

Amol

REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2065 OF 2019**

- 1. KESAR CORPORATION,**
A registered partnership firm,
having its office at Kesar Solitaire
Office nos. 802-804, 8th Floor,
Plot No.5, Sector 19, Sanpada,
Navi Mumbai 400 705.
- 2. TROIKA CONSTRUCTIONS
COMPANY,**
A registered partnership firm,
having its office at 1/20,
Broadway Shopping Centre,
Dadar, Mumbai 400 014.
- 3. DATTASHRAM
COOPERATIVE HOUSING
SOCIETY LTD,**
A Cooperative Society registered under
the Maharashtra Cooperative Societies
Act, 1960
having its registered office at Plot No
62, Hindu Colony,
Sir Bhalchandra Road, Dadar,
Mumbai 400 014

... PETITIONERS

AMOL
PREMNATH
JADHAV

Digitally signed by
AMOL PREMNATH
JADHAV
Date: 2024.03.07
16:35:06 +0530

~ VERSUS ~

1. **MUNICIPAL CORPORATION
OF GREATER MUMBAI,**
A body incorporated under the Mumbai
Municipal Corporation Act, 1888,
having its office at Mahapalika
Road, Mumbai 400 001.
2. **ASSISTANT
COMMISSIONER (ESTATE),**
Brihanmumbai Mahanagarpalika
Head Office, 4th Floor,
Extension Building,
Fort, Mumbai 400 001.

...RESPONDENTS

APPEARANCES

**FOR THE
PETITIONERS**

**Mr Cyrus Ardeshir, with Yadunath
Chaudhari, Naira Variava &
Kevin Pereira, i/b Chinmaya
Acharya.**

**FOR
RESPONDENTS-
MCGM**

**Mr Yashodeep Deshmukh, with
Kunal Waghmare, i/b Sunil K
Sonawane.**

**CORAM : G.S.Patel &
Kamal Khata, JJ.**

DATED : 1st March 2024

ORAL JUDGMENT (Per GS Patel J):-

1. We believe the matter is fully covered by our recent decision in *Prabhat Sadan Properties Private Limited v Municipal Corporation of Greater Mumbai and Others*.¹
2. Mr Deshmukh on behalf of the Municipal Corporation of Greater Mumbai (“MCGM”) believes there are points of distinction. We will therefore address the facts to the extent necessary.
3. We are concerned here with a leasehold Plot No 62 of the Dadar Matunga Estate (South). It is of 1015.88 sq mts. There is or was a building on the plot called “Dattashram” and a society by the same name.
4. The original lessee was one Shekhar Moreshwar Kirtikar. He had a registered Indenture of Lease of 23rd August 1950.
5. On 23rd August 1971, Kirtikar entered into a Deed of Assignment with Shanoor Begum Gulam Mohiddin Alias Papamiya, Kulsum Abdul Latis Shaikh and Khairunnisa Allabux Shaikh in respect of the entirety of this lease.
6. On 17th April 1980, Shanoor Begum and others assigned this property to Troika Construction Company (“**Troika**”), now joined as the 2nd Petitioner.

1 2023 SCC OnLine Bom 1764.

7. On 29th April 1981, Shanoor Begum and others executed a formal Deed of Assignment of this property with Troika. The document in question was presented for registration on 29th April 1981. This is the area of controversy, because actual registration happened only much later, on 20th September 2011.

8. On 29th April 1981, Shanoor Begum and others wrote to the MCGM requesting that the transfer of their leasehold interest in the property to Troika be recorded. A copy of this letter is at page 200 the Petitioners say that they obtained it in response to a query under the Right to Information Act, 2005 (**“the RTI Act”**). Strangely, Mr Deshmukh has instructions to state that the MCGM today only knows of this document from the Petition and the RTI response. We are unprepared to accept such a submission, because it amounts to saying that the Public Information Officer has access to some MCGM records that the MCGM officers do not.

9. Troika took up development. It constructed a building of 21 floors. On 11th September 1987, the 3rd Petitioner society, the Dattashram CHSL, came to be registered.

10. On 20th September 2011, the Deed of Assignment between Shanoor Begum and others and Troika came to be finally registered.

11. On 21st November 2012, there was a registered tripartite Development Agreement between the 3rd Petitioner society, the 2nd Petitioner Troika, and the 1st Petitioner Kesar Corporation.

Kesar Corporation was appointed as the developer for the whole property.

12. In 2012, there came the State Government amendment to the Mumbai Municipal Corporation Act, 1888 (“**MCGM Act**”). This resulted in the insertion of Section 92(dddd), made retrospectively applicable from 22nd June 1993.

13. That Section came up for consideration before this Court in *Homi Villa CHSL v Municipal Corporation of Greater Mumbai*.² We considered this in our judgment in *Prabhat Sadan* and will therefore refer to it at the appropriate place.

14. To return to the factual narrative, on 17th April 2015, the MCGM raised a demand notice for Rs 1,01,53,434/- and claimed that this was pursuant to directions of this Court in various Writ Petitions that had challenged the *vires* of Section 92(dddd).

15. On 5th June 2015, Kesar Corporation made payment on a without prejudice basis though in the name of Shanoor Begum. Kesar Corporation received an Intimation of Disapproval (“**IoD**”) on 19th December 2015.

16. The Special Leave Petition (“**SLP**”) against the High Court judgment in *Homi Villa* failed on 16th September 2016.

2 2015 SCC OnLine Bom 8873.W

17. On 6th January 2017, Kesar Corporation received a Commencement Certificate (“CC”).

18. Two years went past. On 21st January 2019, Kesar Corporation wrote to MCGM asking for a refund of the amount that was paid without prejudice as transfer fees. Kesar Corporation claimed that the Transfer Deed was executed in 1981 and therefore Section 92(dddd) could not apply to that transfer. It also contended that the demand was contrary to the judgment of this Court in *Homi Villa* and against which judgment an SLP was dismissed.

19. Interestingly, there is a reference to a legal opinion by a law officer of the MCGM of 25th March 2019 saying that the demand made by Kesar Corporation was justified.

20. Despite this, on 28th May 2019, the MCGM rejected the request for a refund and it did so on the ground that although the Transfer Deed was executed in 1981, it was registered only on 20th September 2011. The MCGM contended that the *Homi Villa* judgment was not applicable to the facts of that case.

21. On 14th June 2019, the Petitioners filed the present Petition.

22. It has been adjourned periodically since. A Division Bench heard it partly on 12th January 2021. It was then adjourned again. In the meantime, there intervened, on 24th August 2023, our judgment in the *Prabhat Sadan* matter.

23. The issue in *Prabhat Sadan* was identical. We reproduce paragraphs 15 to 21 and 31 to 49 of the judgment in *Prabhat Sadan*:

“15. In 2014, several Writ Petitions were filed in this Court against the MCGM regarding this transfer premium. Prabhat Sadan itself filed Writ Petition No. 1251 of 2014. All these were heard together. On 5th February 2015, the High Court passed an order directing that any assignment or leasehold rights that had taken place prior to 14th August 2012 would carry interest at 12% per annum on the transfer premium for the period after 14th August 2012.

16. Why is this date of 14th August 2012 crucial? It is on this date that the Mumbai Municipal Corporation (Amendment and Validation) Act, 2011 came to be published in the Government Gazette, and this inserted Section 92(dddd) in the Mumbai Municipal Corporation Act, 1888 (“**the MMC Act**”). Not only did it do so, but it did so with retrospective effect from, and now comes the third pivotal date, 22nd June 1993.

17. This immediately lends perspective to the controversy before us. If the effective date, so to speak, as claimed by Mr Jagtiani is 1988, then it is prior to the Section 92(dddd) insertion with effect from 22nd June 1993, and indeed no premium at all could have been demanded. That, as we said, will not now assist the Petitioners in regard to the amount of Rs 24,71,300/-, but it will certainly have a bearing on the present impugned claim of Rs 72,94,268/-.

18. On the other hand, if Mr Kumbhakoni, learned Senior Advocate for the MCGM is correct and the relevant date is the date of registration, 27th October 2006, then, clearly, following the High Court order of 5th February 2015 read with the 14th August 2012 amendment introducing Section 92(dddd) with effect from 22nd June

1993, the premium can: (i) not only be rightly demanded; (ii) will be computed as of 26th October 2006; and (iii) will carry interest at 12% per annum until payment or realisation.

19. On 20th August 2015, and this is a document that is never quite fully explained, the Deputy Municipal Commissioner approved Prabhat Sadan's application of 2nd September 2008 for the transfer proposal subject to terms and conditions. A copy of that document is to be found at page 141 at Exhibit "K" to the Petition. There is a computation of various amounts in this communication of 20th August 2015, and we will take it that the aggregate amount totalled to Rs 52,23,982/-. The formal demand in this amount came from the MCGM on 1st September 2015 (Exhibit "L", page 149) and a reminder followed on 19th January 2016, but now threatening 18% penal interest. A copy of that communication is at Exhibit "M" at page 150. The two demands of 2015 at Exhibits "L" and "M" are of course addressed to the Bedis because the transfer had not yet been approved in the first place.

20. On 12th February 2020, Prabhat Sadan wrote to the Municipal Commissioner asking for a quick disposal. This takes us to 12th May 2021, which is a noting by the Joint Municipal Commissioner of the 2nd September 2008 sanction.

21. There now followed on 1st June 2021, from the MCGM in a communication addressed to Prabhat Sadan, a demand for Rs 24,71,300/- as a transfer premium. This included 12% per annum interest on the transfer period from 14th August 2012 and penal interest at 18% per annum from 1st September 2015.

31. We pause briefly to note that there is a decision of a learned Single Judge of this Court (AA Sayed, J, as he then was) in *Homi Villa Co-operative Housing Society Ltd & Ors v*

*Municipal Corporation of Greater Mumbai & Anr.*³ In its Affidavit in Reply, the MCGM first attempted to not only distinguish the judgment but to say it was *per incuriam*. This position was subsequently and quite correctly, reversed with that statement being withdrawn on affidavit, and it was pointed out that in fact a Special Leave Petition filed by the MCGM had been dismissed. Mr Kumbhakoni has spent some time on this aspect of the matter. But we do not propose to let it delay us. His submission is that a dismissal of the Special Leave Petition simpliciter by the Supreme Court order of 16th September 2016 in Special Leave Petition No. 9057 of 2016 does not conclude the question of law as a decision of the Supreme Court. It is, therefore, his submission that the decision of the learned Single Judge in *Homi Villa* cannot merely because of a dismissal of the SLP constitute a precedent that is binding on a Division Bench of this Court. We think this submission is correctly placed. We do not approach the *Homi Villa* decision as a precedent that binds us in a Division Bench. We do believe, however, that despite the dismissal of the SLP, and it is here that we agree with Mr Kumbhakoni, it is open to us in a Division Bench to affirm the findings of the learned Single Judge in *Homi Villa* just as much as we could do the reverse. Mr Kumbhakoni's submission in this regard, therefore, will take him only part of the distance, which is to say that the decision of the learned Single Judge in *Homi Villa* does not bind the Division Bench. To that extent, but only to that extent, Mr Kumbhakoni is correct.

32. For completeness, we now reproduce Section 92(dddd) of the MMC Act as introduced by the amendment:

“(ddddd) All leases granted by the corporation of the immovable properties belonging to the

3 supra

corporation for whatever term shall be subject to the following conditions in addition to the conditions stipulated in the Lease-deed or Lease-agreement executed by the corporation, namely:—

(i) **Leasehold rights in respect of the properties belonging to the corporation and given on lease may be further assigned or transferred only with the prior permission of the Commissioner, on payment of such premium on account of unearned income and transfer fees or charges at such rates as may be specified by the corporation, from time to time.**

(ii) In the case of any contravention of the provisions of sub-clause (i), the lessee or transferor of such leasehold rights, shall be liable to pay penalty in addition to such premium and transfer fees or charges, at such rates as may be specified by the corporation, from time to time.”

(Emphasis added)

33. There is now really no controversy about the application of this Section, nor is there any challenge to it in the Writ Petition itself. It is not Mr Jagtiani’s case that the Section is *ultra vires* or otherwise illegal and that no demand can ever be raised under it.

34. His reliance is, however, is founded entirely on a reading of Section 47 of the Registration Act, 1908. Now to understand this in context, we must appreciate that Section 47 falls in Part X of the Registration Act. This Part deals with the effects of registration and non-registration. Four sections are in this part, i.e., Sections 47 to 50. Obviously,

any statute will have to be read contextually, and, as necessary, with other relevant sections when referenced.

35. Section 47 on its own reads as follows:

“47. Time from which registered document operates— A registered document shall operate from the time from which it would have commenced to operate if no registration thereof has been required or made, and not from the time of its registration.”

(Emphasis added)

36. We will pass over Section 48 for the present and set out for our purposes Section 49 which reads thus:

“49. Effect of non-registration of documents required to be registered.—No document required by section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall—

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered;

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral

transaction not required to be effected by registered instrument.”

37. Section 50 then says:

“50. Certain registered documents relating to land to take effect against unregistered documents—

(1) Every document of the kinds mentioned in clauses (a),(b), (c) and (d) of section 17, sub-section (1) and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

(2) Nothing in sub-section (1) applies to leases exempted under the proviso to sub-section (1) of section 17 or to any document mentioned in sub-section (2) of the same section or to any registered document which had not priority under the law in force at the commencement of this Act.”

38. Sections 47 and 50 make reference either by necessary implication or, in Section 50, explicitly, to Section 17 of the Registration Act. This falls in Part III of the Registration Act. That part deals with documents that are registrable, and Section 17 deals with documents of which registration is compulsory.

39. Section 17 will have to be read with Part X because this tells us what documents must be registered (Section 17, Part III) and, if not, the consequence of non-registration ,

or, if registered, the consequences of such registration (Part X).

40. Mr Jagtiani's submission is that, plainly read, Section 47 states that the document in question is operative or effective from the date expressed to be its operative or effective date, if no registration had been 'required' *or* 'made', and *not* from the time of its registration.

41. His emphasis is on three distinct aspects of this seemingly simple clause. *First*, he submits, the words "*and not from the time of registration*" cannot be ignored. They must be given their full weight and import. Mr Kumbhakoni's submission, Mr Jagtiani argues, in effect defenestrates the entirety of these words. *Second*, the clause is not restricted to a situation where a document is not compulsorily registrable. It applies also to a situation where though a document may be compulsorily registrable, registration has not been '*made*'. This is clear if one reads the clause correctly in the following manner:

"... would have commenced to operate if no registration thereof had been ... made ...".

42. It is not possible to merely rely on the words 'had been required' and to ignore the words 'or made'. The words 'or made' refer to an act by a human agency, i.e., doing or not doing a certain thing. These two words do not relate to an operation of statute compelling or requiring the registration of a document. Mr Kumbhakoni's submission, Mr Jagtiani says, fails entirely to account for these two words.

43. *Third*, Mr Jagtiani submits that the words 'had been required' are also probably being misinterpreted. They do not necessarily confine Section 47 to cases where documents are not compulsorily registrable. What is being done here, and this is the statutory intent and purpose, is to

create an artificial fiction for a defined purpose which is to specify the effective date of a document. In that situation, the law says that one can proceed on the footing that the document was not compulsorily registrable or even that Section 17 did not exist for the purposes of, and only of, the application of what might be called the doctrine of relating back. But this third submission is not central to his construct. It is only an alternative argument. Since Mr Jagtiani did not pursue this line of argument, we have not thought it necessary to examine it further.

44. Much the same ground was covered by Sayed, J in *Homi Villa*. There, the plot was at Tilak Road, Dadar. A structure called Homi Villa stood on it. There was also a lease of 999 years and then there was a Deed of Gift followed by an Indenture of Assignment some time in 1987. A few years later, a cooperative society came to be formed. The society took an assignment in its favour. The society was the petitioner before Sayed, J. That society building went into redevelopment with a development agreement. The developer was the 2nd petitioner. The petitioners applied for a NOC for re-development. This was held up. One of the reasons was the failure to pay a transfer premium on all previous transfers, as also the proposed transfers. Further details are unnecessary. The argument before Sayed, J was that a later registration of the document would not relate back for the purposes of taxation. It was urged that it was only the date of registration that was relevant, and neither the date of execution nor the date of presentation for registration were at all relevant for the question of the premium under Section 92(dddd). A principal issue in that matter was whether the demand for transfer premium was at all payable in the first place. The argument was that the documents in question were registered only after the cut-off date and, therefore, Section 92(dddd) would apply, making the society liable to pay the

transfer premium. Section 47 was invoked. In paragraph 17, Sayed, J held that on a plain reading of Section 47 it was apparent that upon registration of document its operation relates back to the time of execution.

45. It is this finding to which Mr Kumbhakoni takes considerable exception. This cannot possibly be the correct position in law, he submits. To begin with, if the document is not registered, it is completely inconsequential so far as the MCGM is concerned. Consider the present case, he submits. There is a set of assignors, namely, the Bedis. There is the Prabhat Sadan as the assignee. But until registration they are only proposed assignors and a proposed assignee. The MCGM is not required to recognise Prabhat Sadan as an assignee at all—until the assignment is registered. It is only at that point that Prabhat Sadan becomes the assignee recognised as such by the MCGM. That is, therefore, the effective date so far as MCGM is concerned.

46. The second branch of this argument is that one cannot simply approach a matter of interpretation of statute by proceeding on a hypothesis that some section may be considered for the present not to exist or not to apply. Section 17 exists and it is part of this statute. It makes certain documents compulsorily registrable. Nobody denies that the Deed of Assignment is compulsorily registrable. Therefore, he submits, correctly read, Section 47 has no application to a situation such as this. It certainly has no application in the manner the Petitioner suggests. If a document is not compulsorily registrable under Section 17 and is registered at some later point in time, then undoubtedly Section 47 will operate, and the document will be effective from the date of the document and not the date of registration. This is the plain meaning of the words ‘if no registration thereof had been required’. Mr Kumbhakoni

submits that there is no known principle of interpretation by which these words can be read to mean 'if no section making documents compulsorily registrable was on the statute book'. It is wholly impermissible to introduce an ambiguity when the language of the statute is plain, clear, and capable of only a single meaning.

47. As to the words 'or made', his submission is that this again takes its colour from the previous clause. Where a document is compulsorily registrable under Section 17, i.e., in a situation where without registration that document is ineffective, the words 'or made' cannot come to anyone's rescue. The reason is simple: registration has got to be made. It is compulsory. It is the mandate of the statute. Very simply, no question arises of registration being 'not made'. Even in this case, registration was indeed sought. It only came to be done later. The question is not of whether registration was made, but the impact of a later date of registration. Nobody denies that the document is an actual physical artefact or thing. Nobody denies that it was executed. Nobody denies that it was lodged for registration. But there it lay for whatever reason until 2006 and it was not until that date that it attained its full legal efficacy. Until that time, it was only a record of a transaction between parties. So far as the MCGM is concerned, it did not even recognise Prabhat Sadan on the basis of the unregistered document. It could not have done so.

48. Mr Kumbhakoni also points out that there is a possibility of invoking something akin to the mischief rule of interpretation. Registration of some kinds of documents is made universally compulsory under Section 17 for a given reason. This ensures that there are government records of transfers of valuable immovable property or other transactions as contemplated under Section 17. Imagine the chaos that would be loosed upon the world, he submits, if

Section 17 was to be ignored and if the MCGM was required to act on whatever document came to it or was produced before it by some party, without passing through the checks and balances of compulsory registration. And indeed Section 17, he submits, does provide checks and balances. The executing party must appear before the registering authority. Execution must be admitted to the satisfaction of the registering authority. Registration is not simply a ministerial act to be taken for granted. This is why registration is compulsory, and this is why, in his submission, the doctrine of relating back has to be viewed in a correct perspective.

49. He invites our attention on the question of interpretation of Section 47, to the decision of the Supreme Court in *Ghanshyam Sarda v JK Jute Mills Co Ltd.*⁴ We have seen this decision with great care, but we believe it does not necessarily assist Mr Kumbhakoni. What was before the Supreme Court was a contempt proceeding. There was a long and complex litigation history. It was alleged that in wilful disobedience of certain orders, some of the parties had sold away valuable capital assets for an insignificant sum. The transactions in question were defended as *bona fide* and the question that came before the Supreme Court is set out in one sentence at the forefront in paragraph 17, i.e., whether any alienation or transfer was effected after the date of one particular order of 8th May 2014”.

24. In addition, paragraphs 52 to 54, 58, 60, 61, 63 & 65 read thus:

“52. As the emphasized portion of the judgment shows, the transfer comes into effect on registration, i.e., title would pass on registration. The Supreme Court referenced its decision in *Suraj Lamp & Industries Pvt Ltd (2) v State of*

4 (2017) 1 SCC 599.

*Haryana & Anr*⁵ in the context of Sections 54 and 55 of the Transfer of Property Act, 1882 to say that without registration no title would pass, and no interest could be created in immovable property, except to the limited extent contemplated by Section 53-A. A mere agreement of sale was not a conveyance. That required a registration document.

53. In paragraph 19, the Supreme Court considered the effect of Section 47 and held that the principle of that Section is for a different purpose than that which the Supreme Court was concerned. As far as the Supreme Court was concerned, i.e., to see whether on the date of its order, there was or was not a violation, and therefore contempt, it was Section 54 that would have governed. What the Supreme Court held is that after the 8th May 2014, there was no possibility of any party proceeding with the registration of the document and, therefore, the Court held that there was an *ex facie* violation of the order passed by the Court.

54. But, and this is what is against Mr Kumbhakoni, consider the consequence if that registration had happened not on 2nd July 2014 but before the order of 8th May 2014. Had that been so, there would have been no doubt that the transfer would have been fully effected not from the date of registration, but from 4th April 2013, namely the date of the document.

58. To assess Mr Kumbhakoni's argument, we must ask that so far as the property is concerned, and now that the document is registered, will the MCGM treat Prabhat Sadan as the lessee of the property since 2006 or since 1988? That is a long period of time and it is difficult now, after registration, to see how the MCGM could possibly say

5 (2012) 1 SCC 656: (2012) 1 SCC (Civ) 351: 2011 SCC OnLine SC 1360.

that between 1988 and 2006, it will only look to the Bedis as the lessees and not to Prabhat Sadan.

60. For this reason too, we do not think that the reliance by Mr Kumbhakoni on the decision of a Division Bench of the Calcutta High Court in the case of *Commissioner of Gift Tax v Aloka Lata Sett & Ors*⁶ commends itself to application to the case at hand. Reliance was placed on paragraphs 5 and 8, and Sections 122 and 123 of the Transfer of Property Act, 1882 in the context of a deed of gift. This is cited for the proposition that Section 47 is a protection only inter-partes but, as regards third parties, the effective date is the of registration. But, as we noted, this is correct only to the limited extent of determining *when* MCGM could make the demand. It is unrelated to the *amount* of the demand.

61. To a similar effect is the reliance by Mr Kumbhakoni on the decision of a Single Judge of the Madras High Court in *Thulasimani Ammal v Commissioner of Income Tax*.⁷ There was a question of a deed of gift and its effective date. Section 47 was relied on in paragraph 13. It was held that it is only the registration of the document that would complete it. The learned Single Judge held that although it may have an effect from an anterior date to the date of registration, the relevant date for tax purposes would be the date of registration of the document. But the question here was of the taxable event — similar to the raising of the MCGM demand — and not the amount of the tax. In the present case, it is undisputed that MCGM could raise the demand only after registration of the assignment deed. That is not in question before us. The only question is about the basis of computation of the demand, i.e., whether it should be based on property rates of 1988 or 2006.

6 1989 SCC OnLine Cal 473: (1991) 190 ITR 556: (1992) 103 CTR 343.

7 1999 SCC OnLine Mad 1139 : 2000 158 CTR 5: 2000 108 Taxman 426.

63. We are unable to see how in the context of Section 92(dddd) there could ever have been a case of regarding the date of 27th October 2006 as the effective date. There are far too many inconsistencies with this. To begin with, it is obviously a complete rethink or a latter day epiphany and it comes only after the MCGM had raised the demand of Rs 24,71,300/- taking, quite correctly, the date of 8th April 1988 and the Ready Reckoner of rates of that year, accepting payment and issuing a receipt and, in fact, ordering that the transfer be permitted. There is no attempt to explain other than invoking the High Court order of 5th February 2015 — and which was and is incorrect. We do not believe this is a correct approach in public administration. Between the time of the demand for Rs 24,71,300/- and the first impugned demand of 13th January 2022, there was absolutely no change in law. There was no change in facts. There may have been on MCGM's part a change of mind (or a change of advocates), but that is about all. This is no ground to revisit a decision that was, frankly, closed and concluded on 9th June 2021. We see no principle of law by which a public authority can constantly reopen concluded matters like this and subject them to endless revisions.

65. On a pure question of interpretation of Section 47, we are unable to agree with Mr Kumbhakoni that whether it is viewed from the perspective of tax, or it is viewed from the MCGM being a so-called outsider, the effective date must be 27th March 2006 and not 8th April 1988.”

25. We are unable to see any material point of distinction between the *Prabhat Sadan* case and the present case.

26. In our order of 22nd February 2024, having given Mr Deshmukh some time to consider *Prabhat Sadan*, we heard him and

we noted his submission *inter alia* in regards to locus because he canvassed the argument that the Petition was not maintainable at the instance of Kesar Corporation. The amount had been paid, though by Kesar Corporation, on behalf of Shanoor Begum or the society or Troika. The question was, as we noted, hardly a reason to reject the Petition. The other submission was that the Petition was delayed and that this delay disentitled the Petitioner to any relief in law or equity.

27. In any case, as to the question of locus Mr Ardeshir points out that when Kesar Corporation made an application, the MCGM demand was raised on Kesar Corporation itself.

28. That submission has only to be stated to be rejected. It amounts to saying that the MCGM can collect an amount that is entirely without the authority of law and only because some person applies for a refund at a late stage can withhold that amount. If the MCGM is an instrumentality of the State, which it undoubtedly is, we do not see how such an argument can possibly be advanced or canvassed. It is dangerously close to every principle of unjust enrichment apart from transgressing all manner of vices under Article 14 of the Constitution of India.

29. Mr Deshmukh also attempted to distinguish *Homi Villa* by saying that the Court found fault with the MCGM for not acting diligently. But as we have noted that is not the only finding of the Court and it is not the finding on which the reasoning of the *Homi Villa* judgment rests. To the contrary, there is an express finding of

the non-applicability of 92(dddd) to cases such as these and the context of later registration.

30. Mr Deshmukh has instructions to state, and this has been stated on an Affidavit, that the letter received under the RTI Act is not in the files of the MCGM. This is such a strange submission that we can do no more but simply note it. After all, it is not as if the Petitioners produced a set of documents/files from their records. They applied to the Public Information Officer. Presumably, the Public Information Officer has access to the very same files as the persons who make the Affidavits filed in our Court.

31. Having regard to these circumstances, we proceed to make Rule absolute in terms of prayer clause (b) but without any stipulation as to interest. The prayer reads thus:

“(b) this Hon’ble Court be pleased to issue Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ order or direction under Article 226 of the Constitution of India, directing Respondent to refund the payment made by the Petitioner of Rs.1,01,53,434/- along with interest at 12% p.a. towards transfer premium and other charges of the said property as demanded by Respondent vide demand notice dated 17.04.2015 (Exhibit G hereto)”.

32. We are not in a position to grant money decrees of this kind for interest in a Writ Petition. The amount of Rs 1,01,53,434/- is to be refunded to the 1st Petitioner within a period of four weeks from today.

33. The MCGM is at liberty to raise a demand if it has not already done so in regard to its legal charges but will not deduct these from the amount. Mr Ardeshir agrees that on a without prejudice basis those legal charges will also be paid.

(Kamal Khata, J)

(G. S. Patel, J)