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

WRIT PETITION NO. 2225 OF 2015

Aegis Logistics Limited and Anr. ... Petitioners
Versus
Municipal Corporation of Greater Mumbai & ... Respondents
Ors.

Mr. Navroz Seervai, Senior Counsel with Mr. Rohan Rajadhyaksha and Ms. Pooja Kshirsagar and Ms. Apporva Gupte, i/b M/s. AZB and Partners for Petitioners.
Mr. S.S. Pakale, with Ms. Vandana Mahadik for Respondent – BMC.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATE: 20TH JULY, 2018.

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

1. Notice for final disposal was issued and on the last date, the parties were heard. By this Writ Petition under Article 226 of the Constitution of India, the challenge is to the Rules purportedly framed by the Municipal Commissioner of the Brihanmumbai Municipal Corporation (for short “the said Corporation”) in purported exercise of powers under sub-section 1(B) of Section 154 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”). The challenge is to the provision of Rule 18 of the Rules framed in purported exercise of powers under sub-section 1B of Section 154 of the said Act. The said Rules are the Factors

and Categories of Users of Buildings or Lands (Assignment of Weightages by Multiplication) Fixation of Capital Value Rules, 2010 (for short “the said Rules”). We may note that the said Rules were revised in the year 2015 and now Rule 18 has been deleted. The challenge in this Petition is confined to Rule 18 of the said Rules mainly, on the ground that the Commissioner has framed the said Rule 18 by exceeding the limits of the authority conferred upon him by sub- section 1B of Section 154 of the said Act.

2. The grounds on which the constitutional validity of a statutory Rule could be challenged are well settled by several decisions of the Apex Court. We may refer only to one such decision in the case of ***State Of Tamil Nadu & Anr vs P. Krishnamurthy & Ors.***¹ Paragraph 15 of the said decision reads thus:-

15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:-

- (a) Lack of legislative competence to make the subordinate legislation.
- (b) Violation of fundamental rights guaranteed under the Constitution of India.

¹ 2006 (4) SCC 517.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness / unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).”

(Underline added)

3. With a view to appreciate the submissions canvassed across the bar, a reference to few relevant provisions of the said Act will have to be made. Chapter VIII of the said Act deals with Municipal Taxes which include property tax. Section 139 A defines what property tax consists of. The property tax consists of water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess, street tax and betterment charges. There are provisions made by the Maharashtra Act of 11 of 2009 by amending the said Act under which an option is provided to levy property taxes on the capital value of the properties instead of traditional rateable value. For that reason, by the said Act No.11 of 2009, Section 140 A was added which enables the said Municipal Corporation to pass a resolution to adopt levy of property taxes on buildings and lands on the basis of capital value of the buildings and lands on and from such dates and at such rates as the Municipal Corporation may determine in accordance

with provisions of Section 128 of the said Act.

4. Section 154 is relevant for our consideration which reads thus:-

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.

[2] [(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, [3] [as 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 [4] [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 also have regard to the following factors, namely :-]

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

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

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

(d) age of the building, or
 (e) such other factors as may be specified by rules made under subsection (1B).

(1B) The Commissioner shall, with the approval of the Standing Committee, frame such rules as respects the details of categories of building or land and the weightage by multiplication to be [5] [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 ever 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 [6] [or the capital value, as the case may be,] of such building or land.

5. By exercising the Rule making power under sub-section 1B of Section 154, the said Rules have being framed. Rule 18 has been framed. Section 18 reads thus:-

4.7 Rule 18 of the said Rules reads thus:-

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

(1) storage tank above the ground level – (a) land – at the rate of open land in the Ready Reckoner and weightage by multiplication to be assigned thereto shall be 1.25, (b) storage tank – capacity of storage tank in litres multiplied by the rate of Rs.40 per litre, with weightage by multiplication to be assigned thereto on account of age factor as in schedule 'C', (c) total capital value of a storage tank = total of items (a) and (b). (2) storage tank below the ground level :- (a) land – at the

rate of open land in the Ready Reckoner and weightage by multiplication to be assigned thereto shall be 1.25 (b) storage tank – capacity of storage tank in litres multiplied by the rate of Rs.50/- per litre, with weightage by multiplication to be assigned thereto on account of age factor as in schedule 'C', (c) total capital value of a storage tank = total of items (a) and (b)."

6. Going to the factual aspects of the case, the Petitioners have stated that they are engaged in the business of bulk liquid storage and handling terminals at various ports in India, liquefied petroleum gas terminals at ports etc. They are having a storage tank terminal at Trombay, Mahul in Mumbai which is taxed to the property taxes. Provisional property tax bills for the years 2010-11, 2011-12 and 2012-13 were issued to the Petitioners. Exhibit A are the bills issued for the said property. After the Petitioners raised an objection to the said bills, Special Assessment Notices were served upon the Petitioners in accordance with provisions of sub-section 2 of 162 of the said Act. On 28th January, 2015, a notice was served upon the Petitioners to pay property taxes as per the statement enclosed with the notices. According to the case of the Petitioners, threats were given to pass orders attaching their property. Thereafter, the Petitioners filed the present Petition.

7. The submission of the learned Senior Counsel appearing for the Petitioners is that while framing Rule 18 of the said Rules, the Commissioner has exceeded the Rule making power by fixing

the capital value of storage tanks at rate of Rs.40/- per litre in case of storage tanks above the ground and at the rate of Rs.50/- for storage tanks under the ground. He urged that Rule making power has been exercised only under Section 154 and under no other provision. The learned Senior Counsel appearing for the petitioners relied upon a decision of Apex Court in the case of ***Municipal Corporation of Greater Bombay and others Versus Indian Oil Corporation Ltd.***² Relying upon said decision, he submitted that as observed by the Apex Court in the said decision, the tanks in question have been permanently attached to the land and cannot be separated from the land. He also pointed out that significantly, while revising the said Rules in the year 2015 as per mandate of Sub Section 1 (C) of Section 154 of the said Act, the Rule making authority has deleted the Rule 18 apparently realising the error committed earlier.

8. The learned Counsel appearing for the said Municipal Corporation invited our attention to Sub Section 1 (A) of Section 154 of the said Act. He submitted that the said Rules only deal with a specific category of building namely storage tanks and the weightage by multiplication to be assigned to the said category of buildings. He submitted that it is crystal clear from Rule 18 that in

² 1991 Supp (2) SCC 18

case of storage tanks, whether above the ground or below the ground, clause (b) of Sub Rule 1 and clause (b) of Sub Rule 2 of Rule 16 only assign weightage by multiplication. His submission is that merely because a rate is mentioned, it cannot be said that the Commissioner has exceeded the Rule making power. He invited our attention to the decision of the Apex Court in the case of **Government of Andhra Pradesh and Ors. Vs. P. Laxmi Devi (Smt.)**³. He also invited our attention to the decision of Division Bench of this Court dated 28th July, 1954 in the case of **Hirabhai Ashabhai Patel V/s. State of Bombay**⁴. He urged after referring to Section 154 (1A) that under the said provision, a power is given to the Commissioner to fix capital value with the approval of the standing committee and Rule making power is also vested in the Commissioner which is to be exercised with the approval of the standing committee. He would urge that if the Municipal Commissioner has power to fix the capital value, while exercising the Rule making power, there is nothing wrong if he refers to the rates of Rs.40/- per litre and Rs.50/- per litre, as the case may be, as a criteria for fixing the capital value. Relying upon the aforesaid decision of a Division Bench of this Court, he would urge that no fault can be found with the Rule 18 in as much as the Municipal

3 (2008) 4 Supreme Court Cases 720.

4 1954 Law Suit (Bom.) 110

Commissioner has always a power to fix the capital value of a property. He would, therefore, urge that there is nothing wrong with the legality of Rule 18 and it is legal and valid. He submitted that now in any event, the impugned Rule does not find place in the revised Rules of the year 2015.

9. We have given careful consideration to the submissions. In this Petition we are dealing with the issue of constitutional validity of a subordinate legislation. It is well settled that the validity of subordinate legislation can be assailed on the ground of the failure to conform to the statute under which it is made and also on the ground of exceeding the limits of authority conferred by the statute. The substance of the argument of the Petitioners is that, the Rule making power has been exercised by the Commissioner by framing Rule 18 by exceeding the limits of the authority conferred by the sub-section 1B of Section 154.

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 exists. 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 sub-section 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 sub-section 1A. Thus, the Rule 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 sub-section 1A.

12. There is a difference between the power conferred on the Commissioner under Section 1A of fixing capital value by taxing base value as laid down therein and the power conferred under sub-section 1B. Power conferred under sub-section 1B is a Rule making power which has to be exercised by him with the approval of the standing committee.

13. Now we come to Rule 18. The title of the Rule is “The capital value of storage tank”. There are two parts of the Rule 18 in the form of sub Rule 1 and 2. Sub Rule 1 deals with storage tanks above the ground level. Sub Rule 2 deals with the storage tanks below the ground level. There are two parts of both sub

Rule 1 and Sub Rule 2 enumerated clauses (a) and (b). In the clauses (a) of both sub Rule 1 and 2, it is provided that the capital value of the land shall be fixed at the rate of open land in the ready reckoner and weightage by multiplication to be assigned thereto shall be 1.25. Both the Clauses (a) thus deal with weightage by multiplication to be assigned for determining capital value of the land. Rule making power under sub-section 1B of Section 154 allows Commissioner to frame a rule fixing weightage by multiplication to be assigned to various categories of lands and buildings. As stated earlier, Rule 18 deals with the capital value of one category of land and building namely storage tanks. Clause (b) of both sub rules 1 and 2 create the real difficulty. While exercising the Rule making power, the Commissioner could have certainly provided for weightage by multiplication to be assigned for fixing capital value of storage tanks. By exercise of the Rule making power, factors in addition to the factors set out in clause (a) to (d) of sub-section 1A of Section 154 could have been added. In addition, even the categories of building and land could have been specified. We are not on the wider issue whether capital value of storage tanks which are attached to earth can be separately assessed by treating the land and storage tanks separately. The question is whether rates of Rs.40/- per litre,

multiplied by the capacity of the tank and Rs.50/- per litre multiplied by the capacity of the tank could have been incorporated in the Rules. The power to fix base value for determination of capital value vests only in the Commissioner under sub-section 1 A of Section 154. Sub-section 1A lays down the manner in which the base value shall be taken for fixing the capital value. Neither clause (e) of sub-section 1A nor sub-section 1B confer a power on the Commissioner to frame a Rule quantifying the base value of the land or building or both. On conjoint reading of clause (e) of sub-section 1A and sub-section 1B, by fixing the rate of Rs.40/- per litre and Rs.50/- per litre respectively, the Municipal Commissioner has certainly exceeded the Rule making power vesting in him and to that extent (to the extent of clause (b) in both sub rules 1 and 2 or Rule 18) the provision of Rule 18 will have to be declared as *ultra vires* to the provisions of sub-section 1(A) (e) and sub-section 1(B) of Section 154 of the said Act. The decisions relied upon by the learned counsel appearing for the Municipal Corporation will not apply in as much as in this case, there is absolutely no doubt that the Municipal Commissioner while framing the Rules has exceeded the limits of the authority conferred by clause (e) of sub-section 1A and sub-section 2B of Section 154 of the said Act.

14. Therefore, it follows that recovery on the basis of the impugned bills cannot be made unless the impugned bills are revised.

15. Accordingly, the Petition must succeed in part. Hence we pass following order:-

(i) We hold that clauses (b) of both Sub Rule 1 and Sub Rule 2 of Rule 18 of the said Rules are *ultra vires* the provisions of the said Act and hence, cannot be implemented and applied. Only to that extent, Rule 18 is struck down;

(ii) We direct the said Municipal Corporation to revise the impugned bills which are subject matter the challenge in this Petition in accordance with law;

(iii) The aforesaid exercise of revising the bills shall be completed within a period of three months from the date on which this judgement and order is uploaded;

(iv) If the amounts payable as per the revised bills are more than the amounts deposited by the Petitioners under the ad-interim order of this Court, without prejudice to the right of the Petitioners of challenge the demand on merits, the Municipal Corporation shall be

entitled to adjust the amounts paid by the Petitioners under the ad-interim order of this Court or even otherwise paid by the Petitioners towards impugned bills. Needless to add that if the amounts payable as per the revised bills are less than the amounts paid by the Petitioners towards impugned bills, either necessary refund shall be issued to the Petitioners or the excess amount shall be adjusted towards amount payable towards the future bills.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)