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

WRIT PETITION No. 3473 OF 2004

Maker Chamber V Premises
Co-Op. Society Ltd. & Anr. ... Petitioners
Vs.
Mumbai Municipal Corporation & Ors. ... Respondents

Mr. K. R. Bolchandani a/w Avik Sarkar, Amit D. Nikam i/b Kamal &
Co. for the Petitioners.

Ms. Pallavi Thakar, for the Respondent - BMC.

CORAM : A. S. OKA, &
P. N. DESHMUKH, JJ.

DATE : FEBRUARY 1, 2018

PC :

1. The first substantive challenge in this petition is to the bill (Exhibit "N" to the petition). By the said bill, the property taxes have been demanded by the Mumbai Municipal Corporation. The second substantive challenge is to the validity of Section 167 of the Mumbai Municipal Corporation Act, 1888. When the petition was filed, Appeal No. 801 of 2004 which arose out of the decision of the learned Single Judge was pending in this Court. The controversy was whether the Municipal Corporation was justified in taking into

consideration the actual amount of rent received or receivable by the landlord in relation to the units which are let out where the lease is exempted from the provisions of the Maharashtra Rent Control Act, 1999.

2. The said appeal was placed before a Division Bench of this Court. When there was a difference of opinion between the two Hon'ble Judges forming the part of the Division Bench, it was in the light of the difference of opinion, the issue indicated above was formulated, which was referred to third learned Judge. The third learned Judge has delivered his opinion on 11th September, 2012, which was thereafter placed before a Division Bench and the Division Bench disposed of the appeal.

3. Now, the challenge to the bill at Exhibit "N" cannot be entertained as what remains to be decided is a challenge on the ground of quantum. Considering the pendency of the main matter, this petition was entertained and therefore, now the Petitioners will have to adopt a remedy under Section 217 of the Mumbai Municipal Corporation Act, 1888. If that be so, the issue of constitutional validity of Section 167 of the Mumbai Municipal Corporation Act, 1988 becomes academic

and therefore, need not be decided.

4. Accordingly, we dispose of the petition by passing the following order:

- (i) As far as the challenge to the bill (Exhibit “N” to the petition) is concerned, it will be open for the Petitioners to prefer an appeal or appeals under Section 217 of the Mumbai Municipal Corporation Act, 1888;
- (ii) If such appeal or appeals are preferred within a period of thirty days from today, the appellate authority shall take a note of the fact that this petition was lodged on 16th December, 2004 and was entertained by this Court and remained pending till today;
- (iii) Needless to add that now the appellate authority will have to decide the appeal in accordance with the law in the light of the law laid down in the case of *The Municipal Corporation of Brihanmumbai and Ors., Appellants Vs. Dalamal Towers Premises & Ors., Respondents*¹;

¹ Appeal No. 801/2004.

- (iv) As regards the challenge to the constitutional validity of Section 167 of the said Act of 1888, we make it clear that we have not made adjudication on the same, as according to us, it is not necessary to decide the same;
- (v) The writ petition is made absolute in the above terms.

Sd/-
[P. N. DESHMUKH, J.]

Sd/-
[A. S. OKA, J.]

Vinayak Halemath