of 2013, there is a synopsis of facts tendered by the petitioners. However, in addition to the submissions canvassed in the lead petition, there are no other submissions.

57. In Writ Petition No.2848 of 2014 and 2872 of 2014, the learned counsel appearing for the petitioners has tendered submissions. The facts of the case of both the petitions are more or less similar. The

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submission on facts is that the property tax has been levied on the basis of erroneous calculation of Capital Value. It is submitted that the Capital Value has been erroneously fixed on the enhanced SDRR instead of taking base value. It is submitted that in case of similarly placed buildings, the Capital Value is taken as base value of SDRR. By inviting our attention to the provisions of Rule 2(e) of the Capital Value Rules of 2010, it is submitted that the property of the petitioners will fall within the ambit of definition of luxury RCC buildings. It is urged that weightage is ascribed not on the base value as stipulated in SDRR but on the enhanced value thereby virtually doubling the capital value of the building. It is pointed out that CTS No.1960 which is CTS number of the property of the petitioners appears in zone 76A and 76B of the SDRR. These two values of the properties in the same CTS number has been assigned. It is submitted that the value ascribed to zone 76A is that base value and the value ascribed to 76B is the enhanced value. It was urged that while applying sub-rule (2) of Rule 21 of Capital Value Rules base value of the building ascribed under SDRR Rules will be taken into consideration. The submission of the petitioners is that enhanced value under SDRR includes luxury components to augment the capital value of the property from the base value. Therefore, for determining capital value, base value will have to be taken into consideration. About the car park and common area, it is submitted that the same are included in SDRR and therefore, the same cannot be separately charged for determining capital value. The submission is that in view of the decision of the Apex Court in the case of ***Nahalchand Laloochand Private Limited Vs. Panchali Co-operative Housing Society Limited***-[54] car park and stilt parking has to be taken as common area.

Another submission of the petitioners is that loading 20%

54 AIR 2010 SC 3607 : (2010) 9 SCC 536

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over the built up area of the apartment and separate lift of a factor of 20% over the common areas as parking to the stilt, refuse, etc., is arbitrary. It is pointed out that in case of apartments and flats, the market practice is to load an additional area of at least 20% on the carpet area to arrive at super built up area of the apartment. It is submitted that the Municipal Corporation while fixing capital value has arbitrarily, illegally and erroneously not only loaded 20% on the capital value of each apartment of the building of the petitioners but has also separately taken the carpet area of common area of the building of the petitioners. It is already subsumed in the 20% loading factor of each apartment and has once again added further 20% on the common areas. It is pointed out that while framing Capital Value Rules of 2015, the definition of luxury RCC building which was appearing in Capital Value Rules of 2010 has been deleted and accordingly luxury factor of 1.2 stands deleted. However, retrospective effect is not given to the said deletion. It is pointed out that weightage by multiplication of RCC building with lift for the first four floors is 1.0 and for 50th floor is 1.20. The submission is that providing higher weightage to higher floors is arbitrary and illegal. It is submitted that the said Rules of 2010 which came into force from 20th March 2012 could not have been applied retrospectively for the earlier period and in absence of specific provision for retrospective application, the Rules could not be applied retrospectively. Apart from the aforesaid submissions, the petitioners in these two petitions have adopted the submissions made in the lead matters as well.

58. In Writ Petition No.1812 of 2013, which relates to Parsi Fire Temples, it is submitted that the properties subject matter of the petition do not have any market value as the same are perpetually used for

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religious purposes. It is submitted that members of the public belonging to Zoroastrian faith worship at these Atash Behrams. Hence, no general tax as provided under sub-section (1A) of section 143 of BMC Act can be levied or imposed. It is submitted that sub-section (1A) of section 154 of the BMC Act which gives a discretion to the BMC is unreasonable, arbitrary and void.

59. Writ Petition No.118 of 2015 has been filed by the Association of Hoardings in Mumbai. In addition to the submissions made in the lead matter, it is contended that sub-section (3) of section 128 of the BMC Act which gives power to impose property tax with retrospective effect is violative of Article 14 of the Constitution of India. It is pointed out that personal hearing was not granted for the purposes of hearing of objections submitted by the petitioners to the draft Capital Value Rules of 2010. It is submitted that in case of hoardings base area on the ground is already taxed in the hands of the land owner and therefore, imposing property tax on the hoardings amount to double taxation. It is urged by relying upon a decision of the Apex Court in the case of ***Patel Gowardandas Vs. Municipal Commissioner*** (supra) that the State Legislature can impose a rate and not a tax. It is further urged that hoardings cannot be described either as a land or building. It is also pointed out that there is a discrimination made between hoardings and tower such as dish or satellite antenna. Apart from that similar submissions which are appearing in lead matter which is challenged under sub-section (1A) of section 154 are made in this petition.

60. In Writ Petition No.1943/2014, the learned counsel appearing for the petitioner invited our attention to various factual aspects

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including two complaints filed by the petitioner on the basis of special assessment notices. Our attention is also invited to the order passed by the Assistant Assessor and Collector fixing ratable value. It is pointed out that on the complaints filed by the petitioner reasoned order has not been passed. Thus, the consequent demand of taxes without passing a reasoned order is illegal. Moreover, opportunity of being heard was not granted to the petitioner before deciding the complaint. It is further submitted that adoption of capital value system has a basis and measure of taxation as no reasonable nexus was rational nexus with the object of levy. It is pointed out that by virtue of interpretation given by BMC, the tax for residential premises has been capped at 363% on ratable value and 916.05% of ratable value for non-residential premises. It is submitted that tax calculated on the basis of capital value has increased from anything between 17.68 times to 212 times. Similar submissions are made on the validity of capital value rules which have been made in the lead matters. It is pointed out that tax rate applicable to hotel which are not starred is 0.654 and for starred hotels which is 1.303 as against 0.349% for residential. He pointed out that for 5-star hotels, additional base value is taken of 1.25 and therefore, 5-star hotels will be required to pay 2.5 times than un-starred hotels. The submission is that the tax levied is exorbitant, excessive and will eventually make business of running hotel commercially unviable. The submission is that the levy was clearly violative of Articles 14 and 19(1)(g) of the Constitution of India.

61. In Writ Petition No.1738 of 2014, the attention of the Court is invited to several special notices and bills issued. It is submitted that as per section 140 of the BMC Act, property tax is leviable only on land and building and there is no category such as land under construction. Our attention is invited by the petitioners to the definition of land and building

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in clauses (r) and (s) of section 2 of BMC Act. It is submitted that when land with constructed building is assessed, the assessment is both of the land as well as the building and every component of either rateable value or capital value is taken into consideration in fixation of such rateable value or capital value. Reliance is placed on decision of the Apex Court in the case of ***National and Grindlays Bank Ltd.*** (supra). It is therefore, submitted that when a property is assessed with building, the assessable value will be more as compared to assessable value of the same land after its building is demolished. Reliance is placed on a decision of the Apex Court in the case of the ***Polychem Limited*** (supra). It was urged that submission on the plan for development of property is no ground for revision of capital value when the property was assessed as plot of land post 1st April 2010.

62. The petitioner in Writ Petition No.2184 of 2014 challenges the levy of property taxes on the basis of the special assessment notices. There are no separate submissions made on merits other than the submissions made in the lead matter. In Writ Petition No.2686 of 2014 attention of the Court is invited to two judgments and orders of the Court of Small Causes by which the orders passed in the year 2001-2002 fixing rateable value have been set aside. There is a challenge to the order passed on the complaint filed pursuant to special assessment notice served under section 162(2). It is contended that complaints were disposed of without giving an opportunity of being heard.

63. In Writ Petition No.539 of 2014, apart from adopting submissions made in the lead matter, there is a note submitted by the learned counsel appearing for the petitioners incorporating comparison of

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Capital Value Rules of 2010 and 2015. It is also demonstrated as to how both Rules are contrary to SDRR of 2010 and 2015. It is submitted that when the statute provides that wherever SDRR is applicable, it will be the basis of fixation of capital value, the Capital Value Rules provide for the said Rules overriding SDRR. Therefore, it is submitted that the Rules are *ultra vires*.

64. In Writ Petition No.2087 of 2017, challenge is to levy of taxes on property by treating the same as land under constructions. Apart from the challenges which are raised in the lead petition it is pointed out that for arriving at capital value SDRR Rules have been completely ignored as the area of the land being more than 2,000 square meters it has to be valued 15% less than SDRR rates. Moreover, valuation of land in no development zone has to be made at 40% of SDRR rate.

65. In Writ Petition No.1277 of 2018, it is submitted that while demanding taxes, capping has been ignored. It is submitted that the petitioner is entitled to exemption and concession by virtue of section 143(1)(A) of BMC Act as the property belongs to a charitable trust which is a hospital for conducting research in medicine. Various details of the activities have been pleaded. The same comments are made about the expert committee appointed by the Mumbai Municipal Corporation. The submissions made in the lead matter have been generally adopted in this petition. It is contended that water supply to the hospital building is being metered right from inception and therefore, levy of water charges in addition to water bills is illegal.

66. In Writ Petition (L) No.4394 of 2018, the submissions made are on par with the submissions in the lead matter. Another contention

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raised is that for nonpayment of property taxes, the property subject to property taxes cannot be sealed.

67. In Writ Petition No.2375 of 2016, which is filed by the Association of Developers, by relying upon the decision of the Apex Court in the case of the ***Polychem Limited*** (supra), it is submitted that a property cannot be assessed as a land under construction (LUC) and therefore, creation of category of land under construction in Capital Value Rules of 2015 is completely illegal. It is submitted that the capital value of the land after demolition must reduce and cannot increase. It is urged that water tax and sewerage tax cannot be levied for service rendered by BMC. These are the submissions which are apart from the submissions in the lead matter.

68. In Writ Petition No.70 of 2017, the petitioners are implementing a Slum Rehabilitation Scheme in respect of first two properties subject matter of the petition. It is contended that the petitioners have not availed supply of water from the Municipal Corporation either by way of metered or unmetered connection and in fact, the petitioners have obtained water supply by purchasing water tanker and therefore, no water charge or water tax can be claimed.

69. In Writ Petition No.872 of 2016 which relates to a property on which a hotel has been constructed, it is pointed out that there is a huge disparity of tax payable in respect of residential and hotel properties. Reliance is placed on the Maharashtra Tourism Policy of 2006 which provides that property tax for hotels shall be charged at residential rates. It is pointed out that the tax payable in respect of the hotel properties is as high as upto 1350% compared to residential properties in similar

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localities. A submission was made that the area such as refuse floor, service floor, plant room, etc., cannot be separately assessed as the same have no capital value. It was submitted that weightage given to floor factor in computing capital value creates several anomalies. It was pointed out that there should be consistency between the Capital Value Rules of 2010 and 2015. It was pointed out that for ascertaining the capital value, carpet area has to be taken into consideration and not the built up area as mentioned in capital value Rules of 2010.

70. In Writ Petition No.40 of 2017, it is argued that rules 3, 17 and 21 of the Capital Value Rules of 2010 treat the land under construction which is declared as a slum under the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 on par with an unencumbered land in non-slum area having full potential for development. It is urged that the Capital Value Rules of 2010 infringe the mandate of sub-section (1A) of section 154. It is pointed out that the relevant provisions of Capital Value Rules of 2010 (rule 3 read with rule 21 and schedule A) take into account permissible floor space index available on open land without taking into consideration the obligations or disadvantages placed on the owner of the lands for grant of additional or incentive FSI. It is urged that incentive FSI which is granted under clause 10 of Regulation 33 of the DCRs is coupled with obligations imposed on the owner to provide free tenements to the slum dwellers and to project affected persons. It is submitted that this aspect is ignored by Capital Value Rules 2010. It is urged that classification made by sub-rule 2 of Rule 21 is violative of Article 14 of the Constitution of India. The petitioners pointed out that in case of a redevelopment scheme under clause 7 of Regulation 33 of the Development Control Regulations of 1991, discount factor of 0.30 has been applied to the lands underneath the

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cess building. However, the land which is being redeveloped under clause (3) of Regulation 33 is not given such discount factor which is arbitrary and violative of Article 14 of the Constitution.

The exemptions which are set out under the Capital Value Rules of 2010 are not extended to similarly situated cases. Reliance is placed on a decision of the Apex Court in the case of ***Union of India v. N.M. Ratnam and Sons***[55] . It is submitted that rehabilitation schemes covered by clauses 7 and 10 of the Regulation 33 form part of the same clause and therefore, the same should be treated equally.

71. GIST OF THE SUBMISSIONS OF THE LEARNED ADVOCATE GENERAL IS AS UNDER:

(i) Various contentions raised on behalf of all the Petitioners, if are to be analyzed, the bird's eye view thereof, will demonstrate that the same can be divided into three parts:- (a) Questioning the Constitutional validity of the four Amending Acts, which have amended the Mumbai Municipal Corporation Act; (b) The validity of the actions taken by the Municipal Corporation for Greater Mumbai (hereinafter referred to as "the Corporation" for the sake of brevity), in execution of the aforesaid amendments; and (c) The Constitutional validity of the parent Act and its unamended provisions, in view of introduction of Part "IX-A" in the Constitution of India. The learned Advocate General has dealt with only the contentions in (a) and (c) above.

(ii) At the outset, it is submitted that, it is a settled position of law that, there is always a presumption in favour of the Constitutional validity of the Statute and the burden is upon him who seeks to attack it, to show that, there has been a clear transgression of the Constitutional principles. Another aspect of the settled position of law is that, laws

55 (2015) 10 SCC 681

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relating to economic activities are to be viewed with greater latitude than the laws relating to the civil rights. The Legislature should be allowed greater 'play in the joints', while dealing with the taxing statutes because it has to face complex problems. A reliance is placed, in support of the aforesaid prepositions, on paragraphs-7 and 8 of the Judgment delivered in the matter of ***R. K. Garg v. Union of India***[56], which is a Constitutional Bench Judgment. It is therefore, submitted that the entire controversy raised in the present group of matters, needs to be appreciated with the aforesaid approach, laid down by the Hon'ble Constitution Bench of the Hon'ble Supreme Court, in R. K. Garg case, which has thereafter been followed from time to time, including in the case of ***State of West Bengal & Anr. v. Kesoram Industries Ltd & Ors.*** (supra) (paragraph 32).

(iii) In as much as the issue of Legislative Competence is concerned, it is submitted that, the amending statutes have been made under the Legislative Head set out in Entry 49 of List II of the Seventh Schedule of the Constitution. The parent Act has been legislated under a Legislative Head set out in Entry 5 of List II of the Seventh Schedule of the Constitution. It is submitted that, if the State Legislature is found legislatively competent to enact the statutes in issue, in view of the legislative head set out in Entry 49 of List II, only because the parent Act is enacted in view of the legislative head set out in Entry 5 of List II, the Amending Acts in issue cannot be said to have been enacted without legislative competence. It is constitutionally permissible for the state Legislature to enact the Amending Statutes in issue in view of its legislative competence under one entry, by inserting/amending the provisions of an existing Statute (enacted in view of its legislative competence under another entry), instead of enacting two separate

56 (1981) 4 SCC 675

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statues under such two entries.

(iv) It is legally incorrect to say that the Municipal tax when charged, by taking capital value of the land and buildings as the basis, the Legislative Competence to enact such a law is referable to only Entry 86 of List I of the Seventh Schedule of the Constitution.

(v) When the Municipal tax was being imposed by taking 'Rateable value' as the basis, a contention was raised that such tax is imposing a tax on 'the income from the property', which is subjected to the tax. On that basis, it was submitted that the State Legislature was not competent to enact such a law. This argument has been specifically rejected by the Hon'ble Supreme Court by its Judgment delivered in the case of ***Government Servant Cooperative House Building Society Ltd. v. Union of India***[57] (paragraph-9 onwards). It was concluded that such a property tax remains tax on the property and cannot be viewed as 'tax on income' and that the State Legislature was entitled to enact such a law in view of Entry 49 of List II of the Seventh Schedule of the Constitution. The same Judgment further lays down that a proper approach in this regard is to look at 'the true nature and character' of the Legislation and its 'pith and substance'.

(vi) The distinction between the scope of Legislative exercise in as much as Entry 86 of List I and Entry 49 of List II is concerned, the same has been dealt with explicitly by the Hon'ble Supreme Court by its Judgment delivered by a Constitution Bench, in the case of ***Assistant Commissioner of Urban Land Tax and Ors. v. The Buckingham and Carnatic Co. Ltd. Etc.***[58] (paragraphs 4 and 6). In this case also, it is observed that characterization or classification of the law in issue is required to be made, taking into consideration 'the subject matter' of the

57 (1998) 6 SCC 381
58 (1969) 2 SCC 55

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Legislation in its 'pith and substance'.

(vii) A similar question was also dealt with by another Constitution Bench of the Hon'ble Supreme Court vide its judgment delivered in the case of ***D.G. Gose and Co. (Agents) Pvt. Ltd. v. State of Kerala and Anr.***[59] (paragraph 4 onwards), This Judgment supports the contention of the State that, in every taxing statute, there are two elements namely "subject of tax" and "measure of tax". In as much as the statute under consideration is concerned, the "the subject of tax" is 'the land and buildings' situated within the area of the Corporation. Whereas, the "measure of tax" only is 'the capital value' thereof. Since the "subject of tax" is 'the land and buildings', the Legislative Competence of the State Legislature can be traced to the Legislative Competence spelt out by Entry 49 List II of the Seventh Schedule of the Constitution. If we consider the relevant charging sections either from the unamended or even the amended statutes in issue, it is clear that the Municipal Tax is not being imposed nor is there any tax directly imposed on 'the capital value of the assets' of the holder of the properties. The 'capital value' of 'the land and buildings', which are 'the subject matter' of the tax in issue, is only the 'measure of tax'. Therefore, the Legislation in issue, both the parent and the amending statutes, are referable to the Legislative Head, spelt out by Entry 49 of List II of the Seventh Schedule of the Constitution and not to Entry 86 of List I of the Seventh Schedule of the Constitution thereof.

(viii) A brief reference may also be made in this regard to paragraph-11 of the Division Bench Judgment of this Court, delivered in the case of ***Basawesar s/o Chandrashekhar Tambakhe v. The Gram Panchayat, Silewada***[60].

(ix) It is worthwhile to note that, since inception, even under the

59 (1980) 2 SCC 410

60 2011 (5) Mh.LJ 914

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parent Act, 'the ratable value' was the basis of the Assessment of the property tax. By the amending statute only 'the basis' is changed from "ratable value" to the "capital value" of 'the land and buildings' situate within the jurisdiction of the Corporation. It is submitted that such a change will not take the parent Act as amended out of the legislative competence of the State Legislature.

(x) It is worthwhile to note that the Petitioners have not been able to bring to the notice of this Hon'ble Court even a single direct Judgment in favour of the contention raised by the Petitioners that, such a taxing statute would fall in Entry 86 List I of the Seventh Schedule of the Constitution. Consequently, in view of the aforesaid position of law, which is well settled by more than one Constitutional Bench Judgments, which rely upon the law holding the field since at least 1940 in our State, the contentions raised by the Petitioners in respect of want of Legislative Competence of the State Legislature to enact either the parent law or the amending statutes is without any substance.

(xi) Under Section 154 (1-A) introduced by the amending Statute in issue, the Commissioner has been entrusted with the job of determining the capital value of all the 'lands and buildings' situate within the jurisdiction of the Corporation. A detailed procedure is prescribed therein, as to the manner and the method to be adopted by the Commissioner while performing the said exercise. Thus clear guidelines are to be provided to him, which are required to be observed by him, in discharging his duties under the said provision. Only because the Commissioner is entrusted with the duty of determining the capital values of all the lands and buildings, to be subjected to the tax in issue, it cannot be said that the Commissioner is himself imposing such a tax. This is principally because the capital value being not the subject matter of the tax, but only 'measure

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of tax'. It will be incorrect to interpret the said provision to mean that the Commissioner is delegated with the powers and the authority to impose the tax in issue itself.

(xii) Even in case of provisions, such as Section 140 (1)(a) and (b) etc., merely because the Standing Committee is entrusted with the job of doing the basic homework for preparing a proposal, as to the quantum of tax, to be imposed as a part of property tax namely water tax, sewerage tax, etc., it cannot be said that it is the Standing Committee itself which imposes these taxes or that there is a delegation of power or authority to impose the tax on the Standing Committee. If the entire scheme of the parent Act is considered in its proper perspective, more particularly, Section 126(2) thereof, it becomes clear that the Standing Committee while preparing the Budget of the Corporation, proposes with reference to the provisions of Chapter VIII, the levy of Municipal Taxes at such rates, as they think fit. It is ultimately for the Corporation, meaning thereby the General Body of the Corporation, while considering the Budget estimates prepared by the Standing Committee and other Committees, to finalize and determine the rates at which the Municipal Taxes shall be levied. This will more clear from Sections 126, 128, 129 etc.

(xiii) These and such other provisions of the parent Act as amended, demonstrate that the Standing Committee and other Committees of the Corporation only propose the taxes to be imposed, which are imposed only upon the same being finalized by the General Body of the Corporation. It is therefore, clear that it is the General Body of the Corporation, which determines the rate at which the municipal taxes are to be levied and it is neither the Standing Committee nor any other Committee or the Commissioner, who determines such rates.

(xiv) Alternately and without prejudice to the aforesaid

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contentions, it is submitted that, even if it is assumed that it is the Standing Committee or such other Committee or the Commissioner determines the rate of taxes to be imposed, such an action would not be unconstitutional.

(xv) In the aforesaid regard, it is necessary to appreciate that in every taxing statutes, there are two types of provisions namely 'charging provisions' and 'machinery provisions'. It is submitted that 'charging provisions' constitute 'the essential part' of the taxing statute. Whereas, 'the machinery provisions' do not constitute 'an essential part' of taxing statute. Therefore, it is perfectly legally permissible to delegate an authority in as much as machinery provided for imposition of a tax in execution of or in implementation of charging provisions of any taxing statute. It is submitted that such a delegation, if any, is constitutionally permissible and sustainable.

(xvi) As is held by the Hon'ble Supreme Court by its Judgment delivered in the case of ***Corporation of Calcutta and Anr. v. Liberty Cinema*** (supra) (paragraph 22 onwards), power 'to fix the rate of tax' can be delegated by Legislature to another authority, the same being not 'the essence' of any taxing Legislation. It is submitted that, it is permissible in law, even to delegate the function of determining the rate of tax to an executive and that in case if it is so done, the same is not unconstitutional.

(xvii) In view of the aforesaid clear judicial pronouncement and nothing being shown to the contrary by the Petitioners, even if it is assumed for the sake of argument that the Standing Committee or other Committees or the Commissioner, under the parent Act, as amended, are delegated with the power to determine the rate of taxes, the statutory provisions in that regard, would not be unconstitutional.

(xviii) It is also pertinent to note that in view of the various judicial

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pronouncements, it is made clear that the approach to be adopted by the Hon'ble Court in interpreting the "charging provisions" against "machinery provisions" of taxing statutes, has to be materially different. The charging provisions are to be construed strictly. Whereas the machinery provisions are not generally subject to rigorous constructions. The Hon'ble Courts are expected to construe the machinery provisions in such a manner that a charge to tax is not defeated. It must be appreciated that the clear intention of the Legislature is to make the charge levied effective. Therefore, the machinery provision ought to be considered so as to make them workable. In this regard, the observation of the Hon'ble Constitution bench of the Hon'ble Supreme Court from its Judgment delivered in the case of ***J.K. Synthetics Limited v. Commercial Taxes Officer***[61] r (paragraph16) as also from the Judgment of the Hon'ble Apex court delivered in the case of ***Associate Cement Company Limited v. Commercial Tax Officer, Kota and Others***[62] (paragraph 27 onwards) may kindly be considered in their proper perspective.

(xix) The submissions of the Petitioners that the term "Municipality" appearing in Article 243-X, from and out of Part IX-A of the Constitution would mean only and only General Body of the Corporation, in view of the definition clause of the Part IX-A i.e. Article 243-P read with 243-Q and that it will not include the Municipal Authorities spelt out by Section 4 of the Parent Act, for the purposes of the amending Statutes in issue, read with Parent Act, is without any substance. It is humbly submitted that from the point of view of the effective implementation of the taxing provisions of the Parent Act read with amending Statutes in issue, the term 'a Municipality' or 'the Corporation' will also include the Municipal Authorities, spelt out by Section 4 thereof, charged with

61 (1994) 4 SCC 276
62 (1981) 4 SCC 578

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carrying out the provisions of the Parent Act.

(xx) It is true that the term "the Corporation" is defined by Section 3(b) of the Parent Act and Section 5 thereof, makes it clear that the Corporation shall consist of 227 directly elected Councilors and 5 nominated Councilors.

(xxi) However, the definition Clause from Part IX-A of the Constitution appearing in Article 243-P thereof, specifically starts with words "In this Part unless the context otherwise requires". It is also worthwhile to note that Section 3 of the Parent Act, which defines various terms including the term "the Corporation" also starts with words "In this Act, unless there be something repugnant in the subject or context". The aforesaid two terms appearing in the aforesaid two provisions, make it abundantly clear that the term "the Corporation", in the context of the taxing part of the Parent Act and the amending statutes in issue, cannot be construed narrowly to mean only and only the 227 directly elected Councilors and 5 nominated Councilors alone. It is submitted that in the context of the charging Sections as also the machinery provisions of the Parent Act and the amending statutes, the said term "the Corporation" would also mean and include therein, all the Municipal Authorities charged with the carrying out the provisions of the Parent Act, which are spelt out by Section 4 of the Parent Act.

(xxii) In the aforesaid regard, the position of the law is well settled viz. though normally the same meaning is to be implied by the same expression in every part of the Act, a word in one part of an Act, depending upon the context in which it is appearing, may carry a different meaning in different parts of the same Act. The same word may be used in different senses in a given statutes and even in the same section. It is a well settled that one has to look into the context in which a particular

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word has been used in a particular provision of a particular statute and assign it the meaning it deserves, in the context in which it is used. In this regard, reliance is placed on the Judgment of the Hon'ble Supreme Court delivered in the case of ***State of Maharashtra v. Indian Medical Association and Others***[63] (paragraphs 7 and 8). The same position has been explained by the Division Bench of this Court vide its Judgment delivered in the case of ***Gurudas Mangruji Kamdi v. The Hon'ble Chancellor of Rashtrasant Tukdoji Maharaj Nagpur University and Ors.***[64] (paragraph 38).

(xxiii) It also cannot be forgotten that the provisions of a taxing statute cannot be construed literally and though literal construction may be a General Rule, in construing taxing enactments, such a rule should not be adopted, if it leads to discriminatory or incongruence results. It is further well settled rule of interpretation of the statute that, in such cases where a literal interpretation leads to absurd or unintended result, the language of the statute can be modified, to accord with the intention of the Legislature to avoid absurdity. Reliance in this regard is placed on the Judgment of the Hon'ble Supreme Court delivered in the case of ***C.W.S. (INDIA) Limited v. Commissioner of Income Tax***[65] (paragraph 10).

(xxiv) If the literal interpretation as suggested by the Petitioners is to be accepted to the effect that "the Corporation" would mean only and only the elected plus nominated Councilors and that it will not include any of the Municipality Authorities, spelt out by Section 4, while interpreting the taxing part of the Parent Act read with the amending statutes, it is bound to yield absurd results, certainly not intended by the Legislature. Such a submission would lead to a result that the activities of the levy, collection and appropriation of such taxes, can be

63 (2002) 1 SCC 589
64 2014 SCC Online Bom 1490 : (2014) 6 AIR Bom R 406
65 1994 Supp (2) SCC 296

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done only and only by all the directly elected 227 Councilors and 5 nominated Councilors alone and nobody else. It is impossible to imagine and accordingly interpret, either the aforesaid constitutional or the statutory provisions in issue, to the effect that such a huge body of elected and nominated Councilors, acting together, will have to conduct all activities relating, not only to mere levy but also collection and appropriation of such taxes. In this regard, more pragmatic and practical approach has been intended by the State Legislature in enacting the provisions in issue.

(xxv) In addition to the aforesaid submissions, it is reiterated that 'the machinery provisions', which will include even fixation of rate of tax, can be constitutionally assigned, even to an executive. In this case, it is pertinent to appreciate that the Standing Committee ultimately comprises of elected Councilors, who are part of the General Body i.e. of "the Corporation".

(xxvi) In the aforesaid regard, it is further submitted that 'the assignment' if any, in the aforesaid regard, cannot be termed as "delegation" of the authority and/or power of the Corporation. At the highest, it would mean only "an authorization" to an instrumentality of the Corporation. The distinction between the aforesaid two terms "the delegation" as against "the authorization" has been explained by the Hon. Constitution Bench of the Hon'ble Apex Court vide its Judgment delivered in the case of ***State of Uttar Pradesh v. Batuk Deo Pati Tripathi and Anr.***[66] (paragraph 15 onwards). Of course, even if it is assumed to be 'a delegation' for the sake of argument, in view of the aforesaid submissions and the settled position of law, the same would not be unconstitutional.

(xxvii) In as much as the contention of the Petitioners that the impugned provisions are hit by Article 14 of the Constitution and the

66 (1978) 2 SCC 102

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reliance placed in its support on the Judgment of the Hon'ble Apex Court delivered in the case of ***Shayra Bano*** (supra) is concerned, it is humbly submitted that the said Judgment will apply only if any of the impugned provisions are demonstrated by the Petitioners as "manifestly arbitrary". Suffice it to submit that, since the Petitioners have failed to make out any such case of "manifest arbitrariness", as contemplated by the aforesaid judicial pronouncement, in respect of the any of the provisions of the any of the Amending statutes in issue, the ratio of the said reported decision will not apply to the present cases and the said submission of the Petitioners does not deserve any consideration at all.

(xxviii) In as much as the allegation of steep increase in the property tax, in respect of some of the exceptional cases is concerned, it is well settled that constitutional validity of a statute cannot be questioned on the basis of such rare and few examples. The Corporation by its affidavit has also demonstrated that there are more, if not equal examples whereby it can be demonstrated that the property taxes under the new regime, have dramatically dropped down as well. Therefore, rare and few samples on either side would not lead to any conclusion, in as much as the issue of constitutional validity of the amending provisions is concerned.

(xxix) In so far as the issue of retrospective application of the amending statutes is concerned, it is submitted that the plain and simple reading of various provisions of the amending statutes, will demonstrate that the same are not retrospective at all in their operation of applicability. There are various provisions made thereby, which are merely 'transitory' in nature and have been made only for the smooth switching over of one regime to another. Taking into consideration the enormous task involved and the huge exercise to be performed by all the concerned, for getting into the new regime of taxation, it is but natural that the entire task was

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time consuming, complex and complicated. It cannot be said that the same could have been performed and the tax finally implemented within one financial year. It was bound to spread over more than one financial year requiring making of necessary provisions for the interregnum period, which have been made by the amending statutes in issue, which cannot be terms as unconstitutional.

(xxx) It is pertinent to note that the same provides for issuance of a provisional Bill subject to the adjustments on both sides, after final determination of the capital value of every property in question. The same provision also specifically contemplates adjustment of accounts and even refund of monies to the taxpayers with interest, in case, it is found that the provisional assessment was on the higher side as compared to the final one. Therefore, these transitory provisions in issue, cannot be faulted, much less can be termed as unconstitutional. According to the affidavit in reply filed on behalf of the Corporation, in fact refund of over Rs.100 Crore is already granted by the Corporation.

(xxxi) In the aforesaid regard, the objects and reasons of all the amending statutes may kindly be considered in their proper perspective.

(xxxii) Alternatively and without prejudice to the aforesaid contention even if it is assumed that these taxing provisions are made applicable with effect from an earlier date or point of time, as held by the Constitution bench of the Apex Court vide its judgment in the case of ***D.G. Gose*** (supra) (paragraph 13 onwards), the same cannot be termed as a retrospective operation or application of the Amending taxing statues in issue.

(xxxiii) In as much as the contentions raised regarding yearly maintenance of assessment books is concerned, in addition to the aforesaid aspects of the matter, it may kindly be appreciated that a specific

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provision has been made by insertion of Section 219-A in the parent Act, whereby the provisions of the amending statutes in general, have been given overriding effect, not only over the provisions contained in Chapter-VIII of the Parent Act but also in respect of all the other provisions thereof.

(xxxiv) In as much as challenge to the provisions of the Parent Act, in view of insertion of Part IX-A of the Constitution is concerned, it may kindly be appreciated that Part IX-A has been inserted in the Constitution on 1st June, 1993. Article 243-ZF thereof, provides a time of one year for amending the existing statutes to bring them in conformity with the said part. The said period of one year expired on 1st June, 1994. In the meantime, the State Legislature has enacted Maharashtra Amendment Act No. XI of 1994, which came into force on 6th December 1994. It is worthwhile to note that since then till filing of the present Petitions for over a period of about 20 years, the provisions of the Parent Act have not been questioned by any of the Petitioners, though they have been uninterruptedly operational in this period. Therefore, the contentions raised in that regard are liable to be rejected only on the ground of delay and latches. The remedy of a writ being extra-ordinary, discretionary constitutional remedy, the same cannot be availed by the Petitioners, after a period of about 20 years or more, particularly when for this entire period, the Petitioners have accepted the same and acted upon it.

(xxxv) In the aforesaid regard, it may kindly be appreciated that the action of the State Legislature in coming out with the amending statutes in issue, cannot give a cause of action for the Petitioners to impugn even the unamended part of the Parent Act and question its constitutionality. This is more so because the amending statutes do nothing more than shift the base of the Assessment of the tax in issue from 'Ratable value' to 'capital value' of the lands and buildings situate within

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the Corporation area. The amending statutes contain only and only such provisions, which were required to be made in various provisions of the Parent Act for the effective implementation of such charge in the regime, which has been done, without changing the original scheme of the Parent Act, in as much as overall taxation of lands and buildings is concerned.

(xxxvi) In this regard, the Judgments delivered by the Apex Court in the case of ***Commissioner of Income Tax, West Bengal v. Balkrishna Malhotra***[67] (paragraph 6) and in the case of ***Express Publication (Madurai) Ltd. and Anr. v. Union of India and Another***[68] (paragraphs 26 and 28), may kindly be considered in their proper perspective.

(xxxvii) Thus, the submissions made and the points raised by the Petitioners regarding the Constitutional validity of the unamended provisions of the Parent Act, in the light of the introduction of Part IX-A of the Constitution, need to be simply 'ignored' and not even 'rejected' (because for the purpose of rejection, the same will have to be considered, whereas the basic objection is for their consideration itself, at this stage and at this point of time).

72. The relevant submissions made by Shri Pakale, the learned counsel appearing for the BMC can be summarized as under :-

73. He adopted the submissions of the learned Advocate General on the issue of legislative competence.

74. It is submitted that property tax is one of the main sources of revenue for the Corporation. Due to such restrictions or limitations, the income of the Corporation from property taxes has remained static. Costs

67 (1971) 2 SCC 547
68 (2004) 11 SCC 526

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of maintaining and laying roads, drains, water supply lines and providing other essential civic measures and amenities, salary of staff and wages of employees and all other type of expenditure have gone up steeply over last 65 years.

75. The present Amendment has been brought onto the statute book in public interest. The object and purpose of said Amendment is to sub-serve the public purpose. It is a matter of common knowledge that the determination or fixation of Rateable Value under different Municipal/Corporation Acts throughout India had resulted in multiple disputes. Apart from this, it had resulted in lack of transparency, equity and rationality in the system of assessment of property taxes. With a view to exploring the possibility of reforming the property tax system, so as to augment the revenue of Corporation, the Tata Institute of Social Sciences, Mumbai were entrusted with the job to study the present system to measure property tax and suggest alternative systems for such measure. After studying various measures available for assessment within and outside India, they recommended the "Capital Value Base System" in place of Rateable Value system.

76. According to TISS, the trend in property tax practices in developing Countries was to move away from the Rateable Value Base to the Capital Value System. Care has been taken to provide an appropriate cap on the increase of Property Taxes on account of switch over to the Capital Value base. It is a well-settled principle of Law that legislature may adopt for determining the incidence of tax, the annual or the Capital Value of lands and buildings. It has also been held in the case of ***Kesoram Industries Ltd.*** (supra) that the Courts ought to adopt a pragmatic

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approach in solving problems rather than measuring proposition by abstract symmetry. It further observes that the measure employed for assessing a tax must not be confused with nature of tax.

77. Reference may also be taken to ***Sir Byramjee Jeejeebhoy v. The Province of Bombay***[69], ***Municipal Corporatio, Ahmedabad v. Patel Gordhandas Hargovandas***[70]; ***Sudhir Chandra Nawn Vs. Wealth-Tax Officer, Calcutta and Ors***.[71] (paragraph 3 onwards); and ***Assistant Commissioner of Urban Land Tax v. The Buckingham & Carnatic Co. Ltd.*** (supra) (paragraph 8).

78. It is one of the many contentions of the Petitioners that the property tax levied by the BMC under the Capital Value System does not fall within the ambit of List II Entry 49 of the Constitution of India as the same is not a 'tax on land and buildings' but a tax to compensate for the services provided by the BMC. It is submitted that this contention is inherently flawed. The correct position with regard to the purpose of levy of property tax has been set out above. Sections 139A and 140 amongst other Sections of the BMC Act clearly provide that property tax is a tax leviable on lands and buildings.

79. The BMC Act provides for imposition of taxes by the Municipal Corporation on land and buildings. The said power of taxation is conferred for the purpose of Local Self Government. When the legislature is competent, it can for the purposes of Local Self Government confer that power upon the Local Authority instead of levying of tax itself.

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69 AIR 1940 Bom (FB) 65
70 ILR (1954) Bom 41
71 AIR 1969 SC 59

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80. It is alleged that there is excessive and unguided, unbridled delegation to the BMC as it is given the power to choose between the Rateable Value System and the Capital Value System. It is further alleged that there is excessive delegation by the BMC on the Commissioner and the Standing Committee. It is also the allegation of the Petitioners the BMC, which itself is a delegate, could not have further delegated any power to the Commissioner or the Standing Committee.

81. It is submitted that first of all, the BMC is not a delegate in so far as the levy of property tax and all matters incidental thereto are concerned. The BMC enjoys the same plenary power under the provisions of the BMC Act. And second of all, the delegation, if any, to the Commissioner or the Standing Committee is neither bad nor unguided or unbridled as alleged. As set out above, the same is subject to clear guidelines provided in the BMC Act itself.

In support of the contention that there is no excessive delegation, a reliance was placed on the decisions of the Supreme Court in the matter of ***Kishan Prakash Sharma v. Union of India***[72] and in the matter of ***Jyoti Pershad v. Administrator for the Union Territory of Delhi***[73]**.**

82. Although the Amendment to the BMC Act introducing the Capital Value System was brought about in 2008, the work of fixing the Capital Value of land and building across Greater Mumbai was still ongoing. This was because the scale of the work involved was very large and extremely time consuming. The data of the old Rateable Value System being voluminous data covered approximately 2.75 lakh properties (or)

72 (2001) 5 SCC 212
73 AIR 1961 SC 1602

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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 BMC Act to furnish the details in the prescribed format. The response obtained was however limited and the officers of the BMC had to physically ascertain the required information.

83. Since the above digitization process was ongoing, the BMC started implementation of the Capital Value System by issuing provisional property tax bills. However, in order to minimize the burden on the tax payers, necessary Amendments to the BMC Act were introduced which provided that the Rateable Value of all properties as existing in 2009-10 would be deemed as the Capital Value of those properties (for the purposes of property tax) for every year until 2012-13 (Section 154A) and once the Capital Value is fixed as per the new Rules, final bills would be issued. In the event of the final bill being lower than the provisional bill for a particular period, the BMC would refund the excess payment made with interest at the rate of 6.25% p.a. or with the consent of the payer, adjust the excess amount against future bills (Section 140A (2)). It is pertinent to note that under this Section, refunds amounting to Rs. 158.92 Crores have been made so far by the BMC.

84. The above makes it clear that the argument that the taxes are being levied retrospectively is incorrect and misleading. No new taxes are being levied for the period prior to the introduction of the Capital Value System. Provisional bills were issued as per Section 140A (2) r/w Section 154A of the BMC Act from 2010-11 (under the Capital Value System) till 2012-13 and the same are simply being adjusted against the final bills that

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are issued as and when the Capital Values of the properties are fixed as per the new Rules. In cases where excess payment has been made against provisional bills as compared to final bills on capital value, the refunds were made. The allegation therefore that the BMC has been levying taxes retrospectively for the years 2010, 2011 and 2012 are unfounded and incorrect. The BMC has not contravened any of the provisions of the Constitution of India. It is also not correct to state that any provision of the BMC Act have been given a go by.

85. Without prejudice to what is stated hereinabove and even if it is held that property tax has been retrospectively levied, it is submitted that the same is not illegal or *ultra vires*. Reliance was placed on the decision of the Supreme Court in the case of ***Mahabir Vegetable Oils (P) Ltd. v. State of Haryana***[74] and in the case of ***Assistant Commissioner of Urban Land Tax v. The Buckingham & Carnatic Co. Ltd.*** (supra). Reference was also be had to the decisions of the Apex Court in the cases of ***Chhotabhai Jethabhai Patel v. Union Of India***[75] (paragraphs 37-39), ***Rai Ramkrishna v. State of Bihar***[76] (paragraphs 13-19), ***M.P.V.Sundararamier v. State of Andhra Pradesh***[77] (paragraph 31), ***Commissioner of Wealth Tax, Meerut v. Sharvan Kumar Sarup & Sons***[78] and ***D.G. Gose & Co.*** (supra).

86. The main misconception as far as the introduction of the Capital Value System for levy of property taxes is concerned is that the amount of property tax payable will increase substantially and will be an

74 (2006) 3 SCC 620
75 1962 Supp (2) SCR 1
76 (1964) 1 SCR 897
77 (1958) SCR 1422
78 (1994) (6) SCC 623

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unbearable burden on all segments of society. This is unjustified because there are a number of capping provisions (section 140A) that have been introduced as protective measures by the Legislature to ensure that the increase in property tax, if any, is not colossal and is within limits. It is a check-and-balance measure to contain the levy of property taxes. These capping measures are set out below:

a. A residential unit of 500 sq. ft. will not suffer an increase in tax for a period of five years after the introduction of the Capital Value System;
b. A residential unit of 500 sq. ft. will not suffer an increase of more than 2 times the property tax which was payable under the Rateable Value system for the year 2009-10 for the first five years;
c. Similarly, non residential units will not suffer an increase of more than 3 times the property tax which was payable under the Rateable Value System payable for the year 2009-10 for the first five years;
d. In case of properties given out on leave and license basis under the Rateable Value System, the tax charged on the license fees received in the immediately preceding year is ignored and the tax is re-assessed as if such buildings were self occupied. This reduces the tax in the immediately preceding year thereby lowering the cap for tax to be charged on Capital Value basis;
e. The taxes have been frozen for a period of five years i.e. upto 31st March 2015 (subject to revision of assessment under Section 167 of the BMC Act on account of structural or occupational changes);

The property tax levied on the basis of Capital Value in respect of any taxable building shall be revised only after every five years. Even thereafter, the increases are subject to a maximum of 40% of the preceding year's tax which works out to an average maximum increase of 8% per annum.

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87. It is pertinent to note that while in case of an increase in the amount of tax payable under the Capital Value System, there are protective capping measures provided by the legislature. But there are no such capping measures in case of a decrease in the amount of tax payable. Assessees therefore, would thus enjoy the full benefit in the event of a decrease and be protected in the event of an increase. It is also noteworthy that while setting out the earlier and the subsequent taxes levied by the BMC on various properties, the Petitioners in many cases have failed to consider the effect of capping, thereby making their claims exaggerated and misleading.

88. Another important factor to note is that the overall tax demand of the BMC under the Capital Value System has actually decreased by 12% to Rs. 2908 Crores as compared to the Rs. 3308 Crores under the Rateable Value system. The tax demand from residential units has reduced from Rs. 1030 Crores to Rs. 949 Crores while for offices and banks, the demand has reduced from Rs. 979 Crores to Rs. 654 Crores and from Rs. 342 Crores to Rs. 222 Crores respectively. Under the new system while only 32.20% of units have suffered an increase in property taxes, a substantial 21.95% of units have actually had a reduction in their property taxes. (Refer to the Reply dated 29.01.2014: Exhibit 5/Pg. 365 and Exhibit 6/Pg. 473)

89. Section 154 (1A) of the BMC Act specifically provides that in order to fix the Capital Value of any land or building assessable to property tax, the Commissioner shall have regard to the value of any land or building as indicated in the SDRR as the base value. The BMC accepts the SDRR as published and takes it as a base value. The rates are fixed on

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a scientific basis by the State Government in accordance with the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 as framed under the provisions of the Bombay Stamp Act, 1958. In fixing the SDRR rates, a number of relevant factors are taken into consideration in accordance with established principles of valuation such as the type of land of construction, location and situational advantage or disadvantage and the price at which properties in a particular area are being sold. The same is therefore the most equitable, realistic and rational method of ascertaining the value of properties, which are then used by the BMC as the base value for the purpose of levying property tax. The SDRR rates as base value for the determination of Capital Value of property will reduce the large number of disputes that prevailed under the old Rateable Value System.

90. It is pertinent to note that in so far as levy of tax on Capital Value is concerned, the amended provision prescribes that the Capital Value would be fixed with regards to the value of land and building. Thus, full effect is required to be given to the same. The selection of the mechanism for fixation of Capital Value is the concern of the legislature and the executives.

91. It is contended that the property values around Mumbai have gone up disproportionately in recent years and property tax cannot and ought not to be based on the market value of such properties. It is submitted that the levy of property tax on the basis of Capital Value is widely accepted in many parts of India and the world. It is axiomatic that property taxes based on Capital Value will be based on the market value of the concerned property. To ensure reliability and stability, the legislature has provided for reliance on the SDRR. The correct position in this regard

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is set out above.

92. It is sought to be contended that there is no nexus between the levy of property tax that is essentially a compensation for the services provided by the BMC and the basis adopted for the levy i.e. the Capital Value of the concerned land/building. This argument is inherently flawed.

As pointed out above, as a general rule, taxes levied by the BMC are not compensatory for the specific services provided by it or on persons to whom such services are provided. Except to the extent specifically provided in the BMC Act, the taxes levied and collected by the BMC are credited to the Municipal Fund which is applied for the numerous purposes set out in Sections 61, 62, 62D, 62E and 63 of the BMC Act. There is no quid pro quo qua a particular tax or a particular taxpayer. It is therefore submitted that there is no nexus as falsely and incorrectly contended by the Petitioners. Levy of property tax on the basis of Capital Value is a scientific method that is accepted in many parts of India and worldwide. It is further pertinent that this argument, if accepted, would apply even to the Rateable Value system that was in force for many years prior to the acceptance of the Capital Value system. The same is not a specific challenge to the Capital Value system at all and ought to be rejected. (Refer to AIR 1979 SC 321; ***Arvinder Singh v. State of Punjab & Anr***.)

93. It has been alleged that the differentiation between commercial premises based on their actual usage under the new rules is irrational. The main purpose for adopting the Capital Value System is to introduce rationality in taxation and to reduce, as far as possible, the disparity in the tax burden on various premises as existing under the old Rateable Value System. The categories of user as set out in Section 154

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(1A) forms a logical backbone for levy of property tax. A weightage is given to each user category. For example, an amusement park or a golf course has the highest weightage of 1.25 over the base value whereas a salt pan land or land under reservation with total impermissibility of construction that naturally cannot be commercially exploited has a weightage of only 0.01. Similarly, an office of a co-operative society has a weightage of only 0.10.

94. A charge of tax without the multiplication factor would amount to treating unequals equally. Consequently, the weightages have been fixed keeping in mind the user of the land and building. It is further pertinent that in majority of the cases, the weightage varies between 1 and 1.25 (which is the maximum). While the disparity cannot be eliminated completely (because of the caps in place under the new system) this categorization helps in substantially rationalizing the tax burden. As far as possible, the standard deviation between the highest taxpayer in a particular category and the lowest taxpayer is minimized. As far as offices are concerned, under the old Rateable Value System, the standard deviation between the highest taxpayers and the lowest taxpayers was approximately Rs. 210.84 per sq. mt. per month. This has been reduced to Rs. 61.84 per sq. mt. per month after adoption of the Capital Value System.

95. Similar rationalization has resulted in all other user categories as well. For instance, under the Rateable Value System, the property tax levied on and paid by owners of old buildings was negligible as compares to the property tax levied on and paid by owners of new buildings. The Capital Value System eliminates this disparity to a certain

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extent.

96. It is also alleged that the purpose of levying property taxes is to raise money to meet the expenses required to provide civic services to the citizens of Mumbai. Such tax has to be compensatory in nature. This is not entirely correct. Section 111 of the BMC Act inter alia provides that all monies raised by way of taxes levied for the purposes of the BMC Act are to be deposited in the Municipal Fund subject to the provisions of certain sections set out therein which provide for the creation of special funds. Sections 119A and 119B are two such sections which provide for special funds viz. the Consolidated Water Supply and Sewage Disposal Loan Fund and the Water Sewage Fund respectively. Moneys received under Sections 140(a), 140(b) and 169 to 172 and for the purposes of Chapters IX and X of the BMC Act are to be credited to these Special Funds. Such monies are to be used for expenses under Chapters IX and X of the BMC Act. It is pertinent that pursuant to the provisions of Sections 169 and 170, the specific taxes relating to water and sewage have been replaced by water charges and sewerage charges that have a direct quid pro quo with the services provided to the tax payers, which is directly compensatory.

97. Section 118 provides that the Municipal Fund is to be applied for numerous purposes set out in Sections 61, 62, 62D, 62E and 63 of the BMC Act. Property tax is one of the categories of taxes to be imposed by the BMC under the BMC Act as provided in Section 139. Property tax consists of water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess, street tax and betterment charges. Section 140 sets out the purposes for which the aforesaid taxes are levied. Whereas the water tax, water benefit tax, sewerage tax, sewerage benefit

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tax, general tax, education cess, street tax and betterment charges are specifically levied for the purposes set out therein, general tax is levied and as the name suggests for a general purpose. (Refer 1954 Law Suit (Bom) 110)

98. Similarly in ***Rai Ramakrishna v. State of Bihar***[79], the Apex Court has laid down the test of compensatory/unreasonableness in following terms:

> "The character of the material provisions of the impugned statute is such that the Court would feel justified in taking the view that in substance the taxing statute is a cloak adopted by the Legislature for achieving its confiscatory purpose.

It further goes to observe that:

> "…unless the infirmities in the impugned statute was of such a serious nature as to justify its description as a colorable exercise of legislative power, the Court would uphold the taxing statute."

In the instant case, no such allegations are made by the Petitioners.

99. The BMC provides a large number of services in respect of which no special tax is collected. The general tax is used for providing such services. It is clear from the above that the property tax levied by Respondent No. 2 is not compensatory in nature and is not levied on the basis of each item of expenditure to be incurred by Respondent No. 2. It is submitted that there is no quid pro quo qua a particular tax or a particular taxpayer.

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79 AIR 1963 SC 1667

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100. It is alleged the BMC income from taxes is greater than its expenses and that the BMC makes a surplus every year that is transferred to its reserves. It is further contended that the property tax levied must be on the basis of the budget estimates for the ensuing year.

101. It is submitted that if the BMC makes a surplus, it is because of sound and prudent financial planning and management. In any event, it is not as if the BMC makes a surplus every year. There have been certain years in the past in which there has been deficit. In such years, the deficit is met from the reserves to which the surpluses made in other years have been transferred. It is further pertinent that Section 122 of the BMC Act specifically provides how to deal with the surplus money in the Municipal Fund. This shows that the BMC Act itself envisaged there being a surplus at the end of a financial year and provided for how to invest the same. There is, thus, nothing wrong if the BMC has a surplus at the end of a financial year. The same is for the overall benefit of the city of Mumbai.

102. Section 126(2)(d) of the BMC Act provides that the BMC should "allow for a cash balance at the end of the said year of not less than one lakh of rupees". Accordingly, it is obligatory for the BMC to submit a surplus budget estimate every year and not a deficit budget.

103. In so far as the figures of income and expenditure of the BMC shown in the Petition are concerned, the said figures are of Revenue Income and Expenditure only. The estimates of the budget include both revenue and capital expenditure. The BMC has to perform day-to-day activities for upkeep of civic services through revenue expenditure as well as capital expenditure from its own sources of revenue. The BMC does not

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have any other sustained sources of income like grants from State/Central Government to provide funding for capital projects. Hence, revenue surplus is transferred to the capital fund to execute the various projects under capital works. The taxation system in the BMC has developed on this premise over the last several decades. The BMC's expenditure on revenue/capital is shown in in the following table:

(Rs. in crores)

Year	Revenue Actual Expenditure	Capital Actual Expenditure
2007-08	8182.08	2003.79
2008-09	10743.55	3861.12
2009-10	11519.24	5089.87
2010-11	12666.66	5017.28
2011-12	12916.04	3954.72
2012-13	16715.93	4559.68

From the above table, it is seen that during the year 2007-08, actual revenue expenditure was Rs. 8,182.08 Crores and expenditure on capital works was Rs.2,003.79 Crores. Year by year the said expenditure has increased and during 2012-13, it reached upto Rs.16,715.93 Crores and Rs.4,559.68 Crores respectively. This shows that during the last 6 years, the revenue expenditure has increased 2 times and the capital expenditure has increased by 2.25 times as compared to the expenditure in 2007-08. It shows that since 2007-08, the BMC has carried out various development projects on a large scale.

104. In context to the point raised regarding increased property taxes, the status of income from property taxes during last 6 years is as

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follows:

Year	(Rs. in crores) Actual Property Tax collection
2007-08	1938.64
2008-09	2237.04
2009-10	2659.92
2010-11	2617.96
2011-12	3220.66
2012-13	1961.91

From the above, it is clear that due to the transition from the Rateable Value System to the Capital Value System, there is a noticeable decrease in the collection of property taxes during the year 2012-13. Yet the income from property taxes over the years has increased by only 1.5 times whereas the revenue expenditure has doubled and the capital expenditure has increased by about 2.25 times. This shows that the BMC has to depend on other sources of income, besides property taxes.

105. The BMC is a unique urban local body which provides for services such as fire brigade services, running medical colleges and major health hospitals, running a large number of primary and secondary schools having its own 4,000 strong security force to take care of vital installations and buildings, etc. Besides, it has to perform its functions of providing for roads and bridges, storm water management, poverty alleviation, upkeep of open spaces, public gardens and recreation grounds, etc.

106. The BMC is in the process of implementing various Schemes

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in respect of health on behalf of the State Government such as eradication of malaria, tuberculosis, etc. However, the BMC does not receive full and timely reimbursement of the expenditure incurred on the said Schemes from the State Government. Besides, the Grant-in-Aid received for primary and secondary education from the State Government is very meager in proportion to the expenditure incurred by the BMC on this activity. A substantial portion of the municipal revenue is spent on such Schemes. It is pertinent to state that the BMC received a grant of around Rs.1,000 Crores under JNNURM Scheme over five years and a one-time grant of around Rs.1,000 Crores for Strom Water Drains after the deluge of 2005. Besides this, there is no financial support from the State Government or the Central Government for executing the BMC's projects. The BMC thus, has to meet all its obligations for revenue and capital expenditures from its own sources of revenue. In the current financial year, the BMC has extended a loan of Rs.1,600.00 Crores to the BEST to bail them out of financial distress.

107. Furthermore, it must be added that as provided under the 74th Amendment to the 12th Schedule of the Constitution of India (Article 243W), urban planning including town planning is the obligation of the BMC. As per the revised City Development Plan of the BMC, an amount of Rs.91,440 Crores will be required to implement the Development Plan over the next 15-20 years keeping in mind the major new capital projects, and for that the BMC alone has to bear the entire responsibility of raising funds. Revenue expenditure is increasing substantially and upkeep of old infrastructure also needs substantial funds for its rehabilitation and repairs.

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108. It is also pertinent to note that the city of Mumbai is developing rapidly day-by-day and it is binding on the BMC to provide all essential services to its citizens, which result in a noticeable increase in revenue as well as capital expenditure.

109. The tax burden on new buildings under the Capital Value System will be lower for the vast majority of such buildings than what would have been payable had the Rateable Value System been continued. In order to demonstrate this in real terms, a comparison of property taxes payable under the two systems across all 696 SDRR "pockets" in Mumbai has been carried out (Refer to the Reply dated 09/01/2014: Exhibit 7/Pg. 537). The comparison showed that for new buildings:

a. Falling in 'Residential' category, the property taxes under the new system would be lower in all 696 "pockets" of the city;

b. Falling in 'Shops' category, the property taxes under the new system would be lower in 685 out of 696 "pockets" i.e. in 98.42% of the pockets;

c. Falling in 'Office' category, the property taxes under the new system would be lower in 607 out of 696 "pockets" i.e. in 87.21% of the pockets;

d. Falling in 'Hotels up to 4 Star' category, the property taxes under the new system would be lower in 684 out of 696 "pockets" i.e. in 93.10% of the pockets; and

e. Falling in '5 Star and above Hotels' category, the property taxes under the new system would be lower in 684 out of 696 "pockets" i.e. in 98.28% of the pockets;

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The above figures makes it clear that as far as new buildings are concerned, the vast majority would benefit from a reduction in property taxes under the new Capital Value System. This is one of the reasons that refund (on account of payment made against provisional bills being more than the final demand) is due in case of many properties.

110. As far as units let out on leave and license basis are concerned, the compensation charged by the owners of many of them is very high (especially in case of those units being used as offices and banks). In order to rationalize the tax burden, the BMC Act in the second proviso to Section 140 A provides that for the purpose of levy of tax, all units let out on leave and license basis be treated as if these units were self-occupied. This presumptive system provides a greater rationality by averaging out the tax burden and is also much fairer overall. An impact assessment statement prepared by a reputed firm of chartered accountants clearly shows that by changing from the Rateable Value System to the Capital Value System, property taxes have reduced across probable taxes of new buildings constructed in the year 2010 in the same locality if the Rateable Value System would have been continued instead of switching to the Capital Value System. It is clearly evident from the said statement that tax payable after capping in respect of the said 69 properties quoted in the Property Owners Petition No.2592/2013 is on the lower side as compared to the tax payable as per rateable value. Therefore, the contention that there is an increase in taxes to the extent on 19 times, 88 times etc. is misconceived and does not reflect the true facts. It is pertinent that the capping provisions have not been taken into account. The tax worked out on the basis of capital without capping after capping are two different things.

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111. It is alleged that the constitutional requirement of the State Government constituting a Finance Commission through which measures such as levy of property taxes on the basis of Capital Value ought to have been implemented, was not followed. It is submitted that a perusal of Article 243Y of the Constitution of India clearly shows that the Finance Commission can only make recommendations to the Governor in respect of the matters set out therein. It is not mandatory for the concerned Municipality to accept such recommendations. It is also not the case that a Municipality cannot on its own, without the recommendations of the Finance Commission, decide on issues dealing with the determination and levy of taxes or measures needed to improve the financial position of the Municipality. It is pertinent that Article 243Y deals with the distribution of taxes between the State and the Municipalities and has no relevant to either method of levy or rate of tax by a Municipal Corporation.

112. It is alleged that Rule 22 of the 2010 Rules wrongly ignores the "Important Guidelines of Stamp Duty Valuation" as specified in the SDRR. Guideline No. 1 of the said Guidelines provides that where the building is fully tenanted, the value shall be computed at 112 times the monthly rent receivable from the tenants. By purporting to exclude the said Guidelines, the BMC has contravened the provisions of Section 154(1A) of the BMC Act and has purported to fix the capital value of fully tenanted buildings not as per the said Guidelines but as per the value mentioned in the SDRR for non-tenanted buildings.

113. It is submitted that arriving at the capital value of fully tenanted buildings in accordance with the provisions of Guideline 1 of the

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above-mentioned Guidelines would amount to reversion to the Rateable Value System. The said Guidelines cannot be relied on for the purposes of arriving at the Capital Value of a tenanted building. The said guidelines are rooted in the Rateable Value System and against the very concept of the Capital Value. It is further submitted that reliance on the said Guidelines would result in an absurd situation where two identical buildings standing next to each other, one tenanted and the other not, would have vastly divergent capital values.

114. It is further submitted that the BMC is empowered under Section 154(1B) of the BMC Act to frame Rules in respect of details of categories of buildings and lands and the weightages by multiplication to be assigned to various categories and factors for the purpose of fixing the capital value with the approval of the Standing Committee. Hence, it is not mandatory to follow the guidelines as provided in the "Important Guidelines of Stamp Duty Valuation".

115. It is alleged that the SDRR doers not distinguish between freehold and leasehold property. As mentioned above, it is submitted that the adoption of the rates set out in the SDRR is a machinery provision for arriving at the capital value of a property. In matters of taxation, substantial leeway and elbowroom is permissible to the taxing authority.

116. It is contended that the BMC's methodology does not take into account relevant factors while converting carpet area into built up area and that the Rules take into account built up areas whereas the BMC Act takes into account carpet area. It is submitted that this contention is vague and devoid of particulars. The Petitioners have not stated out what

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are the allegedly relevant factors that are not taken into consideration while converting carpet area to built up area as per the BMC's methodology.

117. In any event and without prejudice, it is submitted that every minor difference cannot be taken into account while fixing the Capital Value. It is further submitted that for conversion of carpet area into built-up area, the same Rule as prescribed by the SSDR is adopted by the BMC. If the SDRR rates are prescribed on carpet area, the same will be adopted by the BMC and the multiplying factor will be removed.

118. He submitted that the machinery sections need to be interpreted in manner that the charge to tax is not defeated. Machinery Sections are not subject to rigorous interpretation.

119. A well-known principle that in the field of taxation, the Legislature enjoys a greater latitude for classification, has been noted by this Court in long line of cases.

120. In the case of ***R.K. Garg*** (supra), the Constitution Bench of this Court stated that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. While dealing with constitutional validity of a taxation law enacted by Parliament or State Legislature, the court must have regard to the following principles: (i), there is always presumption in favour of constitutionality of a law made by Parliament or a State Legislature (ii), no enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational but some constitutional infirmity has to be found (iii), the court is not concerned with the wisdom

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or unwisdom, the justice or injustice of the law as the Parliament and State Legislatures are supposed to be alive to the needs of the people whom they represent and they are the best judge of the community by whose suffrage they come into existence (iv), hardship is not relevant in pronouncing on the constitutional validity of a fiscal statute or economic law and (v), in the field of taxation, the Legislature enjoys greater latitude for classification."

121. It is alleged that complaints filed by the assesses are not decided as was required under the BMC Act and that taxes cannot be recovered before deciding and disposing of the complaints. It is submitted that fixation of Capital Value depends on only seven factual parameters viz. carpet area, age of the building, type of constriction, user category, floor number, occupancy type and SDRR rate. There is no scope for misinterpretation. Hence, whatever errors are pointed out by the complainants in their complaints are essentially factual errors which are rectified by the BMC. Most of the citizens have appreciated the steps taken by the BMC in this regard. Any other points that may be raised in the complaints relating to the provisions of the BMC Act or the Rules are beyond the jurisdiction of the Investigation Officer.

122. If a taxpayer is aggrieved by the decision of the Investigation Officer, he is entitled under the BMC Act to file an Appeal before the Chief Judge of the Hon'ble Small Causes Court (Section 217). It is pertinent that such an Appeal would be a full fledged hearing where the aggrieved tax payer as also the BMC would be entitled to lead evidence including oral evidence and cross examination of witnesses thereby complying fully with the principles of natural justice.

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123. It is contended that property taxes should be levied keeping in mind the capacity of the owner of the land or building to pay the same. It is submitted that this can never be a relevant factor. In order to restrict the steep increase in tax burden on the taxpayers, sufficient capping provisions are incorporated in Section 140A of the BMC Act by the Legislature as stated hereinabove. Further, increase in taxes is recoverable under Section 12 of the Maharashtra Rent Control Act, 1999 as well as Section 147 of the BMC Act. Thus the contentions in this regard are baseless and not sustainable.

124. It is alleged that in view of subsequent enactments such as the Slum Act, the MRTP Act, the MMRDA Act and the MHADA Act, Chapter XII-A of the BMC Act, which deals with Betterment Charges is deemed to have been repealed and that the levy of Betterment Charges is illegal. It is submitted that the above contention is baseless and without substance. Chapter XII A of the BMC Act has neither been repealed nor is it deemed to have been repealed. Betterment charges form part of the property taxes levied by the BMC as clearly provided inter alia Sections 139A and 140 of the BMC Act. It is further submitted that this contention raised by the Petitioners has no connection with the levy of property taxes on the basis of Capital Value that is the subject matter of the present Petition and various other Petitions.

125. It is contended that after the Maharashtra Municipal Property Tax Board Act, 2011 came into effect on 10th March 2011, only the Property Tax Board can suggest the basis of valuation of properties and the assessment of property tax and not the Commissioner or the Standing Committee. It is submitted that this contention is wholly misconceived

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and the same is clear from a perusal of the provisions of the Maharashtra Municipal Property Tax Board Act, 2011. Section 12 of the said Act sets out the functions of the Board. Section 12(c)(i) provides that the Board may review the property tax system and suggest a suitable basis for valuation of properties and assessment of property tax as and when required by the Government to do so. Section 12(c)(iii) provides that the Board may recommend modalities for periodic revision of the Board only has the power to make suggestions/recommendations is respect of the BMC's system of property tax and that too as and when required by the Government.

Therefore, to say that the BMC or the Standing Committee cannot make suggestions in this regard post the enactment of the Maharashtra Municipal Property Tax Board Act, 2011 shows that the Petitioners have wholly misconstrued and misinterpreted the provisions of the said Act. Further the Capital Value system came into existence from 1st April 2010 whereas the Maharashtra Municipal Property Tax Board Act came into force from 2011. As such, this contention of the Petitioners is absolutely irrelevant in the present Petition.

126. It is alleged that while the SDRR provides for 70% depreciation in respect of buildings which are more than 60 years old and for 60% depreciation in respect of buildings which are between 50 to 60 years old, the Rules for fixation of Capital Value classify all buildings which are more than 50 years old in a single category and provide for 30% depreciation in respect of the same (Rule 7 of the Fixation of Capital Value Rules, 2010). The SDRR also provides for separate rates of depreciation in respect of semi pucca or kachcha structures.

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127. It is submitted that the rate of deprecations based of the age of the property is given as per the approval of the Standing Committee. No factor is provided for the buildings more than 50 years old. Providing for greater depreciation is not practical as in such cases where depreciated value goes below the land value, then the capital value would have been arrived at by taking land value separately and adding the depreciated cost of construction thereto which would be very complicated and the buildings under reference would have been valued at a higher capital value than the fixed one.

128. It is alleged that the charging of penalty under Section 202 of the BMC Act is nothing but levy of interest for delayed payment. It is submitted that the perusal of the said Section makes it clear that the same is a penalty and not interest as alleged. In any event, as stated above, this contention is in no way connected with the subject matter of the present Petition.

129. It is alleged that under the new Capital Value System, open land would attract taxes higher than a similar plot where there is a building. This premise appears to be incorrect. A perusal of Schedule A Part I and Part II of the Fixation of Capital Value Rules shows that the weightage given to land is not higher than that given to buildings. In any event, it is submitted that this has been done with the purpose of incentivizing development across Greater Mumbai. In a city where there is a large shortage of space, it is imprudent to allow large tracts of land to remain undeveloped. Accordingly, the property taxes payable by an owner of a plot with a building on it. It is respectfully pointed out here that while deciding the tax rates for different user categories, analysis has been

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carried out and the tax rates were proposed so as to have overall revenue neutrality. The tax rates under the Rateable Value System were the same for residential land and residential building. However, the difference was in the valuation of the two. Under the Rateable Value System, lands were assessed at higher rate than buildings. Under the Capital Value System, the land is valued by taking the rate in the "Land" column of the SDRR. Thus to maintain the earlier revenue composition, suitable rates adopted for the purposes of Municipal revenue cannot be given a complete go-by.

130. It is alleged that the TISS Report did not consider the purpose of levy of property taxes. The allegation is vague and ambiguous and is denied. It is pertinent that there was substantial deviation between the TISS Report and the provisions as finally approved.

131. The main deviations were that (1) The TISS Report proposed higher capping of the existing tax to the extent of four to six times whereas the BMC Act provides for two times for residential and three times for non residential user; (2) The BMC Act provides for no increase for residential tenements having carpet area up to 500 square feet, whereas the TISS Report proposed the same capping level in respect of such tenements also; and (3) The TISS Report also proposed lower capping to the extent of 50% and 75% which is not provided in the BMC Act.

132. Therefore in conclusion, it is respectfully submitted that the BMC has acted in accordance with law and in the best interests of the city of Mumbai by introducing the equitable, rational and beneficial Capital

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Value System for the purposes of levy of Property Taxes and there is no merit in the Writ Petitions challenging the same and therefore, the same ought to be dismissed with costs.

133. The learned senior counsel Shri Pochkhanwala also made submissions in two specific cases on behalf of BMC. His submission is that as per section 154 of the BMC Act all lands and building in Mumbai are assessable. In the old regime, in the Rateable Value system, the properties were assessed on the basis of hypothetical rent. Open land was assessed by adopting the ready reckoner rates per square meter with effect from 1st April 2010, the Capital Value system is implemented. As per the powers delegated by the State Government, under section 154 (1A) BMC was required to adopt the SDRR rates. The said rates are prepared by the State Government and BMC is only adopting the same for valuation purpose and thus, BMC does not have any role in fixing these SDRR rates. In 2015, viz. After 5 years as permitted u/s.154(1C) of the BMC Act, the said rates were revised. Generally the 2010 rates continued. The revision of the rates was done in terms of the said section 154 viz revisions ought not to be more than 40% of the existing tax on C.V. as prescribed in Section 140 (A).

134. There are different types of buildings and lands particularly Residential and non residential. Hence, nature and type of land, weightages by multiplication assigned thereto have to be considered while fixing the Capital Value. According to the classification of lands and the weightages thereto, these have been specified in annexure-A part-I of the Capital Value rules which have been framed after confirmation and with the approval of the Standing Committee. As per Section 154A and 154B

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of the BMC Act, the BMC is empowered to classify the properties on the basis of age, type of construction and user categories.

135. It was realized that there were several types of properties (lands & buildings) which were required to be assessed and the complexities of such assessment was such that both in 2010 as also in 2015 the Corporation took a call that this specialised task of setting out how the assessment should be done is required to be examined by an expert committee in order to ensure that there is complete transparency in the assessment provisions. Hence, the expert committee was appointed by the Municipal Commissioner. The Expert Committee for 2010 consisted of Shri. D.M. Sukhatankar, the Secretary of Maharashtra, Dr. Roashan Nanavati & D.N. Choudhary, Chairman Law Committee, Maharashtra. Hereto annexed and marked Exhibit-II is a time chart showing the various stages through which the draft Rules were passed before the same were approved by the Standing Committee.

136. The 2015 Committee consisted of DMC (A & C) – Chairman, Assessor & Collector, Dy. Assessor & Collector (City), Dy. Assessor & Collector (WS), Assistant Assessor & Collector – G/South and Superintendent-A ward. They submitted their recommendations to BMC. After considering the same, the recommendations were sent to the Standing Committee. The contention of the Petitioners that the Corporation has not applied its mind is totally incorrect. Administration has applied its mind and deeply considered the recommendations of the Expert Committee. In 2010 BMC has also invited the suggestion and objections to the same from the public. All these suggestions and objections were further considered while enacting the CV rules. The said

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Rules were sent to the Standing Committee for approval and after getting the approval, CV was implemented. Accordingly, the software was developed. It is therefore, submitted that BMC has done the classification exactly as per Law.

137. The Petitioners have relied on the judgment of the Hon'ble Supreme Court in the case of ***M/s.Polychem Limited*** (supra). While the said judgment was based on the then prevailing ratable value system nevertheless keeping the said judgment in mind while enacting the capital value rules, the Corporation has itself considered only one type of land which is "Open Land".

Rule 2(g) of Capital Value Rules amply clarifies as to what is open land and it is necessary to highlight the same.

> 2(g) "Open land includes land not built up or land being built upon, but does not include land."

In this context, the Corporation relies upon the provisions of section 3(r) of the BMC Act. It is necessary to set out here the said section 3 (r) which reads a follows :

> "3(r) "land" includes land which is [being built upon or is built] upon or covered with water, [benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street]."

In view of above, the petitioners' contention that the Corporation has not followed the judgment in the case of ***Polychem Limited*** (supra) is without substance.

138. As per Section 3(r) of BMC Act read with clause 2 (g) of the rules, the Corporation classifies land with respect to nature and type of

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land. Accordingly, it must be emphasized that under a capital value system, and exactly as per the judgment in the case of ***Polychem Limited*** (supra), whether the land is open land or whether the land is under construction or being built upon, as far as the corporation is concerned, in terms of the statutory provisions as set out, the assessment basis remains the same viz. Open land which is statutorily defined. The Corporation has therefore acted exactly in accordance with law.

139. It is the contention of the Petitioners that the Corporation arbitrarily classified various properties. They are relying upon the Apex Court judgment in ***Polychem Limited*** (supra). It is necessary to disabuse the Petitioners in this regard. BMC has worked within the 4 corners of the statutory provisions of section 154 of the Act while framing rules. Section 154 (1A) of the Act specifies at the cost of repetition, the ready reckoner rates fixed by the State Government shall be taken as base value for capital value purpose. The same section 154(1B) gives complete authority to the Corporation, treating ready reckoner rules as base to enact the CV rules and to classify properties with respect to the various factors set out in section 154 (1A). BMC while enacting CV rules, has kept this very much in mind while classifying various properties in Schedule (A) of the rules. There is absolutely nothing arbitrary in the exercise adopted by the BMC. The contention of the Petitioners that the multiplying factors to arrive at the CV rates are arbitrary is unfounded. As set out above, all though authority was given to the Municipal Commissioner under section 154 (1A) and 154 (1B), to fix the multiplication factors, BMC with due precaution appointed the aforesaid expert committee. BMC with due precaution put up a proposal to consider the factors provided by the expert committee, to their own Standing Committee. Before doing so,

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BMC has taken due precaution to call for and verify public objections. Only thereafter the Standing Committee took decision to adopt multiplication factors as set out in the schedule. Therefore, today the Petitioner cannot be heard to say that the Corporation action was arbitrary in nature. At the end of the day, the Corporation's obligation is to the City and residents of Mumbai. In terms of this obligation, BMC has rationally adopted the said multiplying factors for arriving at the capital value in the schedule.

140. It is observed in Capital Value Rules as enacted in 2010 that many lands with old, dilapidated and unhabitable structures were left as it is by the Owners and were not taken up for development. This was due to loophole in the rules which permitted such lands to be treated at par with the properties taken up for development. It is the obligation of the Corporation to ensure that Mumbai City and its inhabitance live progressively for general betterment. It is unfair to the progress of the city that property owners would allow a structure to remain unhabitable and make no efforts to develop the same. It is unfair, therefore that the same rates should apply in respect of those property owners who actively developed the land. In these circumstances, care was taken to ensure in the 2015 Rules (which are alone impugned in this Petition) that in Schedule-A Part-I. Viz.

> "Land beneath partly demolished/ collapsed/remains of structures and therefore not capable of being physically occupied until issuance of IOD".

Under this the Corporation was empowered to assess for CV purposes land beneath partly demolished/ collapsed/ remains of the structures and

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therefore not capable of being physically occupied until issuance of IOD. Similarly, BMC in 2015 rules has also taken into consideration open land not built upon until issuance of IOD and revalued component of open land for redevelopment under various schemes. Different CV has been made applicable in respect of each of these categories. The Petitioners contended that classification of land under schedule (A) is contrary to the decision of Hon'ble Supreme Court in ***Polychem case***. They take a simplistic argument that if there is one category of land under the judgment viz. Open land then BMC is not entitled to further classify various lands. BMC has already submitted hereinabove that in terms of section 3(r) read with clause 2(g) of the Rules there are open land not built upon and land being built upon. The Petitioners are conveniently overlooking crucial definition under rule 2(g) which was enacted after the judgment in the case of ***Polychem Limited*** (supra). *Inter alia* rule 2(g) specifically considers under the definition of land "benefits arising out of the land". Considering the benefits that would arise out of various lands, the said schedule (A) part (1) has been enacted and weightage by multiplication to the base value of Ready Reckoner rules has been provided by BMC. It is respectfully submitted that words "benefits arising out of a land" contained in rule 2(g) and section 3(r) of BMC Act are not mere adornments; these words must be given due weightage. The Petitioners have conveniently ignored this. It is therefore, submitted that it was abundantly proper for BMC to have different capital value weightage for different kind of lands. For example, if on one prominent road in Mumbai, there is an open land on both ends of road, both have dilapidated structures, one land at one end is developed; at the other end no efforts are made to develop the land; it is totally inequitable to have the same capital value in respect of both the lands. The Petitioners'

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contention in this behalf is, thus, completely unfounded.

141. It is the contention of the Petitioners that F.S.I. permissible or approved cannot be counted for determining the capital value of open land. Such a contention deserves to be rejected. In the first place, approved rules 20 and 21 specifically contemplate increased rates while valuing for capital value purposes, land which has been given or approved additional FSI. When land becomes available for redevelopment, the first thing that will entice the developer is the potential increase in F.S.I., that is bound to be given to him under Development Control Rules which are implemented by BMC. But for the incentive or benefit given to the developer, as regards the additional F.S.I, no person in his right mind would purchase that land when other lands are available to him where he can secure additional F.S.I. This is indeed a benefit arising out of open land to the developer. Therefore, counting FSI for Capital Value Assessment does not amount to adding a non existing value. It is known to the developer from the first date and he exploits this potential.

WATER TAX AND SEWERAGE TAX

142. At the very outset it is necessary to state that the water tax and sewerage tax which is sought to be suddenly challenged in the present petition appears to be an after thought to put in as much challenge as possible to the capital value rules. Proof for the above statement is the fact that there is absolutely no change as regards levy of water tax and sewerage tax between the earlier rateable value system and the present capital value system. All concerned have always been paying these taxes under the previous system. Even when the rateable value system was challenged right upto the Hon'ble Supreme Court of India, it would appear that water tax and sewerage tax had never been the subject matter

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of challenge. It is therefore, strange that the Petitioner should now wake up to say that these two taxes ought not to be levied for land under construction.

143. At the very outset, the water tax and sewage tax are levied under statutory provisions of the BMC Act enacted by Government of Maharashtra. The relevant provisions for levy are Section 141 for Water tax and section 142 for sewerage tax read with Section 169 for water charges and section 170 for sewerage charges. To put it succinctly if charges are levied under section 169 and 170 of BMC Act, then tax under section 141 and 142 are not levied. The said 2 are completely separate and distinct. Suffice to emphasize that water tax and sewerage tax in terms of statutory provisions of section 141 and 142 are levied on the capital value of the open land.

144. With this background, the Corporation wishes to highlight that as a responsible civic body, it is the duty of the BMC to make available water and sewerage facilities, and to continue to upgrade the same, whether or not the citizens demand the same. In short, therefore once Corporation has so provided such facilities in any area, it has the ability to tax such a facility. Once adequate water supply is given to locality, in terms of Section 141, the Commissioner declares that the water is available whether used or not, the same is taxable. The same is the case for sewerage tax under section 142. Absent the tax, it would be difficult for the Corporation to generate funds for this very basic civic obligation. Let us take for e.g. A plot of land 'A'. It is an open land, the owner of the land pays water charges and sewerage charges in respect of this land under section 169/170 respectively. The owner will not be

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required to pay any water tax, sewerage tax under section 141 and 142 of the act. The above is regardless that open plot of land is available and not being developed. Furthermore, if the land owner begins to develop the plot 'A' and uses the water facilities made available to him and the sewerage facilities made available to him during the period of construction, no water tax and sewerage tax is imposed on him if during construction he pays water charges and sewage charges. However, despite water being available as above and despite sewerage facility being available as above if the developer of the land chooses to use tanker water and does not use sewerage facility, such a developer will be taxed under the provisions of section 141 and 142 of BMC Act. There is nothing *ultra vires*, illegal or arbitrary in these time tested provisions of law. Furthermore, it may not be out of place to emphasize that the present batch of Writ Petitions in the Hon'ble High Court includes the present Writ Petition challenging the constitutional validity and amended provisions of the BMC Act. The Petitioners seems to be under misapprehension as to the rate of tax being unjustified. Section 169 and 170 of BMC Act specifically provides the rate for levying water tax and sewerage tax. These rates as recommended by the administration have been approved by the Standing Committee. Water tax and sewerage tax are levied exactly as per the approved rates. It is respectfully submitted that once statutorily the corporation is permitted to levy the tax, it is not open for the petitioner to question the rate at which it is taxed.

145. By way of reply to the submissions made by the learned Advocate General and Shri Pakale, Mr. Rafiq Dada made detailed submissions by way of rejoinder. The said submissions can be summarized as under:

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a. Article 243X gives a power to the State legislature to pass a law to authorize a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits. The word Municipality has been defined in article 243-P (e) to mean an institution of self-government constituted under article 243Q. It is submitted that the word Municipality therefore can only refer to the Municipal Corporation for a larger urban area which in the present case is the Mumbai Municipal Corporation. It is submitted that the word Municipality must be construed as the Municipal Corporation duly constituted by Corporators by the process of election in accordance with the provisions of the Mumbai Municipal Corporation Act (hereinafter referred to as "the said act"). The word Municipality must mean the entire Municipal Corporation as the same word is used in the following articles of the Part IX-A: 243R(i), 243R(ii), 243S, 243V, 243W, 243X(b), 243X(c), 243X(d), 243Z, 243ZA, 243ZC, 243ZE(2)(b), 243ZE(3), 243ZF which provides for unconstitutionality for violation of Part IX-A and 243ZG. It is submitted that the word Municipality specially in 243X(a) must mean the Municipal Corporation as the same meaning must be assigned to the same word in the above articles. The word Municipality cannot possibly refer to either the Standing Committee or the Municipal Commissioner for the reason that an authority to levy, collect and appropriate tax is given. It is respectfully submitted that the basis of the authority to levy a tax being entrusted to the Municipality is that this is the power of the state legislature which is largely an elected body, and its power which is entrusted to the Municipal Corporation where the elected representatives hold their seat.

b. It is submitted that in any event if as argued by the Respondents certain machinery provisions can be left to other

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functionaries of the Municipality, the power to levy tax is a part of the substantive provision of a tax statute. This is evident from the judgment of the Hon'ble Supreme Court in ***J. K. Synthetics Limited v. Commercial Tax Officer*** (supra). In paragraph 2 of the judgment the Supreme Court has referred to the charging section as Section 3, whereby the liability to pay tax arises and Section 5 which prescribes the rate of tax. In paragraph 9 of the judgment (page 287) the Hon'ble Supreme Court has held in the matter of interpretation of a tax law that "Section 3 read with Section 5 of the Act is the charging provision whereas the rest of the provisions provide the machinery for the levy and collection of the tax." It is respectfully submitted that this constitution bench judgment has clearly illustrated that the section whereby liability to pay tax arises and the section that prescribes the rate of tax is the charging provision. It is respectfully submitted that in view of this, the Municipality alone can levy the tax and fix the rate thereof. This cannot be left the Standing Committee or the Municipal Commissioner.

c. Section 128 of the said act is the charging provision whereby tax is to be imposed at the rates which may be prescribed under Section 128 is clearly overridden by section 140, 169 to 172 whereby the power to impose taxes in respect of water and sewerage is left exclusively to the Standing Committee. It is clear from a true and proper construction of these provisions that the power of the Standing Committee overrides the power of the Municipal Corporation under section 128. The Standing Committee has been given the power to levy the tax and/or charge it and fix the rate by appropriate rules.

d. In a compilation submitted by the Petitioners the resolutions passed by the Standing Committee in the meeting held on 10th May 2012 have been submitted. The rules for imposition of water charges

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and sewerage waste removal rules effective from 16th June 2012 have also been placed. These rules show that they have been enacted in pursuance of the powers under Section 169 of the said Act by the Standing Committee. The rules for sewerage and waste removal effective from 16th June 2012 have also been placed on record. These rules are also framed in accordance with Section 170 of said Act. It is respectfully submitted that the entire conduct of the Municipality under the said act clearly and unequivocally shows that it is the Standing Committee alone that levies the tax on water and sewerage as also fixes the rate thereof. This is the part of the substantive law and hence it is a function which could not ever have been performed by the Standing Committee. In view of this, the rules framed by the Standing Committee for levy and fixation of rates of tax for supply of water and collection of sewerage are clearly *ultra vires* Article 243X.

e. The Respondent submitted that the Standing Committee only refers the proposal to impose tax but the tax is imposed by the Municipal Corporation. It is respectfully submitted that the following sections were referred to as a part of the arguments viz. 111, 118, 118A, 119A (constitution of a consolidated water supply and sewerage disposal loan fund), 119B(constitution of water and sewerage fund), 123 proviso, 125(I)A which prescribes that the estimate of expenditure which is placed before Standing Committee does not include the expenses to be incurred for the purposes of Chapter IX-A(drainage) and X (Water Supply), 126 (Budget estimate to be prepared by Standing Committee) however the budget estimate G which is for water and sewerage is not included , 126E (estimate of expenditure for the purposes of Chapter IX-A and X and 126F (budget expenditure G to be prepared by Standing Committee of income and expenditure for purposes of Chapter

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IX-A and X. Reference was made to Section 127 whereby the estimates are considered and thereafter to Section 129 (adoption of budget) and Section 128 under which the Municipal Corporation after considering proposals of the Standing Committee determines the rates at which tax is to be levied. It is submitted that this clearly excludes taxes to be levied by the Standing Committee under Section 140 read with Sections 169 to 172 as an overriding effect is given to these sections over Section 128.

f. The judgment in CWS (India) Limited v. Commissioner of Income Tax reported in 1994 Supp(2) SCC 296 in paragraph 10 refers to a rule of interpretation which can be adopted by a court to prevent and save a provision from being discriminatory and highly incongruous. In para 10 there is a quotation from Maxwells Interpretation of Statutes (12th Edition) in regard to "Modification of the language to meet the intention". It is respectfully submitted that no absurdity, incongruity or discrimination can result in interpreting 243X to say that the Municipality alone has the power to levy tax and fix the rates thereof.

g. It was submitted on behalf of the State that delay in challenging a statute may prevent the Petitioners from getting the relief. In this connection the judgment in ***Express Publication (Madurai) Limited & Anr. v. Union of India & Anr.,*** has been cited. The learned judges of the Hon'ble Supreme Court held in paragraph 25 that the classification which was subject to challenge was not arbitrary. In paragraph 26 the Hon'ble Court held that the aspect of long delay in laying a challenge the validity of the provisions may be a factor to be considered when the constitutional remedy under Article 32 is sought. The Petitioners relied upon the judgment of ***Motor General Traders & Anr. State of Andhra Pradesh & Ors.***[80] (para 24, page 127). In this judgment

80 AIR 1984 SC 121

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Hon'ble Supreme Court has held that a mere lapse of time does not lend constitutionality to a provision which is otherwise bad. Time doesn't run in favour of legislation. "If it is *ultra vires*, it cannot gain legal strength from long failure on the part of lawyers to perceive and set up its invalidity".

h. In the present case the issue is academic as a provision which is contrary to 243X is void after the expiry of one year from the commencement of the constitution (74th) Amendment Act 1992 " i.e. 01.06.1993". It is submitted that if the earlier provisions were void, they were not required to be challenged. The Petitioners are aggrieved by the present provision whereby tax on basis of capital value was sought to be imposed and hence it is respectfully submitted that there is no delay in challenging the provisions. In any event it is submitted that if the Petitioners are correct and the provisions are *ultra vires* and void in terms of Article 243ZF then delay if any in challenging the same cannot be an answer to the present petition. The Respondents have also placed reliance on the judgment of this Court in the case of ***Sir Byramjee Jeejeebhoy v. Province of Bombay.***[81] Reference was made to a portion of a judgment of Justice Kania (right hand column, last para graph page 75). In this paragraph the Learned Judge held that under Section 24 of the City of Bombay Municipal Act, the word Municipality when applied to Bombay, is intended to mean the appropriate Municipal Authorities. It is respectfully submitted that this finding was given in the context of the challenge in the petition whereby apart from the constitutionality of the Urban Immovable Property Tax Act which, a decision was sought that the notices served on the Plaintiff were void. It is respectfully submitted that the construction of the word Municipality in the Act with which the Hon'ble Bombay High

81 AIR 1940 Bombay 65

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Court was concerned cannot have any bearing on the construction of the same word under Article 243X.

i. The Respondents have placed reliance on the judgment in ***Commission of Income Tax West Bengal v. Balkrishan Malhotra*** (supra). Paragraph 6 was referred to whereby the Hon'ble court held that a particular meaning of the word Assessment and Assessee had been accepted by the Revenue from a period as long back as September 24, 1953 and hence there was no warrant to give a different interpretation. This judgment has no application to the present case.

j. The Respondents relied on the judgment in ***State of Maharashtra v. Indian Medical Association & Ors.*** (supra) where the Learned Judge of the Hon'ble Supreme Court referred to the phrase "unless the context otherwise requires… " (See para 8). In the facts of the case the Learned Judge held that the expression 'management" in the case of a medical college established by the State Government cannot mean the State Government in the matter of application for the Essentiality Certificate as the state cannot apply to itself for an Essentiality Certificate.

k. The Respondents also relied on a judgment in ***Gurudas Mangduji Kamdi v. Rashtrasant Tukdoji Maharaj Nagpur University*** (supra). In this judgment in paragraph- 38 the Learned Judges of the Bombay High Court have referred to the application of the phrase "unless the context otherwise requires". It is respectfully submitted that the phrase "unless the context otherwise requires" is used in Article 243-P (Part IX-A). It is respectfully submitted that in a true and proper interpretation of Article 243-X there is no warrant to use the principle of "context otherwise requires". This has been submitted to this Hon'ble court with reference to the word Municipality used in virtually every Article in Part IX-A . There is no warrant to interpret Municipality to mean Standing Committee or to

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mean the Municipal Commissioner in the matter of charging tax.

l. In this connection with retrospective levy, the Petitioners have already submitted the arguments that with reference to the scheme of taxation accounts are required to be prepared and budget finalised every year (Sections 125 to 127). The Petitioners have made their submissions on interpretation of Section 128(3) and argued that the rate of property tax so determined are required to be made effective by following the procedure laid down at least on or after the 1st of April of that year but before the conclusion of that year.

m. The Petitioners have submitted that a tax cannot be approved in 2012-13 and made to applicable from 1st April 2010. The Petitioners in the oral submissions pointed out that the Water Rules and Sewerage Waste Disposal Rules have been made effective from 16th June 2012. The Standing Committee therefore (without prejudice to the Petitioners submission that they have no power) have made the rules applicable from 16th June, 2012 . There is no warrant or justification to apply it from 1st April, 2010. The Respondent's reliance was placed on Section 219(AB) of the said Act to submit that the provisions of certain Sections would have an overriding effect. The Provisions of Sections 128, 140A, 154A, 156 and 168 are referred to in Section 219(AB). It is submitted that this provision cannot have an application from year to year otherwise this section as interpreted by the Respondents would defeat the entire protection given to tax payers in the matter of assessment, notice, hearing of complaints, authentication of the assessment book and final issuing a bill. It is respectfully submitted that in any event the effect of this Section nor its interpretation can enable the Municipality to override Section 156, 157, 160, 161, 162, 163 to 165 and 166. It is respectfully submitted that the provisions referred to in Section 219AB specifically

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refers to certain amendments carried out by the Act 27 of 2010 as also Maharashtra Act 6 of 2012. Specific sections which have an overriding effect have been submitted, but it is respectfully submitted that this doesn't override the protective provisions of Sections 156 to 168 of the said act. It is respectfully submitted that Respondents has admitted that the tax was finalised, bills were raised and complaints were invited in a specific format. No hearing was given prior to the fixation of the tax and nor was the assessment book authenticated as required by the judgment cited by the Petitioners. The ***Sholapur Municipal Corporation v. Ramchandra Ramappa Madgundi*** (supra)) and ***Municipal Corporation of City of Hubli v. Subha Rao Hanumantharao*** (supra). An argument was advanced on behalf of the Municipal Corporation that specific limits or guidelines are not required since "carrying out the object of the Act" is a good guideline. In this connection the case of ***Avinder Singh v. State of Punjab***[82] relied upon by the Municipal Corporation was cited. Paragraph 19 was pointed out to show that the phrase "for the purposes of the Act" would constitute sufficient guidance for imposition of tax. It is respectfully submitted that this case would have no application like the other cases on excessive delegation cited. As the Petitioner has submitted that there is no basis or guideline given by the legislature as to in what cases the capital value is to be resorted to and in what cases the rateable value should be adopted. It is submitted that the basis on which capital value is to be adopted is not laid, particularly when the power to levy property tax on rateable value is still retained in the said Act. Conditions and limitations are required to be laid down in view of Article 243X. The power of the legislature has been granted to the Municipality and has to be exercised in accordance with such procedure and such limits as may be

82 AIR 1979 SC 321

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specified in law. The Petitioners submit with reference to the judgment cited on behalf of the Municipal Corporation that the tax based on capital value was extortionate and exorbitant. The Petitioners had cited the case of ***Patel Ghordandas Hargovindas & Ors. v. The Municipal Commissioner Ahmedabad & Anr.*** (supra), paragraph-34 to show how the tax was extortionate. The Petitioners have also in that context referred to as a part of the submissions on violation of Article 14. An analysis of a statement at Exhibit-F at page 82 of Petitioner's Note 2 in Compilation II, to show that the tax based on capital value has become 363% of the rateable value and 403% of the annual value in the case of residential and 916.50% of rateable value and 1018.50% of annual value in case of non-residential. The learned judges in Patel Ghordandas Hargovindas had found 250% of annual value to be extortionate. By the same analysis tax challenged in the petition is extortionate. The Petitioners in course of oral arguments referred to two judgment cited on behalf of the Municipal Corporation, ***The Assistant Commissioner of Urban Land Tax & Ors. v. Buckingham and Carnatic Co. Ltd.*** (supra) where the Learned Judges have referred to the general rule that so long a tax is not confiscatory or extortionate, the reasonableness cannot be questioned (paragraph 11). Reference was also made to the judgment cited on behalf of the Municipal Corporation in ***D.G. Ghose and Co. (Agents) Pvt. Ltd.*** (supra) (paragraph 44) where the Supreme Court said that " It is also well settled that so long as a tax is not confiscatory or extortionate, the reasonableness of the tax cannot be questioned in a court of law".

n. The Petitioners submit that the Commissioner has been given power under Section 154(1A) which is not permissible for the reasons already argued. Likewise the Respondents have not addressed this

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court again on the validity of the Rules especially Rule 21 and 22, but have reiterated the earlier submissions. The Petitioners submitted before this Court that the important guidelines are part of the Stamp Duty Ready Reckoner which is framed under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 framed under provisions of the Maharashtra Stamp Act, 1958. The important guidelines are relatively the most important method of determining the base value of the property. The Petitioners pointed out that the Written Submissions of the Municipal Corporation at page 15. It is stated that "The rates are fixed on a scientific basis by the State Government in accordance with Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 as framed under the provisions of Bombay Stamp Act 1958. In fixing the SDRR rates, a number of relevant factors are take on to consideration in accordance with established principles of valuation such as the type of land of construction, location and situational advantage or disadvantage and the price at which properties in a particular area are being sold. The same is therefore the most equitable, realistic and rational method of ascertaining the value of properties which are then used by BMC as the base value for the purpose of levying Property tax. It is respectfully submitted that in view of this the mandate of Section 154(1A) which was binding on the Commissioner, couldn't have been by-passed. The Petitioners submitted that the rules have been framed under 154(1A)(e) and 154(1B). The mandate of taking carpet value into consideration was by-passed. The attention of the court has also been drawn to the effect of accepting SDRR rates v/s rates fixed by the Commissioner and the effect of accepting the important guidelines which have been overridden by the Municipal Commissioner.

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CONSIDERATION OF SUBMISSIONS

146. We have carefully gone through the pleadings and written submissions. We have given our thoughtful consideration to written and oral submissions. We have also carefully considered the large number of the decisions relied by the parties. We must note here that large number of precedents have been relied upon taking similar views. Some of the decisions are not relevant at all. We cannot resist the temptation of observing that the members of the Bar must show restraint while relying upon various decisions and ensure that the Court is not burdened unnecessarily with large number of decisions.

THE APPROACH OF THE COURT WHILE DEALING WITH THE CHALLENGE TO THE VALIDITY OF TAX LAWS.

147. This Court is dealing with the challenge to the Constitutional validity of the amended provisions of the BMC Act in respect of the levy and the collection of the property tax. In this context, what is held by the Constitution Bench of the Apex Court in its decision in the case of ***R.K.Garg v. Union of India and others*** (supra) is relevant. Paragraph-8 of the decision reads thus:

> "8. **Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to**

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give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud [351 US 457 : 1 L Ed 2d 1485 (1957)] where Frankfurter, J., said in his inimitable style:

> "In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adaption of remedy are not always possible" and that "judgment is largely a prophecy based on meager and uninterpreted experience". **Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid.** The courts cannot, as pointed out by the United States Supreme Court in Secretary of Agriculture v. Central Roig Refining Company [94 L Ed 381 : 338 US 604 (1950)] be converted into tribunals for relief from such crudities and inequities. **There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and**

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> **abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.**
>
> (emphasis added)

The said decision is consistently followed by the Apex Court from time to time including in the case of ***State of West Bengal and Kesoram Industries Limited*** (supra). Paragraph-32 of the said decision reads thus:

> "32. The above-stated are general principles. Legislations in the field of taxation and economic activities need special consideration and are to be viewed with larger flexibility in approach. Observations of the Constitution Bench in R.K. Garg v. Union of India and others, (1981) 4 SCC 676, are apposite, **wherein this Court has emphasized a greater latitude - like play in the joints - being allowed to the Legislature because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula. In this field the Court should feel more inclined to give judicial deference to legislative judgment.** Their Lordships quoted with approval the following statement of Frankfurter, J. in Morey v. Doud, (1957) 354 US 457:-
>
> "**In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events, self-limitation can be seen to be**

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> **the path to judicial wisdom and institutional prestige and stability**".
>
> Their Lordships further observed that the Courts ought to adopt a pragmatic approach in solving problems rather than measuring the propositions by abstract symmetry. The exact wisdom and nice adaptations of remedies may not be possible. Even crudities and inequities have to be accommodated in complicated tax and economic legislations."
>
> (emphasis added)

Moreover, it is well settled that there is always a presumption in favour of the constitutionality of a statute. One who contends that a statutory provision suffers from the vice of unconstitutionality has to establish it. In case of taxing statutes, more latitude is required to be given to the Legislature. Therefore, the burden on the petitioners in this case is more onerous.

THE ARGUMENT ON LEGISLATIVE COMPETENCE:

148. One of the contentions of the petitioners is that the State Legislature is not competent to make a law to levy property tax based on capital value. The contention is that by the impugned amendments to the BMC Act, a provision has been made to levy tax on capital value of the assets and it is not a tax on lands and buildings. Chapter-I of Part-XI of the Constitution of India deals with distribution of legislative powers. In view of clause (1) of Article 246 Constitution of India, the Parliament has exclusive power to make laws with respect to any of the matters enumerated in List-I in the Seventh Schedule. In view of clause (2) of Article 246, the Legislature of any State has exclusive power to make laws for such State with respect to any of the matters enumerated in List-II in the Seventh Schedule. The Parliament and the Legislature of any State have powers to make laws with respect of any of the matters enumerated

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in List-III in the Seventh Schedule.

149. Now, coming to List-II in Seventh Schedule, the relevant entry is Entry-5 which read thus:

> "5. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-Government or village administration."

Apart from Entry-5, even Entry-49 of List-II is relevant which reads thus:

> "49. **Taxes on lands and buildings**."

When we consider the issue of legislative competence, we will have to also refer to Entry-86 of List-I. Entry-86 of List-I reads thus:

> "86. **Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies**; taxes on the capital of companies."

There cannot be any dispute that the BMC Act will fall in Entry-5 of List-II. On its plain reading, the Entry-5 of List-II does not authorize a legislation providing for levy of taxes and it is a general entry. The same view is taken by a Division Bench of this Court in in the case of ***Hirabhai Patel vs. State of Bombay*** (supra). It is true that nomenclature of the levy used in a particular statute is not a determinative of real character of tax. The contention of the petitioners is that the property tax leviable under the BMC Act is not a tax on the basis of capital value of lands and buildings and it is, in fact, a tax for a specified object of providing services and for recovering expenditure. The argument of the petitioners is that a tax covered by a legislation made under Entry-49 of List-II of taxes on lands and buildings must have a direct and definite relation to the lands and

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buildings. This argument is supported by the decisions of the Apex Court in the case of ***State of Bihar vs. Indian Aluminium*** (supra) as well as in the case of ***Lt. Col. Sawai Bhavani Singh vs. State of Rajasthan*** (supra). The law which emerges from the decision in the case of ***Lt. Col. Sawai Bhavani Singh vs. State of Rajasthan*** (supra) is that the law referable to Entry-49 of List-II must be a law imposing a tax on lands and buildings separately as units and it cannot be a composite tax on value of the land and building.

150. The main submission is that by virtue of the impugned amendments, a tax is sought to be levied on capital value of the property which could be done only by a law made by the Parliament by taking recourse to Entry-86 of List-I. The contention is that by making a law permitting charging of tax on the basis of the capital value of lands and buildings, the State Legislature has committed a direct encroachment on the exclusive legislative domain of the Parliament under Entry-86 of List-I. Thus, it has to be struck down as the State Legislature lacks legislative competence to enact such a law for levy of tax based on capital value of land or building.

151. Reliance is placed on Entry-86 of List-I of Seventh Schedule of the Constitution of India which is about taxes on capital value of assets of individuals and companies. The contention is that by the impugned amendments permitting levy of taxes based on capital value, an encroachment has been made on the legislative power of the Union in Entry-86. In our view, the issue is already decided by the Constitution Bench of the Apex Court in the case of ***Assistant Commissioner of Urban Land Tax and others v. The Buckingham and Carnatic Co.Ltd.*** (supra). This was a case where there was a challenge to the provisions of the

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Madras Urban Land Taxes Act, 1966 (for short "Urban Land Tax Act"). Section 5 thereof provided that there shall be levied and collected for every year commencing from the date of commencement of the Urban Land Tax Act, a tax on each urban land at the rate of 0.4% of the market value of such urban land. Sub-section (3) of section 2 of the Urban Land Tax Act defined the land to mean any land which is used or is capable of being used as a building site and includes garden or ground, if any, appurtenant to the building. An elaborate procedure was laid down in the Urban Land Tax Act for arriving at the market value of the urban land. The argument was whether the State Legislature was competent to enact such a law by taking recourse to Entry-49 of List-II regarding "tax on lands and buildings". The argument was that what is in fact sought to be levied under the Urban Land Tax Act was a tax on capital value of the assets of individuals and companies. This argument is dealt with firstly in paragraph-4 of the said decision which reads thus:

> **"4.** The first question to be considered in these appeals is whether the Madras Legislature was competent to enact the legislation under Entry 49 of List II of Schedule VII of the Constitution which reads: "Taxes on lands and buildings". It was argued on behalf of the petitioners that the impugned Act fell under Schedule VII, List I, Entry 86, that is "Taxes on the capital value of the assets, exclusive of agricultural land of individuals and companies; taxes on the capital of companies." The argument of Mr V.K.T. Chari may be summarised as follows: **"The impugned Act was, both in form and substance, taxation of capital and was hence beyond the competence of the State Legislature.** To tax on the basis of capital or principal value of assets was permissible to Parliament under List I, Entries 86 and 87 and to State under Entry 48 of List II. Taxation of capital was the appropriate method provided for effecting the directive principle under Article 39 of the Constitution, namely, to prevent concentration of wealth. Article 366(9) contains a definition of 'estate duty', with reference to the principal value. Entry 86 of List I (Taxes on capital value of assets exclusive of agricultural land) and

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Entry 88 (Duties in respect of succession to such property) form a group of entries the scheme of which is to carry out the directive principle of Article 39 (*c*). The Constitution indicated that capital value or principal value shall be the basis of taxation under these entries and, therefore, the method of taxation of capital or principal value was prohibited even to parliament in respect of other taxes and to the States except in respect of Estate Duty on agricultural land. Such in effect is the argument of Mr V.K.T. Chari. But in our opinion there is no warrant for the assumption that Entries 86, 88 of List I and Entry 48 of List II form a special group embodying any particular scheme. The directive principle embodied in Article 39 (*c*) applies both to Parliament and to the State Legislature and it is difficult to conceive how Entries 86 to 88 of List I would exclude any power of the State Legislature to implement the same principle. **The legislative entries must be given a large and liberal interpretation, the reason being that the allocation of the subjects to the lists is not by way of scientific or logical definition but by way of a mere *sixplex enumeratio* of broad categories. We see no reason, therefore, for holding that the Entries 86 and 87 of List I preclude the State Legislature from taxing capital value of lands and buildings under Entry 49 of List II. In our opinion there is no conflict between Entry 86 of List I and Entry 49 of List II. The basis of taxation under the two entries is quite distinct. As regards Entry 86 of List I the basis of the taxation is the capital value of the asset. It is not a tax directly on the capital value of assets of individuals and companies on the valuation date. The tax is not imposed on the components of the assets of the assessee. The tax under Entry 86 proceeds on the principle of aggregation and is imposed on the totality of the value of all the assets. It is imposed on the total assets which the assessee owns and in determining the not wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account. In certain exceptional cases, where a person owes no debts and is under no enforceable obligation to discharge any liability out of his assets it may be possible to break up the tax which is leviable on the total assets into components and attribute a component to lands and**

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> **buildings owned by an assessee.** In such a case, the component out of the total tax attributable to lands and buildings may in the matter of computation bear similarity to a tax on lands and buildings levied on the capital or annual value under Entry 49, List II. But in a normal case a tax on capital value of assets bears no definable relation to lands and buildings which may or may not form a component of the total assets of the assessee. But Entry 49 of List II, contemplates a levy of tax on lands and buildings on both as units. It is not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. **By legislation in exercise of power under Entry 86, List I tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under Entry 49, List II the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not make the fields of legislation under the two entries overlapping. The two taxes are entirely different in their basic concept and fall on different subject-matters**."
>
> (emphasis added)

In paragraph-6, the Apex Court held thus:

> "**6.** The problem in this case is the problem of characterisation of the law or classification of the law. In other words the question must be asked: What is the subject-matter of the legislation in its "pith and substance" or in its true nature and character for the purpose of determining whether it is legislation with respect to Entry 49 of List II or Entry 86 of List I. In *Gallahagher* v. *Lynn* [1937 AC 863 at p. 870] the principle is stated as follows:
>
> > "It is well established that you are to look at the true nature and character of the legislation the pith and substance of the legislation. If on the view of the statute as a whole, you find that the substance of the legislation

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> is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorized field. The legislation must not under the guise of dealing with one matter in fact encroach upon the forbidden field. Nor are you to look only at the object of the legislator. An Act may have a perfectly lawful object e.g., to promote the health of the inhabitants, but may seek to achieve that object by invalid methods, e.g., direct prohibition of any trade with a foreign country. In other words, you may certainly consider the clauses of an Act to see whether they are passed 'in respect of' the forbidden subject."

152. Another Constitution Bench of the Apex Court in the case of ***D.G. Gose and Co. (Agents) Pvt. Ltd. v. State of Kerala and another*** (supra), considered the issue of constitutional validity of the provisions of the Kerala Building Tax Act, 1975 which was upheld by the Kerala High Court. The argument before the Apex Court was the same. The argument was that in the name of tax on building, a tax on capital value of the assets was sought to be levied which was within the exclusive province of the Central Legislation. In paragraph 4, the Apex Court noted the issue which arose for its consideration which reads thus:

> "4. The question which arises for consideration at the threshold is that relating to the competence of the State legislature to enact the law, on which considerable stress has been laid by Mr P.A. Francis. **He has argued that the subject-matter of the Act being a tax on buildings, it is a tax on the capital value of the assets of an individual or company and falls within the scope of Entry 86 of List I of the Seventh Schedule of the Constitution, and not under Entry 49 of List II, so that it was beyond the legislative competence of State legislature. The question is whether this is so**."
>
> (emphasis added)

The Constitution Bench reiterated the view taken in the aforesaid decision.

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Paragraphs-6 to 11 of the said decision read thus:

> "6. Chapter I of Part II of the Constitution deals with the distribution of legislative powers. Article 246 of that chapter states, inter alia, the exclusive powers of the Parliament and the State legislatures according as the matter is enumerated in List I or List II of the Seventh Schedule. Entry 86 of List I, on which reliance has been placed by Mr Francis, reads as follows:
>
> > "86. Taxes on the capital value of assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies."
>
> 7. Now the word "assets" has been defined in the Century Dictionary (which is an encyclopaedic lexicon of the English language) as follows:
>
> > "Property in general; all that one owns, considered as applicable to the payment of his debts .... As a singular: Any portion of one's property or effects so considered."
>
> So if a tax is levied on all that one owns, or his total assets, it would fall within the purview of Entry 86 of List 1, and would be outside the legislative competence of a State legislature, e.g. a tax on one's entire wealth. That entry would not authorise a tax imposed on any of the components of the assets of the assessee. A tax directly on one's lands and buildings will not therefore be a tax under Entry 86.
>
> 8. On the other hand, Entry 49 of List II is as follows:
>
> > "49. Taxes on lands and buildings.
> >
> > If therefore a tax is directly imposed on 'buildings', it will bear a direct relation to the buildings owned by the assessee. It may be that the building owned by an assessee may be a component of his total assets, but a tax under Entry 86 will not bear any direct or definable relation to his building. A tax on 'buildings' is therefore a direct tax on the assessee's buildings as such, and is not a personal tax without reference to any particular property.
>
> 9. It has to be appreciated that in almost all cases, a tax has two elements which have been precisely stated by Seervai in his "Constitutional Law of India", 2nd Edn., Vol. 2, as follows, at p. 1258:
>
> > "**Another principle for reconciling apparently conflicting tax entries follows from the fact that a tax has two**

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> **elements: the person, thing or activity on which the tax is imposed, and the amount of the tax. The amount may be measured in many ways; but decided cases establish a clear distinction between the subject-matter of a tax and the standard by which the amount of tax is measured. These two elements are described as the subject of a tax and the measure of a tax.**"

It may well be that one's building may imperceptibly be the subject-matter of tax, say the wealth tax, as a component of his assets, under Entry 86 (List I); and it may also be subjected to tax, say a direct tax under Entry 46 (sic 49) (List II), but as the two taxes are separate and distinct imposts, they cannot be said to overlap each other, and would be within the competence of the legislatures concerned.

10. Reference in this connection may be made to Sudhir Chandra Nawn v. Wealth Tax Officer, Calcutta [AIR 1969 SC 59 : (1969) 1 SCR 108, 110, 111 : 69 ITR 897] . The petitioner there challenged the demand for the recovery of wealth tax on the ground, inter alia, that since the expression "net wealth" included the buildings of the assessee and the power to levy tax on them was reserved to the State legislature under Entry 49, List II, Parliament was not competent to levy the tax under Entry 86 of List I. This Court rejected the challenge and laid down the law as follows:

> "The tax which is imposed by Entry 86 List I of the Seventh Schedule is not directly a tax on lands and buildings. It is a tax imposed on the capital value of the assets of individuals and companies, on the valuation date. The tax is not imposed on the components of the assets of the assessee: it is imposed on the total assets which the assessee owns, and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account.....

Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the

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total assets of the assessee. By legislation in exercise of power under Entry 86 List I tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under Entry 49 List II the State legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not, in our judgment, make the fields of legislation under the two entries overlapping."

11. The decision in Sudhir Chandra Nawn case [AIR 1969 SC 59 : (1969) 1 SCR 108, 110, 111 : 69 ITR 897] was followed by this Court in Assistant Commissioner of Urban Land Tax v. Buckingham and Carnatic Co. Ltd. [(1969) 2 SCC 55 : (1970) 1 SCR 268] where the vires of the Madras Urban Land Tax Act, 1966, was challenged with reference to Entry 86 of List I of the Seventh Schedule. The legal position on that aspect of the controversy was reiterated as follows: (SCC pp. 62-63, para 4)

> "But in a normal case a tax on capital value of assets bears no definable relation to lands and buildings which may or may not form a component of the total assets of the assessee. But Entry 49 of List II, contemplates a levy of tax on lands and buildings or both as units. It is not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings, is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee."
>
> (emphasis added)

In paragraph 12, the argument noted in paragraph 4 was expressly rejected by the Apex Court for the reasons stated in paragraphs 5 to 11 quoted above. A Division Bench of this Court in the case of ***Basaweswar s/o Chandrashekhar Tambakhe v. Gram Panchayat, Silewada and others*** (supra), in paragraph-11, has taken the same view following the aforesaid decision in the case of D.G.Ghose and Co(supra). The challenge

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before the Division Bench was to the provisions of Rule 7 of the Maharashtra Village Panchayat Taxes and Fees Rules, 1960 which permitted levy of property tax on the basis of the capital value of buildings. The challenge was rejected.

153. As in the case of other municipal laws in the State, the unamended provisions of the BMC Act provided for levy of property tax on rateable value which is calculated on the basis of hypothetical annual rent which the property was expected to fetch. In case of ***Government Servant Co-operative House Building Society Limited v. Union of India***[83] (supra), the argument was that in such a case, the tax is not a tax on property but on the income of the property and, therefore, it was within the exclusive domain of the Union Legislature. Paragraphs-9 to 12 of the said decision read thus:

> "9. **It was then submitted on behalf of the appellants that if the annual rent actually received is taken as the basis for determining the rateable value of the property, the property tax will become a tax on income of the owner. Such a tax would be beyond the legislative competence of the State Legislature. Being a tax on income, it can be levied only by the Central Government and it would not fall in Entry 49 of List II of the Seventh Schedule of the Constitution**. It would, in fact, fall in Entry 82 of List I which deals with taxes on income other than agricultural income. Now, Entry 49 of List II covers taxes on lands and buildings. As the High Court has pointed out, the three lists in the Seventh Schedule of the Constitution have no relevance to the Union Territory of Delhi since Parliament can make law respecting all the entries in all the three lists. The Delhi Municipal Corporation Act is, in fact, parliamentary legislation. Nevertheless, as the argument has been advanced before us at some length and it may affect other municipal legislations, we will briefly deal with it.

83 (1986) 6 SCC 381

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10. A similar argument in connection with the Punjab Urban Immovable Property Tax Act, 1940 was advanced before the Federal Court in the case of Ralla Ram v. Province of East Punjab [AIR 1949 FC 81 : 1948 FCR 207 : (1949) 1 MLJ 213] . The property tax under the said Act was based on the annual value of the property. Negativing the argument that this was a tax on income and hence was not covered by List II Item 42, dealing with taxes on lands and buildings under the Government of India Act, 1935, the Court said that a proper approach is to look at the true nature and character of the legislation or its pith and substance. If the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorised field. The Court analysed the provisions of the said Act and observed that in every case, the actual profit derived from the property would not necessarily be its annual value. It is possible to conceive of cases in which the property to be taxed does not actually yield any income whatsoever, though every property must have some notional annual value. The method of arriving at the quantum of tax should not be mixed up with the nature of the tax itself. The essential character of the tax was property tax and not a tax on income. It said: (p. 86)

> "This case demolishes the broad contention that wherever the annual value is the basis of a tax, that tax becomes a tax on income. It shows that there are other factors to be taken into consideration and that it is the essential nature of the tax charged and not the nature of the machinery which is to be looked at."

11. The Federal Court had referred to the Full Bench decision of the Bombay High Court Sir Byramjee Jeejeebhoy v. Province of Bombay [AIR 1940 Bom 65 : 1939 ITR 670] which also deals with the urban immovable property tax to be calculated by the Municipal Commissioner. The same view has been taken by this Court in the case of Patel Gordhandas Hargovindas v. Municipal Commr., Ahmedabad [AIR 1963 SC 1742 : (1964) 2 SCR 608] . In this case the Municipal Corporation of Ahmedabad had imposed a rate on vacant land within the municipal limits. The rate was the percentage of valuation based upon the capital. The contention was that this was a tax on capital and not a tax on property and was,

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therefore, beyond the legislative competence of the State. The Court relied upon Ralla Ram v. Province of East Punjab[AIR 1949 FC 81 : 1948 FCR 207 : (1949) 1 MLJ 213] and emphasised the importance of the distinction between the levy of a tax and the machinery of its calculation including the method of calculation and said that the subject-matter of the tax was obviously something other than the measure provided to quantify tax by levying the tax on a percentage of the capital value of the land taxed. The entire scope of the charging section was not changed. The tax was, therefore, a tax on land.

12. **It is thus well settled that an Act of the State Legislature entitling a municipal corporation to levy property tax on the basis of rateable value of land and building calculated by the yardstick of annual rent at which such property can reasonably be leased to a hypothetical lessee, is valid and within its legislative competence. The tax remains property tax and cannot be viewed as a tax on income**. (See also Bhagwan Dass Jain v. Union of India [(1981) 2 SCC 135 : 1981 SCC (Tax) 84], Asstt. Commr. of Urban Land Tax v. Buckingham and Carnatic Co. Ltd. [(1969) 2 SCC 55 : (1970) 1 SCR 268] and India Cement Ltd. v. State of T.N. [(1990) 1 SCC 12]"

(emphasis added)

154. There is another decision of the Constitution Bench of the Apex Court in the case of ***Sudhir Chandra Nawn Vs. Wealth-Tax Officer, Calcutta and Ors***.(supra). In paragraph 3, the Apex Court held thus :-

3. The Parliament enacted the Wealth Tax Act in exercise of the power under List I of the Seventh Schedule Entry 86 — "Taxes on the capital value of assets, exclusive of agricultural lands, or individuals and companies: taxes on the capital of companies". That was so assumed in the decision of this Court in *Banarsi Dass* v. *Wealth Tax Officer, Special Circle, Meerut* [5 ITR 224] , and counsel for the petitioner accepts that the subject of Wealth-tax Act falls within the terms of Entry 86 List I of the Seventh Schedule. He says, however, that since the expression "net wealth" includes non-agricultural lands and buildings of an assessee, and power to levy tax on lands and buildings is reserved to the State Legislatures by Entry 49 List

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II of the Seventh Schedule, the Parliament is incompetent to legislate for the levy of wealth-tax on the capital value of assets which include non-agricultural lands and buildings. **The argument advanced by counsel for the petitioner is wholly misconceived. The tax which is imposed by Entry 86 List I of the Seventh Schedule is not directly a tax on lands and buildings. It is a tax imposed on the capital value of the assets of individuals and companies, on the valuation date. The tax is not imposed on the components of the assets of the assessee: it is imposed on the total assets which the assessee owns, and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account. In certain exceptional cases, where a person owes no debts and is under no enforceable obligation to discharge any liability out of his assets, it may be possible to break up the tax which is leviable on the total assets into components and attribute a component to lands and buildings owned by an assessee. In such a case, the component out of the total tax attributable to lands and buildings may in the matter of computation bear similarity to a tax on lands and buildings levied on the capital or annual value under Entry 49 List II. But the legislative authority of Parliament is not determined by visualizing the possibility of exceptional cases of taxes under two different heads operating similarly on tax payers. Again Entry 49 List II of the Seventh Schedule contemplates the levy of tax on lands and buildings or both as units. It is normally not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of power under Entry 86 List I tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under Entry 49 List II the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the**

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annual or capital value of lands and buildings for determining tax liability will not, in our judgment, make the fields of legislation under the two entries overlapping."

(emphasis added)

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. The issue stands concluded by the aforesaid decisions of the Constitution Bench of the Apex Court.

WATER TAX AND SEWERAGE TAX

156. As can be seen from the prayers made in the petitions, there is also a challenge to the validity of sub-sections (1)(a), (1)(b) and (1)(ca) of section 140 of the BMC Act. The contention is that the water tax and additional water tax under sub-section (1)(a) and sewerage tax and additional sewerage tax under sub-section (1)(b) have direct nexus with providing services. Water tax has nexus with the expenditure incurred on providing water supply. The additional water tax has a nexus with the

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expenditure incurred or to be incurred for capital works for making and improving the facilities of water supply and for maintaining and operating capital works. Similarly, sewerage tax has a nexus with the expenditure incurred for collection, removal and disposal of human waste and other wastes. Additional sewerage tax has a nexus with the expenditure incurred on capital works for making and improving facilities for collection, removal and disposal of human waste and other wastes. The contention is that since these taxes have co-relation with the services provided, these four categories of taxes are, in fact, fees. We must note that the aforesaid provisions relating to the water and sewerage tax were always there in the BMC Act much prior to the impugned amendments. We are considering the same on merits notwithstanding the fact that we could have refused to entertain the belated challenge as the provisions exist for decades. After all, writ jurisdiction under Article 226 is discretionary.

157. At this stage, we may also make a reference to sections 169 and 170 of the BMC Act which have been already quoted earlier. A rule making power is conferred on the Standing Committee for recovery of charges for supply of water by water tax and water benefit tax levied under section 140 on any property provided with the supply of water. Sub-section (1) of section 170 confers rule making power for determining the charges for removal of human waste and other wastes. The argument that power to frame rules cannot be vested in Standing Committee as the rules are for determination of rates of property tax is dealt with separately. However, both the sections 169 and 170 make it clear that rules can be framed providing for payment of water charges in lieu of water tax based on measurement or estimated measurement of the quality

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of water supplied. The rule making power also provides for making rules for payment of sewerage charge in lieu of sewerage tax based on measurement or estimated measurement of the quantity of water supplied for the premise or quantity of wastes discharged from the premise. Sub-section (2) of section 169 makes it clear that a person who is charged for supplying water by the BMC shall not be liable to pay water tax. Similarly, sub-section (2) of section 170 makes it clear that when a person is charged for rendering sewerage services, he is not liable to pay the sewerage tax.

158. The issue of difference between the tax and fee is no longer *res integra*. Firstly, we may make a reference to the decision of the Apex Court in the case of ***Calcutta Municipal Corporation v. Shrey Mercantile (P) Ltd. and others***[84]. In Paragraphs-14 to 16, the Apex Court has held thus:

> "14. According to Words and Phrases, Permanent Edn., Vol. 41, p. 230, a charge or fee, if levied for the purpose of raising revenue under the taxing power is a "tax". Similarly, imposition of fees for the primary purpose of "regulation and control" may be classified as fees as it is in the exercise of "police power", **but if revenue is the primary purpose and regulation is merely incidental, then the imposition is a "tax". A tax is an enforced contribution expected pursuant to a legislative authority for the purpose of raising revenue to be used for public or governmental purposes and not as payment for a special privilege or service rendered by a public officer, in which case it is a "fee". Generally speaking, "taxes" are burdens of a pecuniary nature imposed for defraying the cost of governmental functions,** whereas charges are "fees" where they are imposed upon a person to defray the cost of particular services rendered to his account.
>
> 15. In the case of *State of W.B. v. Kesoram Industries Ltd*.

84 (2005) 4 SCC 245

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[(2004) 10 SCC 201] the Constitution Bench of this Court while differentiating between the "power to regulate" and "power to tax" observed: (SCC pp. 312-14, paras 108-10)

> "108. It is of paramount significance to note the difference between 'power to regulate and develop' and 'power to tax'.
>
> 109. **The primary purpose of taxation is to collect revenue. Power to tax may be exercised for the purpose of regulating an industry, commerce or any other activity; the purpose of levying such tax, an impost to be more correct, is the exercise of sovereign power for the purpose of effectuating regulation though incidentally the levy may contribute to the revenue**. Cooley in his work on taxation (Vol. 1, 4th Edn., 1924) deals with the subject in paras 26 and 27:
>
> > 'There are some cases in which levies are made and collected under the general designation of taxes, or under some term employed in revenue laws to indicate a particular class of taxes, where the imposition of the burden may fairly be referred to some other authority than to that branch of the sovereign power of the State under which the public revenues are apportioned and collected. The reason is that the imposition has not for its object the raising of revenue but looks rather to the regulation of relative rights, privileges and duties as between individuals, to the conservation of order in the political society, to the encouragement of industry, and the discouragement of pernicious employments. Legislation for these purposes it would seem proper to look upon as being made in the exercise of that authority which is inherent in every sovereignty, to make all such rules and regulations as are needful to secure and preserve the public order, and to protect each individual in the enjoyment of his own rights and privileges by requiring the observance of rules of order, fairness and good neighborhood, by all around him. This manifestation of the sovereign authority is usually spoken of as the police power. The power to tax must be distinguished from an exercise of the police power.' (*State v. Tucker* [56 SC

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516 : 35 SE 215])

The police power 'is a very different one from the taxing power, in its essential principles, though the taxing power, when properly exercised, may indirectly tend to reach the end sought by the other in some cases' (p. 94). 'The distinction between a demand of money under the police power and one made under the power to tax is not so much one of form as of substance.' (p. 95) The distinction between a levy in exercise of police power to regulate and the one which would be in the nature of tax is illustrated by Cooley by reference to a licence. He says:

> 'So-called license taxes are of two kinds. The one is a tax for the purpose of revenue. The other, which is, strictly speaking, not a tax at all but merely an exercise of the police power, is a fee imposed for the purpose of regulation.' (p. 97)
>
> * * *
>
> 'Suppose a charge is imposed partly for revenue and partly for regulation. Is it a tax or an exercise of the police power? Other considerations than those which regard the production of revenue are admissible in levying taxes, and regulation may be kept in view when revenue is the main and primary purpose. The right of any sovereignty to look beyond the immediate purpose to the general effect neither is nor can be disputed. The Government has general authority to raise a revenue and to choose the methods of doing so; it has also general authority over the regulation of relative rights, privileges and duties, and there is no rule of reason or policy in the Government which can require the legislature, when making laws with the one object in view, to exclude carefully from its attention the other. Nevertheless, cases of this nature are to be regarded as cases of taxation. If revenue is the primary purpose, the imposition is a tax. Only those cases where regulation is the primary purpose can be specially referred to the police power. If the primary purpose of the legislative body in imposing the charge is to regulate, the charge is not a tax even if it produces revenue for the public." (*Cooley, ibid.*, pp. 98-99)

110. This Court in a seven-Judge Bench decision in

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> *Synthetics and Chemicals Ltd. v. State of U.P.* [(1990) 1 SCC 109] agreed that regulation is a necessary concomitant of the police power of the State. However, it was an American doctrine and in the opinion of the Court it was not perhaps applicable as such in India. The Court endorsed recognising the power to regulate as a part of the sovereign power of the State exercisable by the competent legislature. Brushing aside the need for discussion on the question, whether under the Constitution the States have police power or not, the Court accepted the position that the State has the power to regulate. However in the garb of exercising the power to regulate, any fee or levy which has no connection with the cost or expenses of administering the regulation, cannot be imposed; only such levy can be justified as can be treated as part of regulatory measure. Thus, the State's power to regulate perhaps not as emanation of police power but as an expression of the sovereign power of the State has its limitations. In our opinion, these observations of the Court lend support to the view which we have formed that a power to regulate, develop or control would not include within its ken a power to levy tax or fee except when it is only regulatory. Power to tax or levy for augmenting revenue shall continue to be exercisable by the legislature in whom it vests i.e. the State Legislature in spite of regulation or control having been assumed by another legislature i.e. the Union. State legislation levying a tax in such manner or of such magnitude as can be demonstrated to be tampering or intermeddling with the Centre's regulation and control of an industry can perhaps be the exception to the rule just stated."

16. Therefore, the main difference between "a fee" and "a tax" is on account of the source of power. Although "police power" is not mentioned in the Constitution, we may rely upon it as a concept to bring out the difference between "a fee" and "a tax". The power to tax must be distinguished from an exercise of the police power. The "police power" is different from the "taxing power" in its essential principles. **The power to regulate, control and prohibit with the main object of giving some special benefit to a specific class or group of**

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> **persons is in the exercise of police power and the charge levied on that class to defray the costs of providing benefit to such a class is "a fee".** Therefore, in the aforestated judgment in *Kesoram case* [(2004) 10 SCC 201] it has been held that where regulation is the primary purpose, its power is referable to the "police power". **If the primary purpose in imposing the charge is to regulate, the charge is not a tax even if it produces revenue for the Government.** But where the Government intends to raise revenue as the primary object, the imposition is a tax. In the case of *Synthetics & Chemicals Ltd. v. State of U.P.* [(1990) 1 SCC 109] it has been held that regulation is a necessary concomitant of the police power of the State and that though the doctrine of police power is an American doctrine, the power to regulate is a part of the sovereign power of the State, exercisable by the competent legislature. However, as held in *Kesoram case* [(2004) 10 SCC 201] in the garb of regulation, any fee or levy which has no connection with the cost or expense of administering the regulation cannot be imposed and only such levy can be justified which can be treated as a part of regulatory measure. To that extent, the State's power to regulate as an expression of the sovereign power has its limitations. It is not plenary as in the case of the power of taxation."
>
> (emphasis added)

Another important decision on this aspect is in the case of ***Municipal Corporation of Delhi v. Mohd. Yasin***[85]. In paragraph-9, the Apex Court held thus:

> "9. What do we learn from these precedents? We learn that there is no generic difference between a tax and a fee, **though broadly a tax is a compulsory exaction as part of a 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. Compulsion is not the hallmark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax.** Though a fee must have relation to the services rendered, or the advantages conferred,

85 (1983) 3 SCC 229

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> such relation need not be direct, a mere causal relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefited does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. A broad correlationship is all that is necessary. **Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax**."
>
> (emphasis added)

Hence, the legal position is that *quid pro quo* is not necessarily absent in a tax. 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

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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.

EDUCATION CESS

160. There is also a challenge to the constitutional validity of sub-section (1)(ca) of section 140 which provides for levy of education cess as forming a part of the property tax which is leviable under section 195E. Section 195E provides for levy of education cess based on either rateable value or capital value. Section 195E reads thus:

> "**195E. Levy of education cess.**
> (1) For the purposes of clause (q) of section 61, the Corporation may, levy within its area an additional tax on buildings and lands (hereinafter referred to as "the education

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cess"), of so many centum, not exceeding twelve, of their rateable value, or of so many per centum of their capital value, as the case may be, as the Corporation may determine:

Provided that—

(a) all buildings and lands vesting in the Central Government.

(b) all other buildings and lands exempted from the general tax under section 143,

(c) all buildings and lands of a rateable value or the capital value, as the case may be, below such sum as the Corporation may determine shall

be exempted from the education cess.

(2) The Corporation may require the Municipal Commissioner to recover the amount of the education cess determined under sub-section (1) by an addition to the general tax levied under this Act. Every addition to the general tax imposed under this sub-section shall be recovered by the Municipal Commissioner from each person liable therefor in the same manner as the general tax due from him. The provisions of sections 147 and 148 shall apply to the education cess as if it were part of the general tax levied under this Act.

(3) The amount so recovered shall be credited to the municipal fund constituted under section 111."

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

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Constitution of India. The argument whether education cess can be levied on the basis of capital value is dealt with separately.

BETTERMENT CHARGES

161. Now, we come to the argument on sub-section (1)(d) of section 140 permitting the levy of betterment charges under Chapter XII-A of the BMC Act. We have accordingly perused Chapter XII-A which deals with the improvement schemes. Section 354-UA provides levy of betterment charges. In view of sub-section (1) of section 354-UA, the betterment charges are levied when clearance or redevelopment of an area is made and any land is increased in value. The relevant provisions read thus:

> "**354UA. Condition for levying betterment charge in clearance and redevelopment areas.**
>
> (1) When by the clearance or re-development of an area as provided for under sections 354RE or 354RJ and 354RK respectively, any land will, in the opinion of the Commissioner be increased in value, the Commissioner may declare that a betterment charge shall be leviable in respect of the increase in value of the land resulting from such clearance or re-development.
>
> (2) Before declaring that a betterment charge shall be leviable under subsection (1) the Commissioner, shall serve on every person whose name appears in the Commissioner's assessment book as primarily liable for the payment of property taxes leviable under this Act on any land or building or part of building affected by the proposed levy of betterment charge a notice of his intention to declare a betterment charge in respect of the land, and specifying the time within which, and the manner in which objections thereto, can be made to the Commissioner.
>
> (3) The Commissioner shall submit to the Improvements Committee any objections received under sub-section (2) and any suggestions he may wish to make in that respect. (4) The Improvements Committee shall, after consideration of any of such objections and suggestions, make such modifications in

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respect of the proposed betterment charge as they think fit, and the Commissioner shall thereafter declare that the betterment charge, either with or without modifications, shall be leviable.

354UB. Method of calculating charge.

Where an improvement scheme has provided for the levy of a betterment charge pursuant to sub-section (3) of section 354E, or where the Commissioner has declared a betterment charge to be leviable under subsection (4) of section 354UA, such betterment charge shall be an amount equal to one-half of the increase in value of the land and shall be calculated, in the case of an improvement scheme upon the amount by which the value of the land on completion of the execution of the scheme exceeds the value of the land at the time of the publication of the notification made under section 354G and in the case of a clearance or re-development area, upon the amount by which the value of the land on completion of the clearance or re-development of the area exceeds the value of the land at the date of the resolution of the Corporation under section 354R or section 354RI declaring that area to be a clearance area or re development area, as the case may be.

354UC. Procedure of determining charge.

(1) When it appears to the Commissioner that an improvement or a clearance scheme or a re-development scheme is sufficiently advanced to enable the amount of the betterment charge to be determined, the Commissioner shall make a report to the 1[Improvements Committee] to that effect and the 1[Improvements Committee] considering the report may by resolution declare the date on which for the purpose of determining the amount of the betterment charge the execution of the scheme shall be deemed to have been completed.

(2) The betterment charge leviable in each case shall be determined in accordance with section 354UB after following the procedure prescribed in sub-section (3) by such officer as the State Government may, by notification in the Official Gazette, appoint in this behalf at the request of the Corporation.

(3) On a date being fixed under sub-section (1) and an officer being appointed under sub-section (2), the Commissioner shall, in consultation with such Officer serve

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upon every person on whom a notice in respect of the property affected has been served under sub-section (2) of section 354G or under sub-section (2) of section 354UA a notice, which shall state—

(a) the date declared by the 2[Improvements Committee under subsection (1) as aforesaid;

(b) the time (being some time not less than twenty-one days after the service of the notice) and place at which the assessment of the betterment charge will be considered by such officer;

and every person upon whom such notice is served shall be entitled to be heard either in person or by a duly authorised agent when the matter is taken into consideration by such officer.

(4) When such officer has determined the amount of betterment charge leviable in respect of any property, the Commissioner shall serve upon the person concerned a notice stating the amount so determined.

(5) With effect from the date of service of the notice under sub-section (4) and subject to the decision upon any reference made to the Tribunal as hereinafter provided in sub-section (6), the amount of the betterment charges determined as aforesaid and interest thereon, if any, shall be a charge upon the property in respect of which it is levied and shall be recoverable in the same manner as expenses declared to be improvement expenses under section 494.

(6) If any person or the Commissioner is dissatisfied with the betterment charge determined by the said officer, he may, at any time within two months from the date of service of notice under sub-section (4) refer the case for the determination of the Tribunal constituted under section 354 SA, whose decision shall be final.

(7) If no reference is made to the Tribunal for the determination of the betterment charge within the period specified in sub-section (6), the determination of a betterment charge by the officer appointed by the State Government in this behalf shall be final."

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

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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.

CONSIDERATION OF CHALLENGE ON THE BASIS OF VIOLATION OF PROVISIONS OF CHAPTER IX-A AND IN PARTICULAR ARTICLE 243X.

163. Now, we go to another main ground of challenge based on provisions of Part IX-A dealing with the Municipalities and in particular Article 243-X of the Constitution of India. Article 243-X reads thus:

> "**243-X. Power to impose taxes by, and Funds of, the Municipalities.--** The Legislature of a State may, by law
>
> (a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
>
> (b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
>
> (c) provide for making, such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and
>
> (d) provide for constitution of such Funds for crediting all moneys received respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom,
>
> as may be specified in the law."

As per Article 265 of the Constitution, no tax shall be levied or collected except by authority of law. Entry-49 of List-II of Seventh Schedule authorizes the State Legislature to make laws providing for recovery of tax on lands and buildings. By virtue of clause (b) of Article 243-X, the

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Legislature of a State is empowered to make a law to assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits. In view of clause (a), the State Legislature is also empowered to make a law authorizing a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees according to the procedure and subject to such limits.

164. Articles 243-P and 243-Q read thus:

> "**243-P. Definitions.--** In this Part, unless the context otherwise requires,—
>
> (a) "Committee" means a Committee constituted under article 243S;
>
> (b) "district" means a district in a State;
>
> (c) "Metropolitan area" means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;
>
> (d) "Municipal area" means the territorial area of a Municipality as is notified by the Governor;
>
> **(e) "Municipality" means an institution of self-government constituted under article 243Q;**
>
> (f) "Panchayat" means a Panchayat constituted under article 243B;
>
> (g) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.
>
> **243Q. Constitution of Municipalities.** (1) There shall be constituted in every State,—
>
> (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;
>
> (b) a Municipal Council for a smaller urban area; and
>
> (c) a Municipal Corporation for a larger urban area,

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in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part. 243R. (1) Save as provided in clause (2), all the seat."

Conjoint reading of clause (e) of Article 243-P and sub-clause (c) of clause (1) of Article 243-Q shows that the BMC is a Municipality within the meaning of Part-IX-A of the Constitution.

165. As per section 4 of the BMC Act, the municipal authorities are defined. Section 4 reads thus:

"4. Municipal Authorities.-- The Municipal Authorities charged with carrying out the provisions of this Act are—

(a) **a Corporation;**
(b) a Standing Committee;
(c) an Improvements Committee;
(d) a Brihan Mumbai Electric Supply and Transport Committee;
(e) an Education Committee;
(f) a Wards Committee;
(g) a Mayor;
(h) **a Municipal Commissioner**;
(i) a General Manager of the Brihan Mumbai Electric Supply and Transport Undertaking."

(emphasis added)

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Section 5 reads thus:

> **"5. Composition of Corporation.--** (1)**The Corporation shall consist of,--**
>
> **(a) two hundred and twenty-seven councillors elected at ward election; and**
>
> **(b) five nominated councillors having special knowledge or experience in Municipal Administration to be nominated by the Corporation in the prescribed manner:**
>
> Provided that, nothing in this sub-section shall have effect until the expiry of the existing term of the Corporation.
>
> (2) The Corporation shall, by the name of "The Municipal Corporation of Brihan Mumbai" be a body corporate and have perpetual succession and a common seal and by such name may sue and be sued."
>
> (emphasis added)

The Corporation is defined in clause (b) of section 3 of the BMC Act to mean the Municipal Corporation of Brihan Mumbai constituted or deemed to have been constituted under the BMC Act. Section 5 is material which is under sub-heading "(A) Municipal Corporation". It provides that the Corporation within the meaning of section 4(a) shall consist of the 227 Councillors directly elected at ward elections and 5 nominated Councillors. Thus, the Corporation consists of elected Councillors as well as nominated Councillors. In the subsequent part of this judgment, wherever we have referred to "the Corporation", it is a reference to the Corporation consisting of elected and nominated councillors as provided in section 5.

166. The contention of the petitioners based on Part-IXA of the Constitution is that under clause (b) of Article 243-X, the Legislature is empowered to assign to a Municipality, taxes, tolls, duties, etc., collected by the State Government and, therefore, levy and collection of municipal

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tax on property can be made only by the Municipality i.e. the Corporation as provided in section 5. A similar argument is also made on the basis of clause (a) of Article 243-X. There are various provisions of the BMC Act pointed out under which a power to levy or determine the rates of property tax is given to the authorities other than the Corporation. The argument is that the levy and collection as provided in clauses (a) and (b) of Article 243-X must be by the Corporation consisting of elected and nominated Councillors and not by any other municipal authorities under section 4.

167. The second argument is based on Article 243-ZF, which reads thus:

> "**243-ZF. Continuance of existing laws and Municipalities.-- Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:**
>
> Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State."
>
> (emphasis added)

It is submitted that the period of one year provided in Article 243-ZF expired on 31st May 1994 and, therefore, those provisions of the BMC Act which are inconsistent with Article 243-X stand repealed on the expiry of period of one year from 1st June 1993. Those provisions which authorize

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the municipal authorities other than the Corporation to levy and collect property taxes stand repealed by virtue of the operation of Article 243-ZF. For the sake of completion , we may note here that Part-IXA of the Constitution was incorporated by 74th amendment with effect from 1st June 1993. The provisions of the BMC Act which are inconsistent with the provisions of Part-IXA remained in force until expiration of one year from 1st June 1993 or till the same were amended, whichever is earlier. Accordingly, for giving effect to the aforesaid provision, the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Ordinance, 1994 was promulgated on 31st May 1994. On the lapse of the said Ordinance, another Ordinance was promulgated. On the basis of the said Ordinances, the Maharashtra Act No.XL of 1994 was enacted which was brought into force with effect from 31st May 1994. Thus, for giving effect to Article 243-ZF, the aforesaid laws were made which amended the BMC Act and other Municipal laws. After 1994, for several years, the provisions of Chapter-VIII of the BMC Act which existed prior to impugned amendments, were never challenged on the ground that the same are inconsistent with the provisions of Chapter IX-A.

168. Considering the submissions made, it is necessary to find out whether any of the provisions containing Chapter-VIII of the BMC Act are inconsistent with clauses (a) or (b) of Article 243-X and in general with the provisions of Part IX-A. Under section 128 of the BMC Act, which is the charging section, the power to fix rates of the property taxes is conferred on the Municipal Corporation. The power to decide whether property tax should be levied on the basis of capital value instead of rateable value is vesting in the Corporation by virtue of sub-section (1) of section 140A of the BMC Act which power has been exercised by the Corporation by passing a resolution. Under sections 169 and 170, the

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power to specify percentage of capital value on the basis of which water tax, water benefit tax, sewerage tax, sewerage benefit tax can be levied is conferred on the Standing Committee. The power to decide the quantum of education cess and street tax is conferred on the Corporation under sections 195E and 195G respectively. Under sub-section (1A) of section 154, power to fix capital value is conferred on the Municipal Commissioner. The power to frame rules as provided in sub-section (1B) of section 154 is conferred on the Municipal Commissioner which has to be exercised with the prior approval of the Standing Committee. Thus, the contention is that in violation of provisions of Article 243-X, various powers to levy property taxes are conferred on the Municipal Commissioner and the Standing Committee. Thus, the argument is that apart from the fact that the said provisions which are inconsistent with Article 243-X stand repealed, in any case, the same are *ultra vires* Article 243X. Reliance was placed by the petitioners on the decision of the Apex Court in the case of ***Rajendra Shankar Shukla v. State of Chattisgarh*** (supra) wherein the Apex Court held that once under Part-IXA of the Constitution, certain functions are entrusted to a democratically elected body, a nominated body cannot take upon role of the elected body. Moreover, the provisions of the BMC Act did not provide any limits as mentioned in Article 243-X of the Constitution.

169. In this behalf, the State has relied upon the decision of the Apex Court in the case of ***J.K.Synthetics Ltd. v. Commercial Tax Officer*** (supra). In paragraph-16 of the said decision, the Apex Court held thus:

> **"16. It is well-known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the**

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machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Provision is also made for charging interest on delayed payments, etc. Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. (See *Whitney* v. *IRC* [1926 AC 37 : 42 TLR 58], *CIT* v. *Mahaliram Ramjidas* [(1940) 8 ITR 442 : AIR 1940 PC 124 : 67 IA 239], *India United Mills Ltd.* v. *Commissioner of Excess Profits Tax, Bombay* [(1955) 1 SCR 810 : AIR 1955 SC 79 : (1955) 27 ITR 20] and *Gursahai Saigal v. CIT, Punjab* [(1963) 3 SCR 893 : AIR 1963 SC 1062 : (1963) 48 ITR 1]). But it must also be realised that provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law for the simple reason that in the absence of contract or usage interest can be levied under law and it cannot be recovered by way of damages for wrongful detention of the amount. (See *Bengal Nagpur Railway Co. Ltd.* v. *Ruttanji Ramji* [AIR 1938 PC 67 : 65 IA 66 : 67 CLJ 153] and *Union of India* v. *A.L. Rallia Ram*[(1964) 3 SCR 164, 185-90 : AIR 1963 SC 1685]). Our attention was, however, drawn by Mr Sen to two cases. Even in those cases, *CIT* v. *M. Chandra Sekhar*[(1985) 1 SCC 283 : 1985 SCC (Tax) 85: (1985) 151 ITR 433] and *Central Provinces Manganese Ore Co. Ltd.* v. *CIT* [(1986) 3 SCC 461 : 1986 SCC (Tax) 601 : (1986) 160 ITR 961] , all that the Court pointed out was that provision for charging interest was, it seems, introduced in order to compensate for the loss occasioned to the Revenue due to delay. But then interest was charged on the strength of a statutory provision, may be its objective was to compensate the Revenue for delay in payment of tax. But regardless of the reason which impelled the Legislature to provide for charging interest, the Court must give that meaning to it as is conveyed by the language used and the purpose to be achieved. Therefore, any provision made in a statute for charging or levying interest on delayed payment of tax must be construed

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> as a substantive law and not adjectival law. So construed and applying the normal rule of interpretation of statutes, we find, as pointed out by us earlier and by Bhagwati, J. in the *Associated Cement Co. case* [(1981) 4 SCC 578 : 1982 SCC (Tax) 3 : (1981) 48 STC 466] , that if the Revenue's contention is accepted it leads to conflicts and creates certain anomalies which could never have been intended by the Legislature."
>
> (emphasis added)

Reliance was also placed on the decision of the Apex Court in the case of ***Associated Cement Company Ltd. v. Commercial Tax Officer, Kota and others*** (supra) and, in particular paragraph-27 thereof which reads thus:

> **"27.** The argument pressed before us on behalf of the assessee is that since Section 7 of the Act does not expressly say that a registered dealer who has not filed any return or a person who has claimed that his turnover or any part thereof is not taxable and has not paid tax due in respect of such disputed turnover should also pay interest on the tax which is legitimately due to the Government but withheld by him, no interest can be claimed under Section 11-B of the Act in such cases. Section 7 of the Act which deals with the submission of returns is not a charging section but a machinery section. **It is settled law that a distinction has to be made by court while interpreting the provisions of a taxing statute between charging provisions which impose the charge to tax and machinery provisions which provide the machinery for the quantification of the tax and the levying and collection of the tax so imposed. While charging provisions are construed strictly, machinery sections are not generally subject to a rigorous construction. The courts are expected to construe the machinery sections in such a manner that a charge to tax is not defeated.** The above rule of construction of a taxing statute has been adopted by this Court in *India United Mills Ltd*. v. *Commissioner of Excess Profits Tax* [AIR 1955 SC 79 : (1955) 1 SCR 810 : (1955) 27 ITR 20] in which Section 15 of the Excess Profits Tax Act came up for consideration. The Court observed in that case thus:

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> "That section is, it should be emphasised, not a charging section, but a machinery section. And a machinery section should be so construed as to effectuate the charging section."
>
> (emphasis added)

Perusal of the said decision would show that law makes a distinction between the charging provisions and machinery provisions under the taxing statues. The law is that charging provisions must be construed strictly and as far as the machinery provisions are concerned, the same need to be interpreted in such a manner that charging provision is not defeated.

170. Reliance was placed on a decision of the Apex Court in the case of ***Cantonment Board, Sikandarabad v. G.Venkataramana Reddy***. (supra). The Apex Court held that Article 243Q understands the word "Municipality" in a broad sense and it is a body politically created by incorporation of the people of a prescribed locality invested with the sub-ordinate powers of the legislation to assist the Government of the State. A decision of the Apex Court in the case of ***Assistant Collector of Central Excise, Calcutta v. National Tobacco Co. of India Ltd.*** (supra) is also relied upon which has laid down that the term "levy" is wider in its import than the term assessment. The term "levy" may include both imposition as well as assessment. This judgment is relied upon in support of the proposition that both the imposition and assessment will have to be by the Corporation consisting of elected and nominated councillors. Reliance is placed on one more decision of the Apex Court in the case of ***Marathwada University v. Sheshrao Balwant Rao Chavan*** (supra) to point out the well settled principle that when an enactment provides that a particular body should exercise a particular power, it must be exercised

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only by that body. It cannot be exercised by other body unless validly delegated. In facts of the said case, under the Marathwada Universities Act, 1974 a power was conferred on the Executive Council of the University to appoint officers which included the power to remove them. It was held that though the Vice Chancellor may have power to regulate the work or conduct of the officers of the university, the said power does not include power to take disciplinary action which was vested with the Executive Council.

171. Reliance was placed on the decision of the Apex Court in the case of ***The Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi and another*** (supra). It lays down that prescribing the rates of taxes is a legislative function and it can be delegated provided if there is enough guidance in the statute providing for delegation. In this case, the validity of section 150 of the Delhi Municipal Corporation Act, 1957 was upheld on the ground that the delegated power to impose taxes under section 150 was not unguided and, therefore, did not amount to excessive delegation.

172. While interpreting the relevant provisions of the BMC Act and, especially in relation to property tax, it will be necessary to note what is held in paragraph-8 of the decision of the Constitution Bench in the case of ***R.K.Garg v. Union of India and others*** (supra) which we have already quoted above. Following the said decision, the Apex Court in the case of ***Bharat Hari Singhania and others v. Commissioner of Wealth Tax (Central) and others***[86], has held in paragraph-34 as under:

> **"34. The above statement of law of the Constitution Bench makes it clear that the mere fact that some crudities and inequities result as a result of complicated**

86 1994 Supp (3) SCC 46

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> **experimental economic legislation, the legislation cannot be struck down on that ground alone and that the courts cannot be converted into tribunals for relief from such crudities and inequities. The court must adjudge the constitutionality of a legislation by the generality of its provisions** and not by its crudities and inequities.....”
>
> (emphasis added)

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.

174. We must note that Article 243-P which defines “Municipality” clearly provides that the definitions contained therein are applicable unless the context otherwise requires. Therefore, if in a given case, the context requires otherwise, wider meaning can be assigned to the definitions provided therein. Articles 243-R and 243-S read thus:

> “**243-R. Composition of Municipalities.--** (1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

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(2) **The Legislature of a State may, by law, provide**--

(a) for the representation in a Municipality of--

(i) persons having special knowledge or experience in Municipal administration;

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered electors within the Municipal area;

(iv) **the Chairpersons of the Committees constituted under clause (5) of article 243-S**:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality.

243-S. Constitution and composition of wards Committees, etc.-- (1) There shall be constituted Wards Committees, consisting of one or more Wards, within the territorial area of a Municipality having a population of three lakhs or more.

(2) The Legislature of a State may, by law, make provision with respect to--

(a) the composition and the territorial area of a Wards Committee;

(b) the manner in which the seats in a Wards Committee shall be filled.

(3) A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.

(4) Where a Wards Committee consists of--

(a) one ward, the member representing that ward in the Municipality; or

(b) two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee,

shall be the Chairperson of that Committee

(5) **Nothing in this article shall be deemed to prevent**

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> **the Legislature of a State from making any provision for the Constitution of Committees in addition to the Wards Committees**."
>
> (emphasis added)

As provided in clause (5) of Article 243-S, the Legislature of a State is empowered to make a provision for constitution of committees in addition to Wards Committees. It follows that when the Legislature is authorised by law to constitute such committees, the Legislature can confer powers of Municipality on such committees. Otherwise, the very object of establishing such committees is frustrated. In Article 243-R, there is a reference to the Chairpersons of the committees constituted. As the committees can be conferred with powers, there can be a representation given to the Chairpersons of the committees on the Municipalities. Even Article 243-W empowers the Legislature of a State to confer certain powers on the committees. Article 243-W reads thus:

> **"243-W. Powers, authority and responsibilities of Municipalities, etc.-- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow**--
>
> (a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to--
>
> (i) the preparation of plans for economic development and social justice;
>
> (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
>
> **(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule**."

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(emphasis added)

Hence, the scheme of Part-IXA of the Constitution itself shows that various functions and duties and powers of a Municipality can be entrusted to committees by the Legislature. Thus, Part-IXA itself provides for discharge of certain duties and functions of a Municipality by the committees. Therefore, the provisions of the BMC Act which provide for exercise of various powers and discharge of various functions of the Corporation by the committees cannot be said to be inconsistent with the provisions of Part-IXA of the Constitution. Therefore, section 4 of the BMC Act which provides that the Municipal Authorities charged with carrying out provisions of the BMC Act are the Corporation, Standing Committee, Municipal Commissioner etc. is not inconsistent with the provisions of Part-IX-A of the Constitution.

175. At this stage, it will be necessary to ascertain what are the powers of the Municipal Corporation, the Standing Committee and the Commissioner under Chapter VIII of the BMC Act. Section 139 read with section 139A authorizes the BMC to levy property tax which includes water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess, street tax and betterment charges. Under clause (a) to sub-section (1) of section 128, the Municipal Corporation is empowered to fix the rates at which the municipal taxes shall be levied. This power is to be exercised on the proposals submitted by the standing committee. This determination of rates is made on proposals of the Standing Committee. The determination has to be made subject to limitations and conditions prescribed in Chapter-VIII of the BMC Act. So the power is not an unguided power. The determination of the rates of water tax, water

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benefit tax, sewerage tax and sewerage benefit tax has to be made by the Standing Committee as per sub-section (1) of section 140. The basis/guidelines for fixing the rates on the basis of the per centum of capital value are also provided in the sub-section. By virtue of the powers conferred by sub-section (1) of section 128, the Corporation (i.e. the elected councillors and nominated councillors) can alter the rates proposed by the Standing Committee. The rates fixed by the Standing Committee under section 140 will form a part of the proposals of the Standing Committee referred in sub-section (1) of section 128. Under sections 195E and 195G, the power to fix the quantum of the education cess and street tax vests in the Corporation. The levy of betterment charges is to be made after following the procedure under section 354-UA. The betterment charge is required to be proposed by the Commissioner which is to be approved by the Improvement Committee which is a statutory committee under the BMC Act consisting of elected councillors. Even the Standing Committee consists only of elected councillors selected by the Corporation consisting of elected and nominated councillors. Both the Committees are to be constituted by the Corporation. Thus, in a sense, both the Committees are democratically elected. The relevant part of the objects and reasons for the 74th Amendment to the Constitution reads thus:

> "STATEMENT OF OBJECTS AND REASONS
>
> **In many States local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersession and inadequate devolution of powers and functions. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government.**
>
> **2. Having regard to these inadequacies, it is considered necessary that provisions relating to Urban Local Bodies are incorporated in the Constitution particularly for-**
>
> (i) putting on a firmer footing the relationship between the

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State Government and the Urban Local Bodies with respect to-
(a) **the functions and taxation powers**; and
(b) arrangements for revenue sharing;
(ii) Ensuring regular conduct of elections;
(iii) ensuring timely elections in the case of supersession; and
(iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.
3. Accordingly, it is proposed to add a new part relating to the Urban Local Bodies in the Constitution to provide for-
(a) constitution of three types of Municipalities:
(i) Nagar Panchayats for areas in transition from a rural area to urban area;
(ii) Municipal Councils for smaller urban areas;
(iii) Municipal Corporations for larger urban areas.
The broad criteria for specifying the said areas is being provided in the proposed article 243-0;
(b) **composition of Municipalities, which will be decided by the Legislature of a State, having the following features**:
(i) **persons to be chosen by direct election**;
(ii) **representation of Chairpersons of Committees, if any, at ward or other levels in the Municipalities**;
(iii) representation of persons having special knowledge or experience of Municipal Administration in Municipalities (without voting rights);
(c) election of Chairpersons of a Municipality in the manner specified in the State law;
(d) **constitution of Committees at ward level or other level or levels within the territorial area of a Municipality as may be provided in the State law**;
(e) reservation of seats in every Municipality-
(i) for Scheduled Castes and Scheduled Tribes in proportion to their population of which not less than one-third shall be for women;
(ii) for women which shall not less than one-third of the total number of seats;
(iii) in favour of backward class of citizens if so provided by the Legislature of the State;
(iv) for Scheduled Castes, Scheduled Tribes and women in the office of Chairpersons as may be specified in the State law;
(f) fixed tenure of 5 years for the Municipality and re-election within six months of end of tenure. If a Municipality is dissolved before expiration of its duration, elections to be held

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within a period of six months of its dissolution;

(g) devolution by the State Legislature of powers and responsibilities upon the Municipalities with respect to preparation of plans for economic development and social justice, and for the implementation of development schemes as may be required to enable them to function as institutions of self-government;

(h) **levy of taxes and duties by Municipalities, assigning of such taxes and duties to Municipalities by State Governments and for making grants-in-aid by the State to the Municipalities as may be provided in the State law**;

(i) a Finance Commission to review the finances of the Municipalities and to recommend principles for-

(1) **determining the taxes which may be assigned to the Municipalities**;

(2) Sharing of taxes between the State and Municipalities;

(3) grants-in-aid to the Municipalities from the Consolidated Fund of the State;

(j) audit of accounts of the Municipal Corporations by the Comptroller and Auditor-General of India and laying of reports before the Legislature of the State and the Municipal Corporation concerned;

(k) making of law by a State Legislature with respect to elections to the Municipalities to be conducted under the superintendence, direction and control of the chief electoral officer of the State;

(l) application of the provisions of the Bill to any Union territory or part thereof with such modifications as may be specified by the President;

(m) exempting Scheduled areas referred to in clause (1), and tribal areas referred to in clause (2), of article 244, from the application of the provisions of the Bill. Extension of provisions of the Bill to such areas may be done by Parliament by law;

(n) disqualifications for membership of a Municipality;

(o) bar of jurisdiction of Courts in matters relating to elections to the Municipalities."

(emphasis added)

Thus, the provisions of the BMC Act which confer powers on the statutory committees consisting of democratically elected representatives of people to fix the rates of taxes, advance the object of making the Municipalities as

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vibrant democratically elected bodies of local self-governance. The said provisions are not inconsistent with the objects and reasons.

176. Under sub-section (1) of section 140A, it is the power of the Corporation to pass a resolution and decide whether to adopt levy of property tax on buildings and lands on the basis of capital value. When such a decision is taken, for a period of five years from the date of decision, there is certain embargo on levy of tax on lands and buildings. It is provided that the tax shall not exceed in respect of buildings used for residential purposes, two times and in respect of buildings or lands used for non-residential purposes, three times the amount of property tax leviable in respect thereof in the year preceding such date. Under sub-section (1C) of section 154, it is provided that the capital value of any land or building fixed in accordance with sub-section (1A) thereof is required to be revised every five years. The third proviso to sub-section (1) of section 140A lays down 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% of the amount of property tax payable in the year immediately preceding the year of such revision. There is a further constraint put by the fourth proviso to sub-section (1) of section 140A. It provides that for a period of five years from the year commencing from the year of adoption of capital value, the amount of property tax leviable in respect of a residential building or a tenement having carpet area of 500 sq.ft. 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. Under clause (a) of sub-section (1) of section 140, the Standing Committee is empowered to decide the rate of water tax equivalent to so many per centum of capital value as the Standing Committee may consider

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necessary for providing water supply. There is a power to levy additional water tax called as water benefit tax of so many per centum of the capital value as may be considered 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. There are similar provisions which authorize the Standing Committee to levy sewerage tax and sewerage benefit tax. The expenditure mentioned in the provisions is not the expenditure on the specific property. It is an expenditure incurred on the entire city. Thus, for fixing the rates, there are built in guidelines. Under clause (c) of sub-section (1) of section 140, the minimum and maximum percentage of rateable or capital value at which a general tax can be levied is laid down. It is obvious that the percentage of such general tax will have to be determined by the Corporation in view of clause (a) to sub-section (1) of section 128. As far as the education cess is concerned, section 195E provides for levy of education cess on buildings and lands of so many per centum not exceeding 12% of rateable value or the capital value, as the case may be. Thus, the power to determine the rate at which education cess can be levied is conferred on the Corporation. Under section 195G, street tax can be levied on percentage basis not exceeding 15% of the rateable value or capital value as the Standing Committee may determine.

177. Under sub-section (1A) of section 154, power to fix the capital value of all the buildings or lands vests in the Commissioner. This is obviously a machinery part as the Corporation cannot do this exercise in respect of all the properties in the city. The sub-section (1A) contains sufficient guidelines for determination of capital value. In case SDRR is applicable to a particular land or building, the capital value has to be

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determined having regard to the rates shown in the SDRR. If for a land or building, SDRR does not exist, the capital value thereof has to be fixed on the basis of market value. The factors which are required to be taken into consideration for fixing capital value have been mentioned in clauses (a) to (e) which we have already reproduced. The said factors are the nature and type of land or building, user categories as specified in clause (c), carpet area of the building and age of the building. The computation/determination of capital value of lands and buildings which has to be taken as the basis for levy of property tax is a ministerial act. Sub-section (1A) of section 154 lays down sufficient guidelines for fixing the capital value. Under sub-section (1B) of section 154, there is a rule making power which can be exercised by the Commissioner with the approval of the Standing Committee for specifying additional factors in addition to factors specified in clauses (a) to (d) of sub-section (1A), for providing for details of categories of buildings/ lands and the weightage for multiplication to be assigned to various categories for fixing capital value. Even assuming that such rule making power is not exercised, still there are more than adequate guidelines in subsection (1A) to determine the capital value. The power conferred by sub-section (1A) of section 154 on the Commissioner can certainly be said to be a “machinery part”. Again, the power is not unguided at all. If the rule making power under sub-section (1B) read with sub-section (1A) of section 154 is examined, it is apparent that the rule making power extends to machinery part of determining market value. As noted earlier, as per section 4 of the BMC Act, even the Municipal Commissioner is a Municipal Authority. The powers under machinery part which are conferred on the Commissioner can be delegated to other officers as provided in the BMC Act. The 'machinery' part has to be interpreted to effectuate the legislation made

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under clauses (a) and (b) of Article 243-X. The same cannot be interpreted to defeat the charging provisions.

178. The rule making power is to be exercised by the Commissioner with the prior approval of the Standing Committee. Thus, the rules framed by the Municipal Corporation are required to be approved by the Standing Committee. As far as sub-section (1A) of section 154 is concerned, the power of the Commissioner is confined to determination of capital value. As stated earlier, there are enough guidelines laid down in the provision. It is provided that for determination of capital value, the value as shown in SDRR is taken as the base value or where SDRR is not applicable, the market value is to be taken as the base value. The SDRR is a creation of the said Rules of 1995 framed under the Maharashtra Stamp Act, 1958. Thus, when the Commissioner exercises the power under sub-section (1A) of section 154, he is bound by the guidelines which are provided in sub-section (1A) itself. Moreover, the determination of capital value is subject to revision after every five years. Even the said revision has constraints which are provided in the first proviso to sub-section (1A) of section 140A. As mentioned earlier, the rule making power conferred on the Commissioner is on three limited aspects which are narrated above and the rules require prior approval of the Standing Committee.

179. The Standing Committee is constituted under section 42 of the BMC Act. As per section 42, the Standing Committee consists of 27 elected councillors. The Chairman of the Standing Committee, as provided in section 44 is one of its own members. As provided in section 43, the Standing Committee is elected by the Corporation in its first meeting after general elections. In the first meeting, 26 councillors are

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required to be elected. By virtue of sub-section (2) of section 43, the Chairperson of the Education Committee is an ex-officio member of the Standing Committee. The Chairman of the Standing Committee is also an elected councillor. Thus, the Standing Committee is a municipal authority which consists of 27 elected councillors of the Corporation. Without approval of the Standing Committee, the rules as contemplated by sub-section (1B) of section 154 cannot be framed. Moreover, as discussed earlier, in case of certain property taxes, the Standing Committee is authorized to determine the rates of taxes which power is subject to sub-section (1)(a) of section 128 which confers the power to determine the rates of taxes on the Corporation. The determination of rates as provided in section 140A is by 27 democratically elected councillors who are the part of the Corporation.

180. In the case of ***Corporation of Calcutta v. Liberty Cinema*** (supra), the Constitution Bench of the Apex Court had an occasion to consider the provisions of the Calcutta Municipal Act, 1951. In paragraph-24 of the said judgment, the Apex Court observed thus:

> "24. First, there is Pandit Benarsi Das Bhanot v. State of Madhya Pradesh [(1959) SCR 427] . That case was concerned with a Sales Tax Act which by Section 6(1) provided that no tax would be payable on any sale of goods specified in a schedule to it. Item 33 of that schedule read, "goods sold to or by the State Government". Section 6(2) of the Act authorised the State Government to amend the schedule by a notification. In exercise of this power the Government duly substituted by a notification for Item 33 the following: "Goods sold by the State Government". The amendment of the schedule by the notification was challenged on the ground that Section 6(2) was invalid as it was a delegation of the essential power of legislation to the State Government. Venkatarama Aiyar J. delivering the judgment of the majority of the Court sitting in a Constitution Bench, rejected this contention and after having

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read what we have earlier set out from the judgment of Bose J. in Rajnarain Singh case [(1955) SCR 290, 301] observed at p. 435:

> "On these observations, the point for determination is whether the impugned notification relates to what may be said to be an essential feature of the law, and whether it involves any change of policy. Now, the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like".

The Act was a statute imposing taxes for revenue purposes. This case would appear to be express authority for the proposition that fixation of rates of taxes may be legitimately left by a statute to a non-legislative authority, for we see no distinction in principle between delegation of power to fix rates of taxes to be charged on different classes of goods and power to fix rates simpliciter; if power to fix rates in some cases can be delegated then equally the power to fix rates generally can be delegated. No doubt Pandit Benarsi Das case[(1959) SCR 427] was not concerned with fixation of rates of taxes; it was a case where the question was on what subject-matter, and therefore on what persons, the tax could be imposed. Between the two we are unable to distinguish in principle, as to which is of the essence of legislation; if the power to decide who is to pay the tax is not an essential part of legislation, neither would the power to decide the rate of tax be so. **Therefore, we think that apart from the express observation made, this case on principle supports the contention that fixing of the rate of a tax is not of the essence of legislative power**."

Further, the Apex Court held that when the power to fix the rate of tax is left to another body, the Legislature must provide guidance for such fixation. In what manner the Court can decide the question whether such guidance is provided or not, is laid down in paragraph-26, which reads thus:

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> "26. **No doubt when the power to fix rates of taxes is left to another body, the legislature must provide guidance for such fixation. The question then is, was such guidance provided in the Act?** We first wish to observe that the validity of the guidance cannot be tested by a rigid uniform rule; that must depend on the object of the Act giving power to fix the rate. It is said that the delegation of power to fix rates of taxes authorised for meeting the needs of the delegate to be valid, must provide the maximum rate that can be fixed, or lay down rules indicating that maximum. **We are unable to see how the specification of the maximum rate supplies any guidance as to how the amount of the tax which no doubt has to be below the maximum, is to be fixed.** Provision for such maximum only sets out a limit of the rate to be imposed and a limit is only a limit and not a guidance."
>
> (emphasis added)

At this stage, we may make a reference to the decision of the Apex Court in the case of ***CWS (India) Limited v. Commissioner of Income Tax*** (supra), wherein the Apex Court dealt with the issue of interpretation of taxing statute. In paragraph-10, the Apex Court held thus:

> "10. Now, it may be noticed that Section 40(a)(v) is only an expanded version of Section 40(c)(iii). The idea was to bring the allowances in respect of the assets owned by the assessee, which assets are used by its employee for his own purposes or benefit, within the net of ceiling. Section 40(c)(iii) did not cover such allowances and this was sought to be remedied. The idea was certainly not to bring about a different treatment of two situations in Section 40(a)(v) referred to as clauses (i) and (ii) in this judgment. The consequence of accepting the assessee's interpretation would be that while the ceiling on expenditure would apply to a case falling under clause (i), no such ceiling would apply to a case falling under clause (ii) unless the employee governed by clause (ii) is also provided a benefit, amenity or perquisite falling under clause (i). The consequence would not only be discriminatory but also very incongruous, almost absurd. In principle, there is no distinction between the two cases or two situations, as they may be called. We are satisfied that the mere use of the word "such" in clause (ii) should not have the effect of driving the court to place an interpretation upon the said clause which is not only

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discriminatory but is highly incongruous. Shri G.B. Pai, learned counsel for the respondent-assessee, submitted that in case of taxing enactments, literary construction should be adopted and that the courts should not try to mould or twist the language of the enactment for achieving the supposed intention of Parliament. While we agree that literary construction may be the general rule in construing taxing enactments, it does not mean that it should be adopted even if it leads to a discriminatory or incongruous result. Interpretation of statutes cannot be a mechanical exercise. **Object of all the rules of interpretation is to give effect to the object of the enactment having regard to the language used**. The intention of Parliament in enacting Section 40(a)(v) can be gleaned from the memorandum explaining the provisions of the Finance Bill, 1968, which sets out the object behind this clause. The Full Bench of the Kerala High Court has set out the memorandum in the judgment under appeal. In this connection, we may refer to the well-recognised rule of interpretation of statutes that where a literal interpretation leads to absurd or unintended result, the language of the statute can be modified to accord with the intention of Parliament and to avoid absurdity. The following passage from Maxwell's Interpretation of Statutes (12th Edn.) may usefully be quoted:

> "1. **Modification of the language to meet the intention.—Where the language of the statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and the intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law, except in a**

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> **case of necessity, or the absolute intractability of the language used. Lord Reid has said that he prefers to see a mistake on the part of the draftsman in doing his revision rather than a deliberate attempt to introduce an irrational rule: 'The canons of construction are not so rigid as to prevent a realistic solution**.' "
>
> We are, therefore, of the opinion that the Full Bench of the Kerala High Court was right in taking the view it did on this aspect and we agree with it."

While interpreting a law imposing taxes, the Court must give latitude to the Legislature. As held by the Apex Court, in the matters of taxation, the Courts should give "Judicial deference to legislative judgment". More so in case of machinery provisions.

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

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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.

CONSIDERATION OF SUBMISSIONS ON THE GROUND OF EXCESSIVE DELEGATION:

183. We have already reproduced the contentions raised in

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support of the said plea. The contention is that assuming that there is no violation of Article 243-X, there is an excessive delegation. The submission is that Article 243-X provides for delegating the powers of the State Government to collect tax, toll, cess etc. to a Municipality by legislation. The contention is that the Corporation as defined by section 5 of the BMC Act is itself a delegate and therefore, there cannot be a further delegation made by the Corporation to the Standing Committee and the Commissioner. The petitioners have pointed out various provisions of the BMC Act to contend that there is an excessive delegation. In fact, we have dealt with most of the said submissions while dealing with the challenge on the basis of the violation of Article 243-X. At this stage, we must note the view taken by the Apex Court in the case of ***Corporation of Calcutta and another v. Liberty Cinema*** (supra). Paragraph-22 of the said decision reads thus:

> 22. Here again there is no dispute that a delegation of essential legislative power would be bad. It was so held by this Court first in In re The Delhi Laws Act [(1951) SCR 747] . The principle there laid down has been summarized by Bose J. in Rajnarain Singh v. Chairman, Patna Administration Committee, Patna [(1955) SCR 290, 301] in these terms: "In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above: it cannot include a change of policy".

Now, we turn to section 128 and, in particular sub-section (3) thereof. The contention is that there is no upper limit prescribed on the rates of property taxes which can be fixed by the Corporation for different types of users of buildings and lands. This provision of sub-section (3) is only for the official years 2010-11, 2011-12 and 2012-13. This provision is a

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transitory provision to enable the Municipal Corporation to shift from the regime of hypothetical rent to capital value. For other years, clause (a) of sub-section (1) of section 128 will apply which confers power on the Corporation to consider the proposals of the Standing Committee and determine, subject to limitations and conditions prescribed in Chapter-VIII, the rates on which the municipal taxes shall be levied. Clause (a) of sub-section (1) of section 128 clearly mandates that it is the power of determination subject to limitations and conditions prescribed by Chapter-VIII. Only going by sub-section (3) of section 128 which is applicable only for transitory period of three official years, it cannot be said that unguided and arbitrary power is conferred on the Corporation to fix the rates. We have already quoted clauses (a) and (b) of sub-section (1) of section 140. Power to fix water tax and water benefit tax of so many percentum of rateable value or capital value, as the case may be, is conferred on the Standing Committee. As far as determination of per centum of water tax is concerned, it is not an unguided power inasmuch as estimate of expenditure for providing water supply has to be taken into consideration by the Standing Committee. For deciding the the percentage of water benefit tax, estimate of expenditure incurred or to be incurred on capital works for making and improving the facilities of water supply has to be considered by the Standing Committee. Even in case of sewerage tax, the Standing Committee before fixing the percentage has to take into consideration the amount required for collection, removal and disposal of the human waste and other wastes. For fixing the percentage of sewerage benefit tax, the Standing Committee is required to consider the expenditure incurred or required to be incurred on capital works for making and improving the facilities for collection, removal and disposal of human waste and other wastes. This power of the Standing Committee is

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subject to the power of the Corporation under clause (a) of sub-section (1) of section 128 to determine the rates of taxes on the proposals of the Standing Committee. As far as general tax covered by clause (c) of sub-section (1) of section 140 is concerned, the upper limit of percentage is specifically laid down in clause (c). Even the lower limit is laid down. As regards education cess as provided in section 195E of the BMC Act, a percentage is required to be decided by the Corporation and upper limit of 12 per centum of the rateable value or capital value is mentioned in the section. Moreover, it is specifically mentioned that this additional tax is for generating revenue for the purpose of clause (q) of section 61 of the BMC Act which lays down the obligations of the Corporation. As set out earlier, all the components of the property tax are mentioned in section 140. The power conferred for fixing rates by sub-section (1) of section 128 and various provisions of section 140 is not at all unguided power. There are more than sufficient guidelines laid down in the said provisions. As regards betterment charges, we have already recorded a finding that elaborate procedure and guidelines have been prescribed. The rate of charges have to be decided and have to be approved by the Improvement Committee which consists of 26 elected municipal councillors.

184. As regards power under sections 169 and 170, we must note firstly that these sections are on the statute book for a substantially long time. Secondly, for deciding the rates of water charges and sewerage charges by the standing committee by framing rules, there are guidelines laid down. Therefore, the power cannot be said to be unguided. Under section 195G, street tax is to be levied as per the rates fixed by the Corporation. The rate has to be equivalent to certain percentage of rateable value or capital value as the case may be. However, sub-section

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(1) of section 195G provides for grant of exemption to certain categories of buildings. The power is conferred on the Corporation consisting of elected and nominated councillors to represent the Bill of the people.

185. As pointed out earlier, the power conferred under sub-section (1A) of section 154 on the Commissioner to fix capital value is not at all unguided power. Sufficient guidelines as set out earlier have been provided therein. As stated earlier, this is a machinery provision. If the rules are framed by exercising power under sub-section (1B) of section 154, even the said rules can afford additional guidelines. Moreover, after the capital value is fixed, entry thereof has to be made in the Assessment Register and a special notice as contemplated by sub-section (2) of section 162 is required to be served to the owner or the occupier of the property. Thereafter, the owner or occupier gets a right to file a complaint which is required to be heard and disposed of after giving an opportunity of being heard to the person filing complaint. The bills demanding taxes can be issued only after the complaints are decided. Thus, the delegation is not at all unguided. 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.

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ARGUMENTS BASED ON VIOLATION OF ARTICLE 14 OF THE CONSTITUTION OF INDIA:

186. Our attention was invited to the report of the Chartered Accountants who were employed by the BMC to recommend the rates of taxation. It was pointed out that the report shows that several persons will be benefited from the capital value system and several will be losers. The main submission in Writ Petition No.2592 of 2013 and other matters was that the illustrations placed on record by the petitioners will show that levy of property tax on the basis of capital value is exorbitant or confiscatory. Reliance was placed on the decision of the Apex Court in the case of ***Patel Gordhandas Hargovindas and Ors. v. The Municipal Commissioner, Ahmedabad and Anr.*** *(supra)*. Reliance was mainly placed on what is observed by the Apex Court in paragraph 34 which reads thus :-

> "34. It is however urged that it really makes no difference whether the rate is levied at a percentage of the capital value or at a percentage of the annual value arrived at on the basis of capital value by fixing a certain percentage of the capital value as the yield for the year. It is true that mathematically it is possible to arrive at the same figure for the rate by either of these method. Suppose that the capital value is Rs 100 and, as in this case, the rate is fixed at 1 per centum of the capital value, it would work out to Re 1. The same figure can be arrived at by the other method. Assume that 4 percent is the annual yield and thus the annual value of the piece of land, the capital value of which is Rs 100, will be Rs 4. A rate levied at 25 percent will give the same figure, namely Re 1. Mathematically, therefore it may be possible to arrive at the same amount of rate payable by an occupant of land, whether the rate is fixed at a particular percentage of the capital value or a particular percentage of the annual value. But this identity would not in our opinion make any difference to the invalidity of the method of fixing the rate on the capital value directly. If the law enjoins

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that the rate should be fixed on the annual value of lands and buildings, the municipality cannot fix it on the capital value, and then justify it on the ground that the same result could be arrived at by fixing a higher percentage as the rate in case it was fixed in the right way on the annual value. Further by fixing the rate as a percentage of the capital value directly, the real incidence of the levy is camouflaged. In the example which we have given above, the incidence appears as if it is only 1 percent but in actual fact the incidence is 25 percent of the annual value. Further if it is open to the municipality to fix the rate directly on the capital value at 1 percent it will be equally open to it to fix it, say at 10 percent, which would, taking again the same example, mean that the rate would be 25 per cent of the annual value, and this clearly brings out the camouflage. Now a rate as 10 percent of the capital value may not appear extortionate but a rate at 250 percent of the annual value would be impossible to sustain and might even be considered as confiscatory taxation. This shows the vice in the camouflage that results from imposing the rate at a percentage of the capital value and not at a percentage of the annual value as it should be. Lastly, municipal corporations are elected bodies and their members are answerable to their electorates. In such a case it is necessary that the incidence of the tax should be truly known. Taking the example which we have given above, the municipal councillors may not feel hesitant in imposing a rate at 1 percent of the capital value, but if they were to impose it at 25% of the annual value they may hesitate to do so, because they have to face the electorates also. **We are therefore of opinion that though mathematically it may be possible to arrive at the same figure of the actual tax to be paid as a rate whether based on capital value or based on annual value, the levying of the rate as a percentage of capital value would still be illegal for the reason that the law provides that it should be levied on the annual value and not otherwise. By levying it otherwise directly at a percentage of the capital value, the real incidence of the rate is camouflaged, and the electorate not knowing the true incidence of the tax may possibly be subjected to such a heavy incidence as in some cases may amount to confiscatory taxation. We are therefore of opinion that fixing of the rate at a percentage of the capital value is not permitted by the Act and therefore Rule 350-A read with Rule 243 which permits this must be struck down,**

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> **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. It follows therefore that as the tax in the present case is levied directly as a percentage of the capital value it is *ultra vires* the Act and the assessment based in this manner must be struck down as *ultra vires* the Act.**"
>
> (emphasis added)

187. This was a case where by framing rules in exercise of the powers under the provisions of the Bombay Municipal Boroughs Act, a provision was made for levy of tax/rate on the area of open land at the rate of 1% of valuation based on capital value of the lands. Rule 350A framed under the Act provided that on the area of open land, tax shall be levied at 1 per centum of the valuation based upon capital value. Rule 243 defined "valuation based upon capital value" as the capital value of the lands and buildings as may be determined from time to time by the valuers of the Municipality. A challenge was made before this Court to the validity of the aforesaid two rules. One argument was that provincial legislature had no legislative power to levy a rate on percentage of capital value. The argument was Item 55 of the List–I of the Seventh Schedule to the Government of India Act, 1935 will govern the rate of percentage of capital value of the land. The High Court held that the said rules were not *ultra vires* as the method employed was only a mode of levying the rate. The Apex Court struck down the rules on the ground that the Bombay Municipal Boroughs Act did not provide for fixing of rate at a percentage of capital value. The observations made in paragraph 34 are in the said context. The Apex Court did not hold the rules to be *ultra vires* on the ground that there was no legislative competence in the provincial government. Moreover, the rules provided for levy of rate directly at a percentage of capital value. It was observed that the law provides that the

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rate should be levied on annual value and not otherwise. It was held that by levying it directly at a percentage of the capital value, the real incidence of rate was camouflaged.

188. It is true that the petitioners have set out certain examples in support of their case which may show that the amount of tax levied on the basis of capital value method in certain cases may appear to be exorbitant. We must note here that the BMC has filed an affidavit in the lead matter and has placed material on record demonstrating that under the new regime, in several cases, as compared to the earlier rateable value regime, the amount of property taxes have drastically gone down. Thus, on facts, it can be shown both ways. Some of the persons liable to pay property taxes will be benefited and some will not be benefited. Moreover, the cases in which amount of tax appears to be on the higher side is due to applicability of Capital Value Rules of the year 2010 and 2015. Considering the findings which we have recorded on the validity of some of the rules contained in Capital Value Rules, the figures quoted by way of illustration by the petitioners may not be valid any longer. Even assuming that in some cases, it may appear that the amount tax to be excessive or exorbitant, that does not *per se* make the legislation confiscatory. As pointed out earlier, even in the case of ***Patel Gordhandas*** *(supra*), the Apex Court has not struck down the rules *per se* on the ground that the taxes payable as per the offending rules were confiscatory in nature.

189. Reliance was placed on the decisions of the Apex Court in the cases of ***Shayra Banu Vs. Union of India*** (supra) and ***Navtej Johar Vs. Union of India*** (supra), in which it was held that a statutory provision can be struck down on the ground that the same was manifestly arbitrary and

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unreasonable. As noted earlier, considering the finding which we have recorded on the validity of Capital Value Rules of the year 2010 and 2015, the argument that in some cases there will be exorbitant rise in the taxes payable will have no basis. 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 start 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.

CHALLENGE TO THE NOTIFICATION ISSUED UNDER THE MAHARASHTRA EDUCATION (CESS) ACT, 1962

190. Before we go to the other limb of the arguments, we must note that there is a challenge to the notification issued under the Maharashtra Education (Cess) Act, 1962. Whether education cess can be levied on the basis of rateable value of the lands and buildings on which municipalities have been authorized to levy and collect property tax came for consideration of a Division Bench of this Court in the case of **Ramchand** ***Maroti Mandwale v. Malkapur Municipal Council***[87] . In paragraph 5 of the said decision, the Division Bench observed thus :-

> "5. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. Therefore, for levying and collecting any tax a law has to be made and that law must be made by a Legislature which has competence to make that law. The State Legislature has made this law for the

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purpose of levying and collecting the education cess and the authority to make such a law is to be found in List II or List III of the Seventh Schedule to the Constitution. Entry No. 11 in the List II relates to education and the purpose of levying the education cess under the Maharashtra Act is for promoting the education in the State of Maharashtra and it is for this purpose that the impugned Act has been made. Giving a wide amplitude to the word "education" as has been observed by the Supreme Court in the case cited supra, levying and collecting of the cess for the purpose of promoting the education would also be covered by the term "education". If the State is to impart education, it must have funds for the purpose without which it would not be possible for the State to carry on that obligation. Hence whatever is necessary for the purpose of carrying out the main object that is, of education, would be within the competence of the State Legislature and raising of funds being essential for the purpose of imparting education, the Entry No. 11 in the List II would also take in the said subject, namely, levying and collecting of a cess or tax for the purpose of augmenting the funds. It may be stated, and has been so said, on behalf of the petitioner that the matter of tax would not be covered in Entry No. 11 because in the same List wherever power has been given to impose taxes, it has been so specifically stated in the different entries, for example, Entry No. 46 and onwards in List II, and hence Entry No. 11 could not empower the State Legislature to impose any cess or tax though for the purpose of education. **Assuming, however, that the subject of this tax is not covered by Entry No. 11, it can still be brought under Entry No. 49. Entry No. 49 relates to taxes on lands and buildings. The impugned Act in effect levies this tax as a tax on lands and buildings, as would be seen from Section 4 of the Act This would be found repeated in several provisions of the said Act. This is, therefore, a tax on the lands and buildings just as the municipalities have been authorised to levy and collect conservancy tax, water rate, fighting tax, property tax and other taxes. Though the purpose of this levy is for the promotion or education, the incidence of this tax falls on lands and buildings and is thus a tax on lands and buildings which the State Legislature is competent to impose under Entry No. 49. It is an addition to an existing tax levied by the municipalities under the Maharashtra Municipalities Act or the earlier Municipal Acts**

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prevalent within the different regions of the State. Being a tax on lands and buildings, the State Legislature is competent to make a law in that respect and it cannot be said that the impugned Act is beyond the competence of the State Legislature."

(emphasis added)

Paragraphs 7 to 9 of the said decision are material which read thus :

"7. The next contention that was raised was that Article 45 of the Constitution of India, which is in Chapter of Directive Principles of State Policy in Part IV of the Constitution, places a duty on the State to endeavour to provide for free and compulsory education for all children until they complete the age of fourteen years. It is urged that it being the duty of the State to impart free education to all children, it cannot impost any taxes on the citizens for meeting the expenses of such education. Mr. Mandlekar contended that the cost of education to the children must be met by the State out of the consolidated fund which it collects from the various sources and no tax under the head "Education" could be levied and collected by the State. It is true that the directive principle embodied in Article 45 provides for free education of children, and that is the endeavour that is being made by the State in that direction. The State has provided for free education of children upto the age of 14 years and no fees are recovered from such students. Article 45 only directs the imparting of free education to the children, but does not prohibit collection of taxes for that purpose to meet the expenses of such education from other sources and further a tax on lands and buildings or a tax on professions, trades, callings and employments would be other sources for meeting the expenses of free education. If the State is enjoined to provide for free education for all children, then it must necessarily have funds for carrying out that purpose and it is no answer to say that without levying any further tax, the

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education must be provided out of the revenues from the consolidated fund. It has to be seen that this is not the only obligation on the State, but the consolidated fund is required for other obligations which the State has to discharge. The contention of the learned counsel for the petitioner, therefore, on this point cannot be accepted.

8. As regards the third contention that the imposition is in direct proportion to the annual letting value of the lands and buildings irrespective of any services rendered or not to the assessee and hence the imposition is *ultra vires*, the same reasoning will apply as on the first point. The new imposition is a tax on lands and buildings just as a property tax is imposed on lands and buildings under the Municipalities Act. The property tax has also no relation to the services rendered, but is a tax on the property itself, which is authorised by Entry No. 49 in List II and the impugned Act cannot be held *ultra vires* on that account, as contended on behalf of the petitioner.

9. **The next contention is also similar to the one already dealt with. It is true that the education tax is levied on a percentage basis on the annual letting value of the lands and buildings, but that is a mode of determining the quantum of tax imposed on the person who owns lands and buildings. Nonetheless, it is a tax on lands and buildings and not on the income, as contended by the petitioner or exclusively reserved for local bodies. For the purposes of carrying out the municipal administration, the State Legislature has passed the Maharashtra Municipalities Act and in order to meet the needs of the administration has made provision authorising the Municipal Councils or Municipal Committees to raise the revenue and conservancy, water rate, property tax etc., are some of the taxes which the Municipalities are authorised to levy for their purposes. The obligation to give free education is cast on the State by the directive principles and therefore, it is the State which has to meet the expenses for providing free**

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> **education. The State has got the power to impose tax on lands and buildings and that power cannot be taken away because part out of it has been given to the local bodies. The State is not divested of its power to impose tax on lands and buildings because the State has also authorised the municipalities to levy some taxes on lands and buildings. That power is, for all the time, preserved to the State and the State is empowered to make this law which is impugned in this case.**"
>
> (emphasis added)

Ultimately, the Division Bench held that education cess is nothing more than addition of existing taxes. Thus, the provision regarding the levy of education cess is covered by Entry-49 of List-II. The Division Bench upheld the validity of law providing for imposition of education cess on the rateable value of lands and buildings. Therefore, if such a cess is imposed on capital value of the land and buildings, the statute will be within the ambit of Entry-49 of List-II.

191. We must refer to the provisions of the Maharashtra Education and Employment Guarantee (Cess) Act, 1962 (for short "the said Act of 1962"). The amendments were carried out to the said Act of 1962. The amended provisions of the said Act of 1962 permit levy of education cess on the basis of capital value. In the present case, we are concerned with education cess under section 195E. Sub-section (1) of section 195E expressly provides for the levy of additional tax in the form of education cess on percentage as provided therein of either of the rateable value or of the capital value.

192. By adopting capital value system, only the mode of computation of property tax has been altered.

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THE ARGUMENTS BASED ON ARTICLE 243-Y

193. An argument was canvased in some of the petitions based on Article 243-Y. The said Article provides for constitution of the Finance Commission to review financial position of Panchayats. Article 243-Y provides that the said Commission shall also review financial position of municipalities and make a recommendation to the Governor on various aspects including the principles which should govern determination of taxes, duties, etc., which may be assigned to the municipalities. Even assuming that Article 243-Y requires the Finance Commission constituted under Article 243-I to review financial position of the municipalities after every five years, that does not in any manner affect the power of the BMC to levy property taxes under the BMC Act even in absence of such review and recommendations by the Finance Commission. The recommendations are only for the guidance of the Municipalties.

PROPERTY TAX BOARD

194. Another argument which was canvassed was about the failure of the State Government to constitute Maharashtra Property Tax Board as required by the Maharashtra Property Tax Board Act, 2011. It is pointed out that section 4 requires constitution of a Board which includes a retired Judge of the Apex Court or the High Court and experts in the field of municipal administration. It is pointed out that function of the Board includes review of property tax system when required by the State Government and to recommend revision of taxes. It is submitted that rateable value or capital value shall be subject to revision by the said Board. We must note here that there is no provision under BMC Act which prohibits levy of property taxes on the ground of absence of

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recommendations of the said Board. The Board does not control the statutory power to levy property taxes conferred by the BMC Act. Even assuming that the statute requires constitution of such a Board and that the Board has not been constituted, the power under the BMC Act to levy property taxes remains unaffected.

GROUND OF RETROSPECTIVE OPERATION OF
THE IMPUGNED PROVISIONS OF THE BMC ACT

195. Now, we come to the argument based on retrospective operation of the impugned provisions. For that purpose, analysis of various provisions of the BMC Act is necessary. We have already referred to sections 128 and 139. Sub-section (4) of section 139A provides that save as otherwise provided in the BMC Act, it shall be lawful for the BMC to continue levy of property tax on the rateable value of the buildings and lands until the BMC adopts levy of any or all the property taxes on such buildings and lands on the capital value thereof as per section 140A.

196. There is a resolution dated 27th January 2010 passed by BMC authorizing levy of property taxes on the basis of capital value with effect from 1st April 2010. We must note here that section 140A which empowers the Municipal Corporation to adopt capital value system and sub-sections (1A), (1B) and (1C) of section 154 were brought on statute book by Maharashtra Act No.XI of 2009 which came into force on 1st April 2009. The provisions of the Maharashtra Act No.XXVII of 2010 by which sub-sections (2) and (3) were added to section 140A and section 154A was added came into force on 26th August 2010. There is one more provision brought on the statute book by Maharashtra Act No.XXVII of

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2010. The said provision is sub-section (3) of section 128 which was brought into force on 26th August 2010. It provides that the Corporation may, at any time, after 26th August 2010 being the date of commencement of the said amending Act but before the expiry of the official year 2010-2011 determine different rates of property taxes for different category of users of a building or land or part thereof. Rates of property taxes so determined shall be effective and shall be deemed to have been effective from 1st April 2010 and the taxes during the year 2010-2011 shall be levied and paid at those rates. We must note here that clause (bb) of section 3 of BMC Act defines the official year to mean "the year commencing from 1st April". The power to fix rates of taxes is conferred on the Municipal Corporation under this provision and not on any other authority. Merely because rates of property taxes are determined with effect from 1st April 2010 by the Municipal Corporation after 26th August 2010 when some provisions incorporated by the Act No.XXVII of 2010 are brought into force, the vice of unconstitutionality is *per se* not attracted. By the Act No.XI of 2012, years 2011-12, 2012-13 were added to sub-section (3) of section 128. The power under sub-section (3) of section 128 is confined only to the three official years from 2010-11 to 2012-13 (both years inclusive). Thus, this period is confined to transitional period for effecting the transition from rateable value regime to capital value regime. Sub-section (3) of section 128 only authorises the Municipal Corporation to fix different rates of property taxes for different categories of users of a building or land only for three official years. Sub-section (3) of section 128 will have to be read with sub-section (2) of section 140A. Sub-section (2) of section 140A as amended by the Maharashtra Act No.XXVII of 2010 provided that for the year 2010-11 in respect of lands and buildings in respect of which process of fixing capital value is in

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progress on 26th August 2010, a provisional demand of property taxes equal to the amount of tax payable in the preceding year can be made. Thus, for the year 2010-11, the provisional tax which can be demanded is of an amount equivalent to the tax payable in the immediately preceding year (i.e 2009-2010). Subsequently, further amendment was made to sub-section (2) by which years 2011-12 and 2012-13 were added. Therefore, in case of even two subsequent years, the provisional tax which can be demanded is the tax payable during the official year 2009-2010.

197. Sub-section (2) of section 140A which came into force with effect from 26th August 2010 brings into operation transitory provisions for facilitating the conversion of rateable value regime into capital value regime. It makes a provision that the buildings and lands in respect of which the process of fixing capital value is in progress on 26th August 2010, the provisional taxes leviable and payable in respect of such buildings and lands shall be equal to amount of tax leviable and payable in the preceding year i.e. the year ending with 31st March 2010. Thus, till the capital value is finalized, there is a provision to provisionally levy property tax which is equivalent to the amount of tax payable during earlier official year ending with 31st March 2010. Sub-section (2) of section 140A provides for service of final bill based on capital value after fixation of capital value. It also provides for refund or adjustment of excess payment made by the assessee under provisional bill if final bill amount is less than the provisional bill amount. Sub-section (2) of section 140A underwent an amendment by the Maharashtra Act No.VI of 2012. The effect of the same was that a provision was made for making provisional assessment for three official years 2010-2011, 2011-2012 and 2012-2013. Sub-section (2) of section 140A thus provides for levy of property taxes for the years 2010-2011, 2011-2012 and 2012-2013 by

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issuing provisional bills demanding the taxes equal to the amount of taxes leviable and payable for the year ending on 31st March 2010. It provides for issue of final bills on final assessment being made on the basis of capital value. The provisional bills are subject to final bills as it is provided that if more amount is recovered under the provisional bills than what is payable under the final bills, there will be either refund released to the tax payer or there will be an adjustment of the excess amount towards the liability of property taxes for future years. Under sub-section (2) of section 140A, it is provided that where in respect of any building or land, the process of fixing capital value for the year 2010-2011 is in progress on 26th August 2010, the rateable value of such building or land in the year preceding the year 2010-2011 shall be the provisional capital value and shall be deemed to be the capital value validly and lawfully fixed pending the fixing of final rateable value. It further provides that it shall be lawful for the Commissioner to treat it as final capital value for the purposes of assessment book kept under the provisions of the BMC Act. Bill of property tax issued under sub-section (2) of section 140A shall be deemed to be legal and valid under the BMC Act.

198. Sub-section (2A) of section 140A added by Maharashtra Act No.VI of 2012 lays down that in case of the tax on buildings and lands which are liable for assessment for the first time on or after 1st April 2010, the tax shall provisionally be equal to the amount of tax, as if such buildings and lands were liable to be assessed in the year 2009-2010. Thus, the properties which are assessed for the first time on or after 1st April 2010, by a legal fiction introduced by sub-section (2A) of section 140A, are placed on par with the properties which were assessed for property tax prior to 1st April 2010 by following rateable value system.

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Even in such cases, there will be provisional bills followed by the final bills.

199. Under sub-section (3) of section 140A, it is provided that a provisional bill cannot be challenged by way of an appeal under section 217 of the BMC Act or in case of notice of special assessment for provisionally assessing capital value, a complaint as contemplated by sections 162 and 163 cannot be filed. There is nothing illegal about this provision. The reason is that to the final assessment made after capital value is fixed, the provisions regarding the complaint and appeals are applicable. Thus, provisional assessment for the year 2010-11 has to be made during the same year. So is the case with the official years 2011-12 and 2012-13. The said provisional assessment is made pending the finalization of capital value. The said assessment is on the basis of rateable value for the year 2009-10 and tax payable for the said three years is equivalent to the tax leviable for the year 2009-10. Only the final assessment is made subsequently.

200. At this stage, a reference to the procedure followed for assessment is necessary. Under section 155, the Municipal Commissioner has a power to require the owner or occupier of a building or land to furnish various details as mentioned in the said provision. Under section 156, it is provided what the assessment book shall contain. Apart from the other details, assessment book must contain the rateable value or the capital value of each such building and land. Assessment book is open for inspection of the owners or occupiers of premises entered in assessment book as provided in section 161. Sub-section (2) of section 162 provides that in every case in which the premises have for the first time being

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entered in the assessment book as liable to the payment of property taxes, a special notice is required to be issued to the owner or occupier specifying the entry made in the assessment book and informing him that a complaint against the entry can be filed within 21 days from the service of the special notice. Such special notice is also required to be issued when either the rateable value or capital value, as the case may be, has been increased. Under sub-section (1) of section 162, there is a provision made for filing complaints when a public notice is issued after the valuation of the properties in any ward has been completed as provided in section 160. Section 162 lays down the manner in which complaints can be filed. Section 164 requires that the complaints received by the Commissioner should be registered in a book specifically kept for that purpose. Section 165 of the BMC Act is important which reads thus:

> **"165. Hearing of complaint.** (*1*) At the time and place so fixed the Commissioner shall investigate and dispose of the complaint in the presence of the Complainant if he shall appear, and, if not, in his absence.
>
> (2) For reasonable cause, the Commissioner may from time to time adjourn the investigation.
>
> (3) When the complaint is disposed of, the result thereof shall be noted in the book of complaints kept under section 164, and any necessary amendment shall be made in accordance with such result, in the assessment- book."

201. Section 166 provides that only after all the complaints have been disposed of and entries of rateable value or capital value, as the case may, are made in terms of clause (e) of section 156, assessment book shall be authenticated by the Commissioner by appending a certificate as provided therein. Under sub-section (2) of section 166, after authentication of ward assessment book, subject to such alteration as may

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be thereafter made, shall be accepted as conclusive evidence of amount of property tax leviable on building or land in the financial year to which the ward relates. As per sub-section (3) of section 166, a new assessment book is required to be created after every five years. We must note here that authentication of ward assessment book is a condition precedent for issuing a bill demanding property taxes. On conjoint reading of all the aforesaid provisions and especially sub-section (3) of section 140A, we find that against the provisional assessment contemplated by sub-section (2) of section 140A, a complaint as contemplated by sections 162 and section 163 cannot be filed as it is provided that such provisional assessment shall not be questioned. The reason for the said provision is that the provisional assessment is subject to final assessment made after fixation of capital value. Only after capital value is determined, after making an entry thereof in the assessment book, service of special notice is required to be made. Thus, after entry of final assessment is taken in the assessment book that special assessment notice is required to be issued so that the assessee can file a complaint which is required to be heard in accordance with section 165.

202. Coming back to sub-section (1) of section 165, it is mandatory to grant an opportunity to the complainant to remain present when the Commissioner investigates and disposes of the complaint. Thus, the complaint cannot be dismissed without investigating into it after notice to the complainant. Perhaps, in all cases except one which are in this group, complaints were disposed of without investigating the same in presence of the complainant. In some cases, it is merely stated that there is no specific objection raised to the manner in which the capital value is fixed or there is no objection raised to the data used for fixing the capital

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value. Wherever a complaint filed by the assessee to the special notice issued under sub-section (2) of section 162 of entry of capital value in the assessment book, the complaint cannot be disposed of without giving an opportunity of being heard while investigating the complaint. Thus, wherever complaints have been disposed of without giving an opportunity of being heard, the demand made on the basis of final assessment by issuing final bills cannot be sustained.

203. It is in the light of this scheme that we have to consider whether the impugned Amendment Act operates retrospectively. It is true that the some of the provisions of the Maharashtra Act No.XXVII of 2010 came into force with effect from 2nd August 2010 and the others with effect from 26th August 2010. The amendment made by inserting sub-section (2) of section 140A providing for making provisional assessment in respect of the properties in respect of which on 26th August 2010, the process of fixing the capital value is in progress, was brought into force on 26th August 2010. The amendment was brought into force during the year 2010-2011 and therefore, it can be said that there is a retrospective operation inasmuch as the same will apply for the year 2010-2011 which commenced from 1st April 2010. The effect of the impugned amendments is that the capital value regime will operate from 1st April 2010. The provisional assessment can be made for the official years 2010-11, 2011-12 and 2012-13 only during the relevant years. The demand made after provisional assessment cannot exceed the tax payable for the year 2009-10. By a legal fiction, this provision is made applicable to a building which came be assessed for the first time in the year 2010-11. Only final assessment is subsequently made after implementation of 'machinery' provisions of the impugned amendments.

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204. Going back to the decision of the Apex Court in the case of ***D.G. Gose and Co. (Agents) Pvt. Ltd.*** (supra) the Apex Court held that the enactment subject matter of challenge cannot be unconstitutional as it was passed on 2nd April 1975 but with retrospective effect from 1st April 1973. In paragraphs 13 to 18 of the said decision in the case of ***D.G. Gose and Co. (Agents) Pvt. Ltd.*** *(supra)*, it is held thus :

> "13. We may as well put aside the other argument that the Act is unconstitutional as it was passed on April 2, 1975 — but has imposed a tax on buildings with retrospective effect from April 1, 1973.
>
> 14. Craies on *Statute Law*, *seventh* Edn., has stated the meaning of "retrospective" at p. 367 as follows:
>
> > "A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past. **But a statute 'is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing'."**
>
> It has however, not been shown how it could be said that the Act has taken away or impaired any vested right of the assessees before us which they had acquired under any existing law, or what that vested right was. **It may be that there was no liability to building tax until the promulgation of the Act (earlier the Ordinances) but mere absence of an earlier taxing statute cannot be said to create a "vested right", under any existing law, that it shall not be levied in future with effect from a date anterior to the passing of the Act. Nor can it be said that by imposing the building tax from an earlier date any new obligation or disability has been attached in respect of any earlier transaction or consideration. The Act is not therefore retrospective in the strictly technical sense.**
>
> 15. What it does is to impose the building tax from April 1, 1973. But as was held in *Bradford Union* v. *Wiltshire* [1868 LR 3 QB 606, 616 : 18 LT 514 : 16 WR 1197**], if the language of the statute shows that the legislature thinks it expedient to authorise the making of retrospective rates, it can fix the**

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period as to which the rate may be retrospectively made.

16. This Court had occasion to examine the validity of the retrospective levy of Sales Tax in *Tata Iron and Steel Co. Ltd*. v. *State of Bihar* [AIR 1958 SC 452 : 1958 SCR 1355 : (1958) 9 STC 267] and it was held that that was not beyond the legislative competence of the State legislature.

17. Nor can the choice of April 1, 1973 as the date of imposition of the building tax be assailed as discriminatory with reference to Article 14 of the Constitution. It will be enough for us to refer in this connection to the following passage from this Court's decision in Union of India v. Parameswaran Match Works [(1975) 1 SCC 305, 311 : (1975) 2 SCR 573] which was a case under the Central Excise and Sales Act, 1944: (SCC p. 311, para 10)

> "The choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless we can say that it is very wide of the reasonable mark. See Louisville Gas Co. v. Alabama Power Co. [240 US 30, 32 (1927) per Justice Holmes] ."

18. It has not been shown in this case how it could be said that the date (April 1, 1973) for the levy of the tax was wide of the reasonable mark. On the other hand it would appear from the brief narration of the historical background of the Act that the State legislature had imposed the building tax under the Kerala Building Tax Act, 1961, which came into force on March 2, 1961, and when that Act was finally struck down as unconstitutional by this Court's decision dated August 13, 1968, the intention to introduce a fresh Bill for the levy was made clear in the budget speech of 1970-71. It will be recalled that the Bill was published in June 1973 and it was stated there that the Act would be brought into force from April 1, 1970. The Bill was introduced in the Assembly on July 5, 1973. The Select Committee however recommended that it may be brought into force from April 1, 1973. Two Ordinances were promulgated to give effect to the provisions of the Bill. The Bill was passed soon after and received the Governor's assent on April 2, 1975. It cannot therefore be said with any justification

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> that in choosing April 1, 1973 as the date for the levy of the tax, the legislature acted unreasonably, or that it was "wide of the reasonable mark."
>
> (underlines supplied)

In the case of Assistant Commissioner of ***Assistant Commissioner of Urban Land Tax v. The Buckingham & Carnatic Co. Ltd.*** (supra), the Apex Court dealt with the issue of retrospective operation of a taxing statute. In paragraphs-12 and 13, it is held thus:

> "12. The impugned Act provides for the retrospective operation of the Act. Section 2 states that except Sections 19, 47 and 48, other sections shall be deemed to have come into force in the City of Madras on the 1st day of July, 1963, and Sections 19 and 47 shall be deemed to have come into force in the City of Madras on the 21st May, 1966. It also provides that Section 48 shall come into force on the date of the publication of the Act in the Fort St. George Gazette. Section 6 enacts that the market-values of the urban lands shall be estimated to be the price which in the opinion of the Assistant Commissioner or the Tribunal such urban land would have fetched or fetch if sold in the open market on the date of the commencement of the Act, that is, from 1st July, 1967. The urban land tax is, therefore, payable from 1st July, 1963. It is contended on behalf of the petitioners that the retrospective operation of the law from 1st July, 1963, would make it unreasonable. We are unable to accept the argument of the petitioners as correct. It is not right to say as a general proposition that the imposition of tax with retrospective effect per se renders the law unconstitutional. In applying the test of reasonableness to a taxing statute it is of course a relevant consideration that the tax is being enforced with retrospective effect but that is not conclusive in itself. Taking into account the legislative history of the present Act we are of opinion that there is no unreasonableness in respect of the retrospective operation of the new Act. It should be noticed that the Madras Act of 1963, came into force on 1st July, 1963 and provided for the levy of urban land tax at the same rate as that provided under the new Act. The enactment was struck down as invalid by the judgment of the Madras High Court which was pronounced on the 25th March, 1966. The Legislature by giving retrospective

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effect to Madras Act 12 of 1966, that the urban land must be taxed on the date on which the 1963 Act came into force the new Act cured the defect from which the earlier Act was suffering. In Rai Ramkrishna case the question at issue was whether the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961 (17 of 1961), was violative of Article 19(5) and (6) of the Constitution for the reason that it was made retrospective with effect from 1st April, 1950. It appears that the Bihar Finance Act, 1950, levied a tax on passengers and goods carried by public service motor vehicles in Bihar. In an appeal arising out of a suit filed by the passengers and owners of goods in a representative capacity, the Supreme Court pronounced on the 12th December, 1960, a judgment declaring Part III of the said Act unconstitutional. Thereafter an Ordinance, namely, Bihar Ordinance No. 2 of 1961, was issued, on the 1st of August, 1961, by the State of Bihar. By this Ordinance, the material provisions of the earlier Act of 1950, which had been struck down by this Court were validated and brought into force retrospectively from the date when the earlier Act had purported to come into force. Subsequently, the provisions of the said Ordinance were incorporated in the Act, namely, the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961, which was duly passed by the Bihar Legislature and received the assent of the President on 23rd September, 1961. As a result of the retrospective operation of this Act, its material provisions were deemed to have come into force on April 1, 1950, that is to say, the date on which the earlier Act of 1950, had come into force. The appellants challenged the validity of this Act of 1961. Having failed in their writ petition before the High Court, the appellants came to this Court and the argument was that the retrospective operation prescribed by Section 1(3) and by a part of Section 23 (b) of the Act so completely altered the character of the tax proposed to be retrospectively recovered that it introduced a serious infirmity in the legislative competence of the Bihar Legislature itself. The argument was rejected by this Court and it was held that having regard to the relevant facts of the case the restrictions imposed by the said retrospective operation was reasonable in the public interest under Article 19(5) and (6) and also reasonable under Article 304(b) of the Constitution. In our opinion the ratio of this decision applies

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to the present case where the material facts are of a similar character.

13. In this context a reference may be made to a recent review of retroactive legislation in the United States of America:

> "It is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called 'small repairs'. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in the retroactive during of such a defect in the administration of Government outweighs the individual's interest in benefiting from the defect.... **The Court has been extremely reluctant to override the legislative judgment as to the necessity for retrospective taxation, not only because of the paramount governmental interest in obtaining adequate revenues, but also because taxes are not in the nature of a penalty or a contractual obligation but rather a means of apportioning the costs of Government among those who benefit from it**. Indeed, as early as 1935, one commentator observed that "arbitrary retroactivity" may continue ... to rear its head in tax briefs, but for practical purposes, in this field, it is as dead as wager of law."(Charles B. Hochman in 73 Harvard Law Review 692 at p. 705.)"

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 to facilitate transition from 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

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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.

THE CHALLENGE TO THE CAPITAL VALUE RULES OF 2010 ON RESTROSPECTIVE OPERATION

206. The Capital Value Rules of 2010 have been framed on 20th March 2012. Sub-rule (1) of Rule 2 provides that Rules shall come into force forthwith. Neither clause (e) of sub-section (1A) nor sub-section (1B) of section 154 of the BMC Act confers power to frame rules with retrospective effect. The Capital Value Rules is a piece of sub-ordinate legislation. As far as retrospective operation of such rules is concerned, the law is laid down by the Apex Court in the case of ***Federation of Indian Mineral Industries and others v. Union of India and another***[88]. Paragraph-26 of the said judgment reads thus:

> "26. The power to give retrospective effect to subordinate legislation whether in the form of rules or regulations or notifications has been the subject-matter of discussion in several decisions rendered by this Court and it is not necessary to deal with all of them—indeed it may not even be possible to do so. It would suffice if the principles laid down by some of these decisions cited before us and relevant to our discussion

88 (2017) 16 SCC 186

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are culled out. These are obviously relatable to the present set of cases and are not intended to lay down the law for all cases of retrospective operation of statutes or subordinate legislation. The relevant principles are:

(i) **The Central Government or the State Government (or any other authority) cannot make a subordinate legislation having retrospective effect unless the parent statute, expressly or by necessary implication, authorises it to do so**. [Hukam Chand v. Union of India [Hukam Chand v. Union of India, (1972) 2 SCC 601] and Mahabir Vegetable Oils (P) Ltd. v. State of Haryana[Mahabir Vegetable Oils (P) Ltd. v. State of Haryana, (2006) 3 SCC 620]].

(ii) Delegated legislation is ordinarily prospective in nature and a right or a liability created for the first time cannot be given retrospective effect. (Panchi Devi v. State of Rajasthan [Panchi Devi v. State of Rajasthan, (2009) 2 SCC 589 : (2009) 1 SCC (L&S) 408])

(iii) **As regards a subordinate legislation concerning a fiscal statute, it would not be proper to hold that in the absence of an express provision a delegated authority can impose a tax or a fee. There is no scope or any room for intendment in respect of a compulsory exaction from a citizen**. [Ahmedabad Urban Dev. Authority v. Sharadkumar Jayantikumar Pasawalla [Ahmedabad Urban Dev. Authority v. Sharadkumar Jayantikumar Pasawalla, (1992) 3 SCC 285] and State of Rajasthan v. Basant Agrotech (India) Ltd. [State of Rajasthan v. Basant Agrotech (India) Ltd., (2013) 15 SCC 1]]"

Therefore, we have no hesitation in holding that the Capital Value Rules of 2010 cannot be retrospectively applied from 1st April 2010 and the same will apply only from 20th March 2012. In fact the said Rules do not contain a provision which provides that the same will apply retrospectively. On the contrary, sub-rule (2) of rule 1 makes it clear that the rules shall come into force forthwith. As far as Capital Value Rules of 2015 are concerned, there is no issue of retrospective operation.

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CONSIDERATION OF THE CHALLENGE TO THE CAPITAL VALUE RULES

207. Now, we turn to the challenge to the Capital Value Rules of 2010 and 2015. The rule making power is conferred on the Commissioner under sub-section (1B) of section 154 of the BMC Act. Under sub-section (1B), the Commissioner is empowered to frame Rules with the approval of the Standing Committee in respect of- (a) the details of categories of buildings and lands and (b) the weightage by multiplication to be assigned to various such categories for the purpose of fixing capital value under sub-section (1A) of section 154. Coming back to sub-section (1A), it empowers the Commissioner to fix capital value of any building or land. While fixing the capital value of any building or land, the Commissioner shall have regard to the value of the building or land as indicated in SDRR by taking it as base value. When SDRR does not indicate the value of any properties in any particular area, the capital value is required to be determined after taking into consideration the market value of such building or land as a base value. Sub-section (1A) of section 154 lays down that while fixing the capital value, regard shall be had to the following factors:

(a) the nature and type of lands and structure of the building;

(b) the area of the land or carpet area of the building or land;

(c) the user categories consisting of categories such as residential, commercial, offices, hotels upto 4-stars and above 4-stars, banks, industries, factories etc.;

(d) age of the building; and

(e) such other factors as may be specified by Rules made under sub-section (1B).

Thus, apart from the two purposes which are specified in sub-section (1B), the Commissioner can exercise the rule making power by specifying other

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factors in addition to the factors (a) to (d) above. The base value of a building or land assessable to property tax is required to be fixed either as per SDRR or as per the market value. The base value can be taken as market value in those cases where either SDRR is not in existence or SDRR does not indicate the value of any properties in any particular area where a building or land in respect of which capital value is required to be determined is situated. Thus, the base value has to be fixed by the Commissioner as per sub-section (1A) of section 154. The capital value has to be fixed by him after having regard to the factors (a) to (d) listed in sub-section (1A) and other factors provided in the Rules which may be framed under sub-section (1B) of section 154.

208. As far as challenge to validity of Rules framed under an enactment is concerned, apart from other well recognized grounds, it can be challenged on the ground the same are *ultra vires* the rule making power provided in the statute.

209. It was pointed out by the petitioners that if Rule 6 of SDRR Rules is perused, the rate of land and building is specified in rupees per square meter of built-up area. In the SDRR, the value is shown in built up area of the premises. Clause (b) of sub-section (1A) of section 154 lays down that the Commissioner shall have regard to the carpet area of the building while fixing the base value of a building for the purpose of determining capital value.

210. As far as the scope of the rule making power is concerned, the law is already laid down by this Bench in Writ Petition No.2225/2015 (***Aegis Logistics Limited and Anr. v. Municipal Corporation of Greater Mumbai & Ors.***) decided on 20th July 2018. Paragraphs 10 and

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11 of the said judgment read thus:

> "10. Under sub-section 1A of Section 154, the Commissioner is conferred with the power of fixing the capital value. Sub-section 1A firstly provides that in order to fix capital value of any building or land, 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 base value. It also provides that if the Stamp Duty Ready Reckoner does not indicate value of any particular property in any particular area wherein the building or land in respect of which the capital value is required to be determined is situate or in the case where the Stamp Duty Ready Reckoner does not exist. In such cases, it is provided that the Commissioner may fix the capital value of any building or land by taking into consideration the market value of such building or land as the base value. Therefore, first part of sub-section 1A lays down the guidelines as to how the Commissioner should consider the base value for the purposes of fixing capital value. The second part of the sub-section 1A lays down the four factors which are enumerated in clauses (a) to (d) and lays down that the Commissioner while fixing the capital value shall also have regard to the said four factors. **Clause (e) provides that in addition to the said four factors provided in clauses (a) to (d), by exercising the Rule making power under sub-section 1B, other factors can be added which will have to be considered by the Commissioner while fixing capital value. Therefore, the Rule making power under sub-section 1B could be exercised by adding additional factors in addition to the factors enumerated in clauses (a) to (d) in subsection 1A**. Thus the Rules could be framed incorporating the additional factors which should be taken into consideration by the Commissioner while fixing capital value.
>
> 11. **Now we come to sub-section 1B which confers the Rule making power on the Commissioner which could be exercised with the approval of the standing committee. Sub-section 1B confers Rule making power on the Commissioner only on two aspects (i) details of categories of building or land and (ii) the weightage by multiplication to be assigned to various such categories for the purposes of fixing capital value under subsection 1A. Thus, the Rule**

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making power under Section 1B is confined to said two aspects and as also to adding the additional factors in addition to the factors listed in clauses (a) to (d) in subsection 1A."

(emphasis added)

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

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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 our 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.

212. Rule 4 provides for user categories of open land and weightages by multiplication. This rule cannot be said to be *ultra vires*. It seeks to give details of user categories and weightages by

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multiplication. This rule gives user categories of open land. Rule 5 prescribes user categories of buildings and weightages by multiplication. Rule 6 provides for nature and type of buildings and the weightage by multiplication. Rule 7 deals with the weightage by multiplication to be assigned to a building on account of age thereof. The power exercised for framing Rules 5 and 6 is referable to sub-section (1B) of section 154 as these rules give details of categories of buildings and/or lands and weightages by multiplication to be assigned to various such categories. Rule 7 can be supported by sub-section (1B) of section 154 as it deals with weightage by multiplication to be assigned to a building on the basis of age. Under clause (d) of section (1A) of section 154, age of the building is a factor to be considered. Rule 8 deals with weightage of multiplication on account of floor factor to be assigned to RCC building with lift. It provides that weightage by multiplication on account of floor factor to be assigned to RCC building with lift shall be according to the number of floors as shown in column (2) of Schedule 'D' and the weightage by multiplication shown against the said building. Thus, it prescribes separate weightage by multiplication to different types of buildings depending upon the number of floors and hence cannot be said to be *ultra vires* the provisions of the BMC Act. Rule 9 deals with an area of hoarding or tower for the purpose of fixing capital value. Therefore, rule 9 cannot be said to be *ultra vires* the provisions of the BMC Act. Rule 10 provides for computation of built-up area of a flat or building. It lays down a formula for converting built up area into carpet area. Under sub-section (1A) of section 154, the carpet area of a building has to be considered for determination of base value. Therefore, no illegality is found in the said rule.

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213. Rule 11 is required to be read with Rule 16. If Rule 11 and Rule 16 are read together, the same provide for details of categories of buildings or part thereof and nature and type of structure. Therefore, the said rules are within the rule making power. Rule 12 provides for fixation of capital value of a building where there are tenants and details of the categories of buildings. Therefore, this rule will not attract a vice of being *ultra vires*. The Rules 14 to 16 deal with types of structures such as terraces, mezzanine floor, balconies etc. These rules do not attract any illegality.

214. Rule 17 creates a category of demolished buildings for the purpose of fixing capital value. It is permissible to frame rules by exercising power under sub-section (1B) of section 154 providing for details of categories of buildings or lands. Rule 17 deals with two categories of buildings and lands. The first category is where a building is fully demolished or has fully collapsed. The second category is where building is partially demolished or has partly collapsed. Therefore, the said rule cannot be said to be *per se ultra vires*. But sub-rule (1) thereof provide for fixing of capital value of open land in terms of Rule 21 and, therefore, application of rule 17 will depend upon finding on the validity of sub-rule (1) of rule 21.

215. Rule 18 of Capital Value Rules of 2010 has already been struck down by this Court in the case of ***Aegis Logistics Limited and Anr. v. Municipal Corporation of Greater Mumbai & Ors***. (supra). The said decision holds the field. Rule 19 deals with categories of luxurious RCC buildings. It provides that where capital value is fixed for such buildings under the Capital Value Rules, capital value of amenities provided therein

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shall not be separately fixed. Though an appeal preferred against the said decision is pending before the Apex Court, the operation thereof is not stayed.

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.

217. As far as open land is concerned, it will be necessary to make a reference to the decision of the Apex Court in the case of ***Municipal Corporation of Greater Mumbai v. Polychem Limited*** (supra) wherein the Apex Court dealt with an issue of land under construction. Paragraph-1 of the said decision reads thus:

> "This appeal, by certification under Article 133(1)(c) of the Constitution, is directed against the judgment of a Division Bench of the Bombay High Court holding that, although, a vacant plot of land is rateable under the provisions of the Bombay Municipal Corporation Act 3 of 1888 (hereinafter referred to as "the Act"), and so is land which has been built upon, yet, any part of land which is being actually built upon is not rateable until the building is finished because no tenant could take it in that condition. In other words, the Division Bench upheld what may be called the doctrine of sterility with

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> which the land was said to have been struck during the period when a building was being actually put up on it. The appellant Corporation questions the applicability of this doctrine to rating of land in this country."

The Apex Court in paragraphs- 21, 22 and 23 of the said decision held thus:

> "21. *Guntur Municipal Council v. Guntur Town Rate Payers' Association* [(1970) 2 SCC 803 : (1971) 2 SCR 423] relates to the interpretation of the provisions of the Madras District Municipalities Act 5 of 1920, where it was held that the assessment must take into account the measure of "fair rent" as determined under the Act.
>
> 22. The above-mentioned authorities of this Court, which were cited before us, enable us to hold that the mode of assessment in every case must be directed towards finding out the annual letting value of land which is the basis of rating of land, and, by definition, "land" includes land which is either being built upon or has been built upon. Nevertheless, a reference to the provisions of the Act shows that, after a building has been completed, the letting value of the building, which becomes part of land, will be the primary or determining factor in fixing the annual rent for which the land which has been built upon "might reasonably be expected to be let from year to year". All that Section 154 seems to contemplate, by mentioning "land or building", is that land which is vacant or which has not been built upon may be treated, for purposes of valuation, on a different footing from land which has actually been built upon. But, relevant provisions of the Act do not mention and seem to take no account, for purposes of rating, of any building which is only in the course of being constructed although Section 3(r) of the Act makes it clear that land which is being built upon is also "land". **Hence, so long as a building is not completed or constructed to such an extent that at least a partial completion notice can be given so that the completed portion can be occupied and let, the land can, for purposes of rating, be equated with or treated as vacant land. It is only when the building which is being put up is in such a state that it is actually and legally**

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> **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.**
>
> 23. The doctrine of sterility, in the context of the provisions we have to construe, cannot apply here. In England, what happens is that when land, which is in the process of being built upon, is equated with vacant land, which is not yielding any profit, it ceases to be rateable land. But, under the statute we have before us, all "land", whether vacant, or in the process of being built upon, or built upon, is rateable according to the well settled principles**. All that can be said is that, so long as a building being constructed on some land is not in a state fit for occupation, its rateable value should not be more or less than that of land which is vacant.** That. however, is not the object of the respondent in invoking the doctrine of sterility. What has happened in the case before us is that the land which was being assessed as rateable so long as it was vacant land has been treated as entirely outside the scope or sphere of rateability just because a building is being erected upon it. As we find no statutory provision which has the effect of conferring such an immunity or exemption upon land which is being built upon, we cannot uphold a conclusion which produces such a startling result."
>
> (emphasis added)

Though definition of "land" under clause (r) of section 3 of the BMC Act clearly includes a land which is being built upon, the Apex Court held that in case of land under construction, so long as the building is not completed or constructed, the land will have to be treated as a vacant land for the purposes of fixing rateable value. It is only when the building which is being put up in such a state that it is actually and legally capable of occupation that the letting value of the building can be considered. Thus, even if a building is being built upon a land, the same

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will have to be treated as a vacant land. The aforesaid decision has been consistently followed.

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 open 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.

219. Now, we come to rule 21 of the Capital Value Rules of 2010 which lays down a formula for calculation of capital value of open land. Going back to the rule making power, as held earlier, rules can be framed for adding factors as provided in sub-section (1A) of section 154. Sub-section (1B) permits rule making for providing details of the building or

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land and weightage by multiplication. Rule 21 reads thus:

> "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 there 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).
>
> (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 built-up area (BA)
>
> CV = BV x UC x NTB x AF x FF x BA
>
> Examples:- Some examples based and worked out on the formulae as aforesaid are shown in the Appendix."

In Capital Value Rules of 2015, the only change is that "built up area (BA)" is replaced by "carpet area". Rule 21 will be applicable only when Ready Reckoner provides for valuation of the land or building. As far as sub-rule (1) of rule 21 is concerned, it provides for computation of capital value of open land by multiplying base value of open land as per Ready Reckoner by permissible or approved FSI. Ready Reckoner takes into consideration all aspects while fixing the base value. Therefore,

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providing for multiplication to the base value as provided in SDRR by permissible or approved FSI is in violation of sub-section (1A) of section 154. This is apart from the fact that rule 21 neither lays down factors as provided in clause (e) of sub-section (1A) of section 154 nor provides for details of categories of buildings or land as provided in sub-section (1B) of section 154. By providing for multiplication by permissible or approved FSI, sub-rule (1) of rule 21 provides for fixation of capital value contrary to SDRR. Moreover, for the purposes of property tax, it treats the open land or a land under construction not as a vacant land as it provides for taking into consideration development potential. We have already given reasons in paragraph-211 to hold that the sub-rule (1) is *ultra vires* the provisions of the BMC Act and in particular sub-section 1A of section 154. In case of Capital Value Rules of 2015, sub-rule (1) of Rule 21 is the same.

220. As far as sub-rule (2) of rule 21 is concerned, there is something which goes to the root of the matter. SDRR provides for rates of buildings in rupees on the basis of per square meter of built-up area. Hence, under sub-rule (2) of rule 21, built-up area is taken in to consideration whereas under clause (b) of sub-section (1A) of section 154, carpet area of a building is required to be taken into consideration for determining the base value. Sub-rule (2) of rule 21 provides for calculating capital value on the basis of built-up area rates given in SDRR which is completely contrary to clause (b) of sub-section (1A) of section 154. Rule 21 (2) does not provide for the conversion of built-up area rates into carpet area rates. The SDRR fixes the value of a building after considering the number of floors and amenities. Sub-rule (2) provides for making an addition to SDRR value on the basis of the additional floors. This is apart from the fact that there is no rule making power provided for

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laying down a formula for calculating capital value of a building. Therefore, rule 21 will have to be struck down holding the same as *ultra vires*. Sub-rule (2) of Rule 21 of the Capital Value Rules of 2015 has only one change. The area taken into consideration is carpet area. But, there is no provision for conversion of SDRR rates of built-up area to carpet area rates. The base rate of SDRR is taken as it is which is in terms of built-up area. Hence, the tests applied to Rule 21 of Capital Value Rules of 2010 will apply to Rule 21 of Capital Value Rules of 2015.

221. Rule 22 of the Capital Value Rules, 2010 reads thus:

> "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."

This rule is completely contrary to sub-section (1A) of section 154 which mandates that while fixing capital value, the Commissioner will have regard to the value of building or land as indicated in SDRR by treating it as base value. "The Important Guidelines of Stamp Duty Valuation" are integral part of SDRR which is a creation of the said Rules of 1995. Rule 22 gives an overriding effect to the Capital Value Rules over SDRR Thus, rule 22 is ultra vires sub-section (1A) of section 154 of the BMC Act.

222. Rules 20, 21 and 22 of the Capital Value Rules of 2015 are almost identical. Therefore, even the said rules will have to be struck down. Sub-rules (1) and (2) of rule 17 are the same as 2010 rules. As a result, capital value of the open land, as provided in rule 17 of the Capital

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Value Rules of both the years cannot be fixed in accordance with rule 21. Even the rule 3 which refers to rule 21 will be redundant to that extent. No other rule out of 2015 rule is shown to be illegal.

223. In several writ petitions, special assessment notices/ final bills on the basis of capital value have been already issued. The capital value of land and building must have been calculated as per rules 20, 21 and 22 of the Capital Value Rules read with rules 3 and 17(1). Therefore, the impugned final bills/ special assessment notices issued on final assessment will have to be struck down and, consequently, fresh special assessment notices will have to be issued after fixing capital value afresh in accordance with sub-section (1A) of section 154 of the BMC Act.

224. We must note here that after fresh special assessment notices are served, if complaints are filed, the complaints will have to be disposed of only after giving an opportunity of being heard to the complainants by following provisions of section 165 of the BMC Act. Even if the Commissioner or the officer exercising delegated power finds that there is no specific objection raised to the valuation warranting consideration of the complaint, the said view can be taken only after giving an opportunity of being heard to the complainant.

CASES OF PLACES OF RELIGION, CHARITALE CLINICS/HOSPITALS:

225. As pointed out earlier, there are petitions filed by the trustees of the places of religion of Zoroastrians including the place used as a Tower of Silence. In some cases, the properties are being used for running charitable hospitals/clinics. The contention in case of places of worship is that the properties have no market value and, therefore, the

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said properties cannot be subjected to property tax based on capital value. In case of premises used for charity, exemption is claimed.

226. We have already quoted section 143 of the BMC Act. The general tax which is a major component of the property tax cannot be levied in respect of the buildings and lands or portions thereof exclusively occupied for public worship or for charitable purposes. Therefore, as far as the buildings and lands used for public worship or for charitable purposes are concerned, the petitioners can always apply to the BMC for grant of exemption under clause (a) of sub-section (1) of section 143. In one of the petitions, it is contended that the land on which redevelopment is in progress vests in the BMC. Under clause (b) of sub-section (1) of section 143, the buildings and lands vesting in the Government or in the Corporation used solely for public purposes and not used or intended to be used for the purposes of profit are exempted from payment of general tax. The issue of exemption can be agitated by the concerned petitioners by making a representation to the Municipal Corporation. Whether the entire building or entire land is used for public worship or for charitable purposes is a question which involves determination of factual aspects. Which part of the building or land is used for public worship or for charitable purposes is an issue which will have to be decided by the appropriate authority of the BMC.

227. In case of places of public worship even if exemption was available under clause (a) of sub-section (1) of section 143, the other components of the property tax were payable even prior to the impugned amendments. Earlier, the property taxes were levied on the basis of percentage of rateable value. By virtue of sub-section (1) of section 154,

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for deciding rateable value, hypothetical rent is required to be determined. Provisions of sub-section (1) of section 154 were never questioned by the concerned petitioners. Assuming that the place of religion has no market value or assuming that no one will be willing to take a structure used only as a place of religion on rent, for the purpose for fixing rateable value, hypothetical rent was required to be determined. The said provision was never questioned which exists for decades before the amendments made by the impugned Acts came into force. By adopting capital value as the basis for levy of property tax, only the measure of computing of property tax has undergone a change. Only the basis of charging the property tax has undergone a change. Instead of calculating hypothetical rent now the hypothetical market value of the subject property will have to be worked out. Even under the unamended Act, in case of places of worship, exemption was available only in respect of the general tax forming a part of the property tax and, therefore, assessment of hypothetical rent which the property might have fetched was required to be made. Therefore, the argument that there is complete absence of marketability in case of places of religion has no merit.

CONSIDERATION OF CASES OF HOARDINGS AND MOBILE ANTENA:

228. Building is defined under clause (s) of section 3 of the BMC Act which reads thus:

> **3. Definitions of terms.**
> In this Act, unless there be something repugnant in the subject or context,--
> (a) to (r) ….. ….. ….. ….. ….. …..
> (s) "building" includes a house, outhouse, stable, shed, but tank (except tank for storage of drinking water in a building or art of a building) and every other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatever."

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When the hoarding is constructed on the building or a mobile antenna is erected on a building, it becomes a part of the said building. If SDRR does not provide for rates of market value of mobile antenna and/or hoarding, as per sub-section (1A) of section 154, the Commissioner will have to decide its market value. What is the market value of such structure will depend upon factual aspects in each case. It will depend upon the nature of the hoarding or mobile antenna, the material used and its location. It will depend on whether the hoarding or antenna is on a land or on a building. These are the issues which are required to be gone into when the complaint is filed in accordance with section 163 of the BMC Act to the special assessment notice.

229. Our conclusions can be summarized as under:

(i) We uphold the constitutional validity of the provisions 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

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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.

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(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:

O R D E R

(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 provisonal 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

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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.

(RIYAZ I. CHAGLA, J.) (A.S.OKA, J.)

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At this stage, the learned counsel for the Mumbai Municipal Corporation prays for stay of that part of the operative part of the Judgment and Order which is against the Mumbai Municipal Corporation.

We stay only that part of the operative part of the Judgment and Order by which (a) Rules 20, 21 and 22 of the Capital Value Rules of 2010 and 2015 are struck down, (b) special assessment notices and final bills are quashed and set aside and (c) a direction is issued to re-determine the capital value. We, however, make it clear that ad-interim or interim orders which are operative till today will continue to operate till 31st August 2019. We also make it clear that unless the stay is extended, with effect from 1st September 2019, the operative part of the Judgment will immediately come into operation as directed.

The learned senior counsel appearing for the petitioner in Writ Petition No.90 of 2016 prays for issue of certificate in accordance with Article 134-A of the Constitution of India. The same prayer is made by the learned counsel for the Mumbai Municipal Corporation. The prayers are rejected.

(RIYAZ I. CHAGLA, J.) (A.S.OKA, J.)

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