IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 611 OF 2022

Motwani Builders Pvt.Ltd. … Petitioner

Versus

The Municipal Corporation of Gr. Mumbai & Ors. …Respondents

Mr. G. V. Murti with Pradeep Dubey, for the Petitioners.

Ms.Vandana Mahadik, for the MCGM-Respondent.

Mr.Satya Prakash Pande, Ward Inspector, G/South Ward present.

CORAM: G. S. KULKARNI &
R. N. LADDHA, JJ.

DATED: MARCH 13, 2023

P.C.

1. We have heard Mr.Murti, learned Counsel for the petitioner and Ms.Mahadik, learned Counsel for the Municipal Corporation.

2. The order impugned in this petition is an order dated 22 November 2021 passed by the Assistant Assessor and Collector (G/South Ward) of the Municipal Corporation of Greater Mumbai (for short '**the MCGM**'). By the impugned order, the Assistant Assessor and Collector has held that for the purpose of payment of property taxes as per Capital

Value Assessment method, in so far as the petitioner is concerned, it was necessary to change the Zone and Sub Zone of the property i.e. Zone 13 and Sub Zone 98. It is further recorded that the petitioner's property is to be assessed as a partial impermissible land as per the C. V. Rule 2010, Schedule A Rule 4 & 5 Part – I, Sr. No.12(a) with base FSI 1.33 as a metered property. The impugned order is passed on the representation of the petitioner dated 2 March 2021 in pursuance of an order dated 27 April 2021 in Writ Petition (L) No.7421 of 2021 passed by the Coordinate Bench of this Court of which one of us (G. S. Kulkarni, J.) was a member.

3. Mr.Murthy, learned Counsel for the petitioner has more than one grievance on the impugned order. The first grievance is that the impugned order falls foul of the settled position in law as laid down by the Division Bench of this Court in the case of "**Property Owners Association and ors. V/s. State of Maharashtra and ors.**"[1] decided by the Coordinate Bench of this Court by judgment and order dated 24 April 2019, which considered a challenge to the legality of the Capital Value Rules, 2010.

4. He submits that Rule 20 of the Capital Value Rules of 2010 was

1 Writ Petition No. 2592 OF 2013 & group matters decided on 24 April 2019.

struck down by the Division Bench of this Court and the same has been upheld in a recent decision of the Supreme Court in the case "**Municipal Corporation of Gr. Mumbai & Ors. Vs. Property Owners' Association & Ors.**"[1]. It is his contention that when the impugned order came to be passed, certainly the decision of the Division Bench of this Court in **Property Owners Association and ors.** (supra) was available and the same was placed for consideration of the Designated Officer who has passed the impugned order. Mr.Murti's contention is that the impugned order in so far as the valuation of capital tax is concerned, the same is in the teeth of Section 140A of the Mumbai Municipal Corporation Act, 1888, which in its proviso below clause (ii) of sub-section (1) clearly ordains that in respect of building or land, used for non-residential purposes, three times of the amount of capital value immediately preceding such date, would be applicable for a period of 5 years from the date on which the property tax is levied on the capital value. He submits that there is no application of mind by the Designated Officer who has passed the impugned order, to such vital aspect which would govern the legal position in passing such order.

5. Ms.Mahadik, learned Counsel for the MCGM has although tried to justify the impugned order, however, is not in a position to contest the

1 2023(1) ALL MR 327 (S.C.)

contention as urged by Mr.Murthy, more particularly as the impugned order does not set out any reasons dealing with such categorical case as made out by the petitioner for consideration of the Designated Officer.

6. Having heard learned Counsel for the parties and having perused the record and the impugned order, we are of the clear opinion that the impugned order ought to have recorded reasons, for the Designated Officer to come to a conclusion as arrived at to the impugned order. This more particularly considering the position in law as laid down by the Division Bench of this Court in the **Property Owners Association and ors.** (supra) as also confirmed by the Supreme Court in its decision which is noted by us above. This apart there is another contention of Mr.Murti in regard to applicability of proviso below sub clause (ii) sub-section (1) of Section 140A when it comes to capping of the taxes, which also appears to have missed the attention of the Designated Officer.

7. In the above circumstances, we find that as there is an apparent infirmity in the impugned order on the issues as discussed by us. We are of the opinion that the Designated Officer ought to consider all the contentions on fact and law as urged by the petitioners in passing an appropriate order as the law would mandate. It is thus appropriate that

a fresh reasoned decision be taken by the Designated Officer/Assistant Assessor and Collector, after taking into consideration the categorical case put up by the petitioner. We accordingly dispose of the present petition by the following order:-

ORDER

(I) The impugned order dated 22 November 2021 is quashed and set aside.

(II) The proceedings are remanded to the Assistant Assessor and Collector (G/South Ward) of the Municipal Corporation of Greater Mumbai, for fresh orders to be passed in accordance with law.

(III) The Assistant Assessor and Collector shall grant an opportunity of a hearing to the petitioner as also the concerned representative of the MCGM and after taking into considering the position in law as also all the contentions being urged by the petitioner pass a fresh order.

(IV) Let such exercise be completed within a period of four weeks from today.

(V) All contentions of the parties are expressly kept open.

(VI) We have not expressed any opinion on merits of the rival contentions. The Assistant Assessor and Collector is free to take appropriate decision on the issues in accordance with law.

(VII) Disposed of in the above terms. No costs.

(R. N. LADDHA, J.) **(G. S. KULKARNI, J.)**