

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

RESERVED ON: 15.12.2025
DELIVERED ON: 24.03.2026

PRESENT:

THE HON'BLE MR. JUSTICE GAURANG KANTH

WPO 1220 of 2024

SAHUJAIN CHARITABLE SOCIETY AND ANR.

VERSUS

THE KOLKATA MUNICIPAL CORPORATION AND ORS.

Appearance: -

Mr. Abhratosh Majumder, Sr. Adv.
Mr. Pratyush Jhunjhunwala, Adv.
Mr. Samit Rudra, Adv.
Mr. Kausheyo Ray, Adv.
Mr. P. K. Jhunjhunwala, Adv.
Ms. Sruti Datta, Adv.
Ms. Sakshi Singhi, Adv.

..... *for the Petitioners*

Mr. Jaydip Kar, Sr. Adv.
Ms. Piyali Sengupta, Adv.
Mr. Swapan Kr. Debnath, Adv.

..... *For the KMC*

Mr. Kishore Datta, Ld. A.G.
Mr. Sirsanya Bandyopadhyay, Adv.
Mr. Vivekananda Bose, Adv.
Ms. Anjusri Mukherjee, Adv.
Ms. Susmita Biswas Chowdhury, Adv.

..... *for the State*

JUDGMENT

Gaurang Kanth, J. :-

1. The Petitioner has instituted the present writ petition seeking a declaration that Section 3 of the Kolkata Municipal Corporation (Amendment) Act, 2022, by which Section 179(2)(d) of the Kolkata Municipal Corporation Act, 1980 has been substituted, is unconstitutional and *ultra vires* the

Constitution of India. The Petitioner has further sought quashing of the letter dated 23.07.2024 issued by the Respondent Corporation, whereby a demand of Rs. 11,24,27,669/-, along with a penalty of Rs. 39,40,847.22/-, has been raised towards alleged arrears of property tax in respect of various parts and portions of the basement, the 11th floor, part of the 12th floor, and the 13th to 16th floors of Premises No. 8, Camac Street (now Abanindranath Thakur Sarani), Kolkata.

2. The facts leading to the present case are as follows:
3. The Petitioner No. 1 is a Charitable Society established in 1981 under the Societies Registration Act, 1860. Petitioner No. 2 is a trustee of Petitioner No. 1.
4. At the relevant time, i.e., in 1984, Petitioner No. 1 was the owner of the basement, the 11th floor, part of the 12th floor, and the entirety of the 13th to 16th floors of a building situated at premises No. 8, Camac Street, now known as Abanindra Nath Thakur Sarani, Kolkata – 700 017. In 1984, the annual valuation of the said property was Rs. 4,74,120/-. The Petitioner was paying the property tax as per the said rate on regular basis.
5. In February 1999, Respondent No. 3 issued three separate notices of hearing, all dated 27.02.1999, proposing upward revision of the annual valuation for three consecutive past periods of six years each, commencing from (a) 4th Quarter 1984–85 (b) 4th Quarter 1990–91, and (c) 4th Quarter 1996–97.
6. Thereafter, the Respondent authorities issued three rate cards and six bills, all dated 16.11.1999, retrospectively revising the annual valuation with effect from as far back as January 1985, i.e., nearly 15 years earlier. Pursuant to the retrospective upward revision, five bills dated 16.11.1999

were issued demanding additional property tax amounting to Rs. 1,93,34,746/-.

7. The Petitioners challenged the said bills before the Municipal Appellate Tribunal. The appeals remained defective as they were not accompanied by certain assessment orders which were never supplied to the Petitioners.
8. In 2003, the Respondents disconnected the water supply to the premises. In order to secure restoration of the said connection, the Petitioners paid Rs. 25,00,000/- towards the outstanding property tax.
9. Pursuant to the representations made by the Petitioners, the Municipal Commissioner, by an order dated 02.06.2003, directed cancellation of the earlier bills dated 16.11.1999 and further directed issuance of fresh bills.
10. However, without issuing any notice of hearing to the Petitioners, the Respondent authorities purportedly issued fresh bills dated 24.06.2003, which contained no variation from the earlier bills.
11. Being aggrieved, the Petitioners filed W.P. No. 460 of 2004 challenging, *inter alia*, the second proviso to Section 179(2)(d) of the Kolkata Municipal Corporation Act, 1980. By order dated 20.04.2007, this Court disposed of the said writ petition by directing the municipal authorities to supply the assessment orders to the Petitioners and granting liberty to the Petitioners to amend the grounds of appeal before the Appellate Tribunal. During the course of hearing, the learned Counsel appearing for the Petitioners, without instructions, made a statement that the Petitioner is abandoning its challenge to the vires of the second proviso to Section 179(2)(d) of the Act. The Petitioners challenged the order of the learned Single Judge before the Division Bench and, pursuant to directions of the Hon'ble Division

Bench, deposited an additional sum of Rs. 40,00,000/- with the Respondents. The said appeal was thereafter dismissed.

12. Pursuant to the directions of the Hon'ble Division bench, the Respondents subsequently furnished copies of the assessment orders.
13. After the Division Bench dismissed the appeal, the Petitioners instituted a fresh writ petition being W.P. No. 1021 of 2011 seeking a declaration that the second proviso to Section 179(2)(d) of the Act is unconstitutional, and further seeking quashing of the bills dated 24.06.2003. During the proceedings, by order dated 22.02.2012, this Court directed the Petitioners to deposit Rs. 1,28,34,746/- by 14.03.2012 and a further sum of Rs. 35,00,000/- by 26.03.2012. The Petitioners deposited Rs. 1,28,34,746/- but preferred an appeal against the direction to deposit further sum of Rs. 35,00,000/-. The Division Bench, by order dated 11.04.2012, set aside the order dated 22.02.2012. In total, the Petitioners had deposited Rs. 1,93,34,746/- with the Respondent Corporation.
14. The said writ petition, being W.P. No. 1021 of 2011 was, however, dismissed by a learned Single Judge by order dated 12.03.2015, without permitting the Petitioners to raise the issue of constitutionality of Section 179(2)(d), and upholding the assessment. Aggrieved thereby, the Petitioners preferred an appeal before the Hon'ble Division Bench in APO No. 265 of 2015.
15. By judgment dated 26.04.2018 reported as **Sahu Jain Charitable Society & Anr. v. Kolkata Municipal Corporation & Ors.**, reported as **2018 SCC OnLine Cal 4793**, the Hon'ble Division Bench read down the expression "any time" in the second proviso to Section 179(2)(d) and held that the Municipal Commissioner may revise the annual valuation only

within a reasonable period, which cannot exceed three years prior to the revising order. The Division Bench directed the Respondent Corporation to make a fresh assessment for the period covered by prayer (b) of the writ petition, in terms of the observations in the judgment, within eight weeks of communication of the order, and thereafter to raise a final bill upon the Petitioner Society within one week.

16. The Respondent Corporation challenged the said judgment before the Hon'ble Supreme Court in SLP (C) Diary No. 46294 of 2018. The SLP was dismissed on 18.01.2019. A review petition (Diary No. 19777 of 2021) was filed and the same was also dismissed on 17.02.2022. Thereafter, the Respondent Corporation filed Review Petition RVWO No. 36 of 2019 before this Court, which was dismissed by order dated 27.02.2020. The Respondents then filed SLP (C) No. 16025 of 2021, which too was dismissed on 03.05.2024.
17. In view of the dismissal of all Special Leave Petitions, the said judgment **Sahujain Charitable Society** (*Supra*) attained finality. Accordingly, the Petitioners, through their advocates, issued a letter dated 15.06.2024 calling upon the Respondent Corporation to comply with the said judgment and refund the excess property tax paid by the Petitioners.
18. However, by letter dated 23.07.2024, the Respondent Corporation informed the Petitioners that Section 179(2)(d) of the Act had been amended by the Kolkata Municipal Corporation (Amendment) Act, 2022. The amendment, inter alia, provides that notwithstanding anything contained in the Act or any judgment, order, or decree to the contrary, annual valuation may be revised at any time not beyond six years from the expiration of each such period, and all earlier revisions made beyond such

period shall be deemed valid, and tax based on such revisions shall be recoverable. The letter further stated that as on that date, a sum of Rs. 11,24,27,669/- (including interest of Rs. 8,22,14,498.62/-) and penalty of Rs. 39,40,847.22/- remained outstanding as property tax, and that Rs. 10,05,080/- was lying in the suspense account.

19. Being aggrieved, the Petitioner has filed the present writ petition challenging Section 3 of the Kolkata Municipal Corporation (Amendment) Act, 2022, whereby clause (d) of sub-section (2) of Section 179 of the Kolkata Municipal Corporation Act, 1980 has been substituted, as being ultra vires the Constitution of India. The Petitioner has further sought quashing of the property tax demand of Rs. 11,24,27,669/- along with penalty of Rs. 39,40,847.22/-, raised by the Respondent Corporation vide letter dated 23.07.2024.

Submission on behalf of the Petitioner

20. Mr. Abhratosh Majumdar, learned counsel appearing for the Petitioner, submits that the impugned validating amendment has been introduced with the sole object of defeating the law laid down by this Hon'ble Court in **Sahujain Charitable Society** (supra). Such legislative intent is evident from a plain reading of the Statement of Objects and Reasons of the Kolkata Municipal Corporation (Amendment) Bill. It is further submitted that the Respondent Corporation's attempt to reopen the Petitioner's case, despite the issue having attained finality upon dismissal of two Special Leave Petitions preferred by the KMC, clearly demonstrates a deliberate attempt to circumvent binding judicial determinations.
21. It is contended that the impugned validating amendment is constitutionally impermissible, in as much as the Legislature is

incompetent to validate a statutory provision that has already been declared illegal or unenforceable by a Court of law unless the defect or cause of invalidity identified in the judicial pronouncements is first removed. A legislative enactment which merely seeks to revive or enforce an invalid levy, without curing the foundational defect, amounts to an impermissible legislative override of a binding judicial decision and constitutes a colourable exercise of legislative power. In support of this proposition, reliance is placed on ***Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality***, reported as (1969) 2 SCC 283, ***Municipal Corporation of the City of Ahmedabad v. New Shrock Spinning & Weaving Co. Ltd.***, reported as (1970) 2 SCC 280, and ***Medical Council of India v. State of Kerala***, (2019) 13 SCC 183.

22. Learned counsel further submits that while retrospective validation of fiscal statutes is not per se impermissible, such validation is constitutionally sustainable only where the infirmity declared by the Court is expressly and effectively removed. A validating statute which leaves the foundational illegality untouched is arbitrary and violative of Article 14 of the Constitution of India. In this regard, reliance is placed on ***Lohia Machines Ltd. v. Union of India***, reported as (1985) 2 SCC 197, ***Amarendra Kumar Mohapatra v. State of Orissa***, reported as (2014) 4 SCC 583, ***NHPC Ltd. v. State of Himachal Pradesh***, reported as 2023 INSC 810, ***R.C. Tobacco Pvt. Ltd. v. Union of India***, reported as (2005) 7 SCC 725, and ***Ujagar Prints v. Union of India***, reported as (1989) 3 SCC 488.

23. It is further submitted that the Legislature lacks competence to retrospectively extend the period of limitation for enhancement of property

tax beyond the maximum period of three years contemplated under the statutory scheme. Any retrospective enhancement of annual valuation beyond such temporal limits is ultra vires the parent statute and beyond legislative competence. In support of this submission, reliance is placed upon ***Katikara Chintamani Dora v. Guntreddi Annamanaidu***, reported as **(1974) 1 SCC 567**.

24. Learned counsel submits that the Legislature is expressly barred from retrospectively creating a fresh or enhanced tax liability. In this regard, reliance is placed upon ***Jayam & Company v. Assistant Commissioner***, reported as **(2016) 15 SCC 125**, wherein the Hon'ble Supreme Court struck down a provision imposing a new tax retrospectively. It is submitted that the impugned amendment, in effect, seeks to resurrect and enforce an invalid levy rather than merely curing a procedural or technical defect.
25. It is submitted that Section 3 of the impugned Amendment Act neither removes nor even purports to remove the grounds of invalidity declared by the Hon'ble Division Bench in ***Sahujain Charitable Society*** (supra). The impugned provision merely attempts to nullify the effect of the said judgment, without curing the defect, thereby rendering the validation arbitrary, unconstitutional, and violative of Articles 14 and 19 of the Constitution of India. Learned counsel further submits that a validating provision which permits the Respondent Corporation to retain amounts illegally collected as property tax, despite binding judicial orders directing otherwise, constitutes an impermissible encroachment upon judicial power. In this context, reliance is placed on ***New Shrock Spinning & Weaving Co. Ltd.***, (supra). It is further submitted that the Respondent Corporation suppressed the existence of the Validation Act before the

Hon'ble Supreme Court during the course of the second SLP, such course of conduct stands deprecated by the Supreme Court in the said decision.

26. It is further contended that Section 179(2)(d)(ii) of the Act not only validates illegal assessments but also authorises the Respondent Corporation to recover taxes on the basis of such illegal assessments. Such statutory authorisation, it is submitted, is impermissible in law. Reliance is placed on ***D. Cawasji & Co. v. State of Mysore***, reported as **1984 Supp SCC 490**.
27. The Petitioner further submits that the retrospective enhancement of property tax operates harshly, unreasonably, and oppressively, as tenants for the relevant past periods are no longer traceable, rendering recovery of the enhanced tax wholly impracticable. This demonstrates that the impugned amendment is neither reasonable nor a bona fide curative measure, but a calculated attempt to defeat a binding judicial decision. It is therefore submitted that Section 3 of the Kolkata Municipal Corporation (Amendment) Act, 2022 is ultra vires the Constitution of India and contrary to binding precedent, and that the Respondent Corporation remains bound by the judgment in ***Sahujain Charitable Society*** (supra) passed by the Hon'ble Division Bench, which has attained finality.
28. Learned counsel lastly places reliance ***Madras Bar Association v. Union of India***, reported as **2025 SCC OnLine SC 2498**, to submit that legislative provisions which seek to negate or override judicial pronouncements violate the constitutional principles of separation of powers and judicial independence, and are liable to be struck down on that ground as well.

Submissions on behalf of the State of West Bengal

29. Appearing on behalf of the State of West Bengal, the learned Advocate General, Mr. Kishore Dutta, submitted that the power of the State Legislature to legislate on municipal taxation, including the assessment and recovery of property tax, is traceable to Entry 5 of List II of the Seventh Schedule to the Constitution of India. This power, it was contended, must be read in conjunction with Part IX-A of the Constitution, introduced with effect from 20.04.1993, which accords constitutional status to municipalities as institutions of self-government. A conjoint reading of Entry 5 of List II and Part IX-A, it was argued, makes it clear that legislative competence in matters of municipal taxation vests exclusively with the State Legislature, subject only to the condition that such legislation must not transgress the constitutional framework under Part IX-A. Unless the impugned legislation is shown to be ultra vires Part IX-A, no other constitutional restriction can be invoked to invalidate it. Reliance in this regard was placed on ***State of Rajasthan v. Ashok Khetoliya***, reported as **(2022) 12 SCC 185**.
30. The learned Advocate General submitted that the impugned amendment forms part of a community-based municipal fiscal framework governing local taxation. Being an incident of sovereign taxing power exercised at the municipal level, such legislation cannot be tested on the anvil of Articles 14, 19, or 300-A of the Constitution in the manner suggested by the petitioners, in the absence of manifest arbitrariness or lack of legislative competence.
31. It was contended that the Amendment Act does not create any new or additional tax liability. It merely regulates the procedure and mechanism

for assessment and recovery of an existing statutory levy which inheres in the property under the parent enactment. Property tax, it was submitted, is a continuing charge attached to the property and does not depend upon the timing of assessment or revaluation.

32. The learned Advocate General further submitted that the impugned amendment is not retrospective in the legal sense. A statute does not become retrospective merely because certain facts or conditions relevant to its operation pertain to a period antecedent to its enactment. The absence of assessment or recovery for a particular period does not confer a vested right upon an assessee to claim immunity from taxation once the law provides otherwise. The levy or recovery of property tax with reference to an earlier period does not impose a fresh liability upon a past transaction, but merely enforces an existing statutory obligation. It was submitted that the permissibility of such operation of fiscal statutes stands recognised by the Hon'ble Supreme Court in ***D.G. Gose & Co. (Agents) Pvt. Ltd. v. State of Kerala***, reported as ***(1980) 2 SCC 410***.

33. It was further submitted that, in any event, the concept of retrospective operation is inherent in the statutory scheme of the Kolkata Municipal Corporation Act, 1980. The Act casts an initial obligation upon the assessee to file returns, following which the Corporation is empowered to undertake assessment or revaluation. Upon completion of such process, any differential amount becomes recoverable as arrears. Property tax, being a recurring and continuing liability attached to the property, continues to accrue irrespective of the time taken to complete the assessment or revaluation.

34. Addressing the issue of limitation, the learned Advocate General submitted that although Section 573 of the KMC Act prescribes a three-year limitation for recovery of certain dues, such as charges, costs, expenses, fees, rates, rents, or other accounts, the provision consciously excludes tax, building tax, or property tax from its ambit. Property tax is levied and recovered under Chapter XVI of the Act, which constitutes a complete and self-contained code providing a distinct mechanism for its assessment and realisation. Consequently, Section 573 has no application to the recovery of property tax. In support of this submission, reliance was placed on ***Calcutta Municipal Corporation v. Abdul Halim Gaznavi Molla***, reported as **AIR 1998 Cal 345**, ***Nepal Chandra Kar v. Calcutta Municipal Corporation***, reported as **2003 (1) CHN 380**, and ***Nazim's Restaurant Pvt. Ltd. v. Kolkata Municipal Corporation***, reported as **2023 SCC OnLine Cal 5723**.
35. It was further contended that the Division Bench decision in ***Sahujain Charitable Society*** (supra) was rendered without taking into consideration earlier binding Division Bench judgments on the same issue and, therefore, does not lay down the correct position of law. According to the learned Advocate General, the judicial reading of a limitation period into the statute, where the Legislature has consciously chosen not to prescribe one, amounts to impermissible judicial legislation.
36. The learned Advocate General further submitted that hardship or administrative inconvenience cannot constitute a ground for striking down a fiscal statute. Several fiscal enactments, including those under the SARFAESI Act and the DRT framework, impose onerous consequences, yet have consistently been upheld in the absence of constitutional infirmity.

- 37.** It was finally submitted that there is neither any challenge to the legislative competence of the State Legislature nor any violation of Article 14 of the Constitution. None of the recognised grounds for invalidating legislation, such as lack of competence, manifest arbitrariness, or unreasonableness, is attracted in the present case. The petitioners' grievance, at its highest, relates only to alleged hardship, which cannot furnish a legally sustainable basis for striking down a fiscal provision. The learned Advocate General accordingly prayed for dismissal of the writ petition.

Submissions on behalf of the Respondent (Kolkata Municipal Corporation)

- 38.** *Per contra*, Mr. Jaydip Kar, learned Senior Counsel appearing for the Respondent Municipal Corporation, submits that the challenge to the constitutional validity of Section 3 of the Kolkata Municipal Corporation (Amendment) Act, 2022 is wholly misconceived and devoid of merit. It is contended that the impugned provision squarely falls within the legislative competence of the State Legislature and constitutes an integral part of a rational and comprehensive statutory framework governing municipal taxation.
- 39.** The Respondent Corporation submits that the impugned amendment represents a valid exercise of legislative power to enact retrospective fiscal legislation, particularly for the purpose of curing defects which had rendered the earlier statutory regime unenforceable. It is well settled that the Legislature is competent to enact laws with retrospective effect, including validating statutes, provided the basis of the judicial declaration of invalidity is removed by an appropriate statutory cure. Learned Senior Counsel submits that the Hon'ble Supreme Court has consistently

recognised the power of the Legislature to neutralise the foundation of a judicial decision through retrospective legislation. In the present case, the amendment expressly addresses the deficiencies noted in the earlier judgment and, therefore, satisfies the constitutional parameters of a valid validating enactment. Reliance in this regard is placed on ***Rai Ramakrishna v. State of Bihar***, reported as **1963 SCC OnLine SC 31**, ***Amarendra Kumar Mohapatra v. State of Orissa***, reported as **(2014) 4 SCC 583**, and ***Katikara Chintamani Dora v. Guntreddi Annamanaidu***, reported as **(1974) 1 SCC 563**.

40. It is further submitted that the Legislature is not precluded from retrospectively modifying fiscal provisions when such modification is founded upon a rational policy objective and is accompanied by a statutory correction addressing the defect identified by the Court. The impugned amendment, it is urged, is remedial and curative in nature and seeks to protect municipal revenue, which is essential for effective local governance and public administration.
41. Placing reliance on the Constitution Bench decision in ***Commissioner of Income Tax (Central)-I v. Vatika Township Pvt. Ltd.***, reported as **(2015) 1 SCC 1**, the Respondents submit that while retrospective fiscal legislation must be clear, certain, and unambiguous, the present enactment meets these requirements inasmuch as it clearly delineates the manner, extent, and temporal operation of the enhancement. Further reliance is placed on ***State Bank of India v. V. Ramakrishnan***, reported as **(2018) 17 SCC 394**, ***Union of India v. V.F. Ltd.***, reported as **(2020) 20 SCC 57**, and ***Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.***, reported as **(2021) 9 SCC 657**, to submit that

the Legislature is vested with wide latitude to enact retrospective laws in public interest, including fiscal measures intended to protect revenue, ensure administrative continuity, and clarify legislative intent, subject only to constitutional limitations.

42. Learned Senior Counsel further submits that fiscal statutes routinely provide for extended periods of assessment or reassessment, particularly in cases involving non-filing or suppression of material facts. By way of illustration, reference is made to Section 11A of the Central Excise Act, 1944; Section 73 of Chapter V of the Finance Act, 1994 (Service Tax); Section 74 of the CGST/SGST Act, 2017; and Section 147 of the Income Tax Act, 1961. It is submitted that under the KMC Act, Section 179 provides for regular periodic assessment, while the proviso to Section 180(2) specifically enables reassessment proceedings subject to fulfilment of prescribed statutory conditions.
43. The Respondents further submit that the Petitioners' plea of lack of legislative competence is entirely misconceived. The impugned amendment does not seek to override a judicial verdict by a bare declaration, but introduces substantive statutory modifications to correct the very basis on which the earlier provision was invalidated. It rationalises the method of valuation, clarifies the temporal scope of enhancement, and expressly validates earlier assessments, thereby satisfying the settled tests for a curative and validating statute. It is further contended that any individual hardship or practical difficulty faced by taxpayers or landlords in recovering amounts from tenants cannot constitute a ground for invalidating an otherwise constitutionally valid fiscal enactment. Reliance in this regard is placed on ***Srimati Tarulata Shyam & Ors. v.***

Commissioner of Income Tax, reported as **(1977) 3 SCC 305**. The Respondents accordingly submit that the amendment is intra vires, constitutionally valid, and essential for safeguarding the municipal revenue framework.

44. In view of the aforesaid submissions, learned counsel for the Respondent Municipal Corporation prays for dismissal of the writ petition.

Legal Analysis

45. This Court has heard the submissions advanced by learned counsel appearing for the respective parties, perused the records placed before it, and carefully considered the judgments relied upon.
46. By the present writ petition, the Petitioner assails the constitutional validity of Section 3 of the Kolkata Municipal Corporation (Amendment) Act, 2022, contending that it is ultra vires Articles 14, 19, and 300A of the Constitution of India and consequently void and inoperative under Article 13. The gravamen of the challenge is that the impugned provision seeks to legislatively override binding judicial pronouncements and, in doing so, exposes assesseees to retrospective and indeterminate fiscal liability, alleged to be arbitrary and unconstitutional.
47. For purposes of clarity and completeness, this Court proceeds to examine the scheme of the unamended and amended Section 179(2)(d) of the Kolkata Municipal Corporation Act, 1980, the judgment of this Court in **Sahu Jain Charitable Society** (supra), the constitutional principles underpinning that decision, and the impact of the subsequent legislative amendment on the statutory framework.
48. The unamended Section 179(2)(d) reads as follows:

“(d) may be revised on the expiration of each such period

provided that when the annual valuation of any land or building has not been revised on the expiry of any such period for reasons to be recorded in writing, the previous annual valuation shall continue to remain in force until it is so revised.

provided further that the Municipal Commissioner may, on the expiry of such period, revise the annual valuation of such land or building at any time and such revised valuation shall take effect from the beginning of the quarter from which the annual valuation would have been revised under this clause.”

- 49.** In ***Sahujain charitable Society*** (*supra*), the petitioners challenged the constitutional validity of the second proviso to Section 179(2)(d) on the ground that the expression “at any time” conferred upon the Municipal Commissioner an unguided and unrestricted power to retrospectively revise annual valuations, thereby subjecting assesseees to unlimited fiscal exposure. The Hon’ble Division Bench held that such uncanalised authority, unlimited in point of time and unfettered in scope, offended the guarantee of equality under Article 14 of the Constitution. The Division Bench, however, declined to strike down the provision and instead adopted the doctrine of reading down. By importing the requirement of a “reasonable time”, the Court held that retrospective revision could not extend beyond three years preceding the date of the revising order. The relevant observations are extracted below:

“25. The power conferred on the Municipal Commissioner to revise the annual valuation of land or building under Section 179(2), second proviso was indeed unlimited in point of time and very wide in its amplitude. Any piece of legislature where unguided or uncanalised power is given to an authority to that extent invalid. Therefore, the power conferred on the Commissioner in my opinion is indeed so unlimited that it falls foul of Article 14 of the Constitution of India.

26. *However, in the Supreme Court cases discussed by me above similar powers were conferred on the authority. In the case of New Delhi Municipal Committee Vs. The Life Insurance Corporation of India reported in 1977 SC 2134 similar power was conferred on the municipal committee under the Punjab Municipal Act to amend the assessment lists. In all these matters including the municipal matter the Supreme Court did not declare the provisions as ultravires but tried to "read down" the rigours of the provision by implying words into the offending provision so as to make a provision reasonable. It implied the words "within the reasonable time" after the phrase "at any time" to make the section workable.*

27. *We adopt the same procedure. The commissioner can only have the power to revise valuation within a reasonable period of time. In the case of Santoshkumar Shivgonda Patil and Ors. Vs. Balasaheb Tukaram Shevale and Ors. reported in (2009) 9 SCC 352 the Supreme Court computed reasonable time in the subject Act to be three years. In Section 573 of the Kolkata Municipal Corporation Act, 1980, the Corporation has the power to recover any sum by initiating a proceeding within three years from the date, such sum became due and payable. Therefore, on a proper interpretation of the proviso, and upon reading it down to save it from unconstitutionality, the period for which valuation of a property can be raised must not be more than three years before the date of the revising order."*

50. The aforesaid judgment was carried in challenge before the Hon'ble Supreme Court in SLP (C) No. 46204 of 2018, which was dismissed by order dated 18.01.2019. A subsequent review petition (RVWO 36 of 2019) was dismissed by this Court on 27.02.2020. The Kolkata Municipal Corporation thereafter approached the Hon'ble Supreme Court in SLP (C) No. 16025 of 2021, which too was dismissed on 03.05.2024. The effect of these proceedings is that the interpretation placed by the Division Bench in **Sahujain charitable Society** (supra) attained finality.

51. Consequently, following **Sahujain charitable Society** (supra), the power of the Municipal Commissioner to retrospectively revise annual valuation under

Section 179(2)(d) stood judicially confined to a period not exceeding three years prior to the date of the revising order. The previously unfettered expression “at any time” was thus constitutionally conditioned by judicial interpretation.

52. It is, therefore, necessary to examine the legislative background which culminated in the enactment of Section 3 of the Kolkata Municipal Corporation (Amendment) Act, 2022.

53. By the Kolkata Municipal Corporation (Amendment) Act, 2006, brought into force with effect from 01.05.2007, the earlier Annual Rental Value (ARV) system was sought to be replaced by the Unit Area Assessment (UAA) regime, resulting in repeal of the ARV-based provisions. However, owing to the absence of requisite preparatory and infrastructural arrangements, immediate implementation of the UAA Scheme proved impracticable. To address this transitional difficulty, Section 174(3) was inserted with effect from 01.04.2008, providing that annual valuation would continue to be governed by the pre-2006 ARV framework until publication of the Scheme under Section 174(1). Thereafter, by the Amendment Act of 2011, Section 232A was introduced to clarify the continued applicability of certain pre-2006 provisions until final publication of the Scheme. Ultimately, the UAA Scheme was notified and brought into effect from 01.04.2017, thereby keeping the ARV regime operational until 30.03.2017.

54. In this background, and with the stated object of addressing assessments pertaining to the period preceding the commencement of the UAA regime, the Legislature enacted the Kolkata Municipal Corporation (Amendment) Act, 2022. By this amendment, notified on 31.05.2023 and brought into force on

09.06.2023, Section 179(2)(d) was substituted in its entirety. The substituted provision reads as follows:

“(d) notwithstanding anything contained in this Act or any judgment, decree or order to the contrary, the annual valuation of such land or building—

(i) may be revised any time not beyond six years from the date of expiration of such period and such valuation shall take effect from the beginning of the quarter from which the annual valuation could have been revised;

(ii) where it has been made or revised beyond such period, the same, including realization of property tax on the basis thereof, shall be deemed to be valid and any outstanding property tax on such revision shall be recoverable.”

- 55** A principal contention advanced against the substituted provision is that it seeks to legislatively displace the binding interpretation rendered by the Hon’ble Division Bench in **Sahujain charitable Society** (supra), which had imposed a constitutionally mandated temporal limitation on retrospective revision. It is, therefore, necessary to examine the nature and scope of the changes introduced by the amendment to Section 179(2)(d), and their legal effect, in order to assess the sustainability of the challenge.
- 56.** A comparison of the unamended Section 179(2)(d) of the Kolkata Municipal Corporation Act, 1980 and the substituted provision introduced by the Kolkata Municipal Corporation (Amendment) Act, 2022 indicates that the amendment has altered the structure and operational contours of the power of revision of annual valuation.
- 57.** Under the unamended Section 179(2)(d), the statute contemplated revision of annual valuation upon the expiration of each prescribed valuation period. Where such revision was not undertaken upon the expiry of the period, the provision required the reasons for non revision to be recorded in writing, and the previous annual valuation was to continue to remain in

force until revision. The second proviso to the unamended provision empowered the Municipal Commissioner, upon expiry of the relevant period, to revise the annual valuation “at any time”, with such revised valuation taking effect from the beginning of the quarter from which the valuation would ordinarily have been revised. The provision did not prescribe any express outer time limit for such retrospective revision, nor did it contain any validating or deeming clause in respect of past revisions or recoveries. The unamended provision also did not contain a non-obstante clause. Its operation was therefore subject to other provisions of the Act as well as to judicial interpretation and control.

58. It was this absence of a temporal boundary, coupled with the phrase “at any time”, that led the Division Bench in ***Sahujain charitable Society*** (*supra*) to hold that the power was constitutionally infirm unless read down. The Court cured the defect by judicial interpretation, limiting retrospective revision to three years, thereby preserving the provision while aligning it with Article 14.
59. By contrast, the amended Section 179(2)(d) commences with a non-obstante clause, providing that the revised provision shall operate notwithstanding anything contained in the Act or in any judgment, decree, or order to the contrary. The inclusion of such a clause alters the manner in which the provision interacts with existing statutory provisions and prior judicial determinations. Sub-clause (i) of the amended provision expressly stipulates that annual valuation may be revised at any time, subject to a maximum period of six years from the date of expiration of the relevant assessment period. This introduces a defined temporal limit for retrospective revision which was not expressly set out in the unamended

text. Sub-clause (ii) of the amended provision further provides that where revisions have been made beyond the six years period, such revisions, along with the realisation of property tax on the basis thereof, shall be deemed to be valid, and that any outstanding property tax arising from such revisions shall be recoverable. The unamended provision did not contain any express deeming or validating mechanism of this nature. Another point of distinction lies in the treatment of past assessments and recoveries. While the unamended provision operated prospectively in the sense that it authorised revision upon expiry of a valuation period without expressly addressing the validity of prior actions, the amended provision expressly addresses the status of past revisions and recoveries through a statutory deeming clause.

- 60.** In summary, the unamended Section 179(2)(d) provided for revision of annual valuation without prescribing an express outer limit and without incorporating any validating clause, thereby leaving the provision to operate subject to judicial interpretation. The amended Section 179(2)(d), on the other hand, introduces an express temporal limit, incorporates a validating mechanism in respect of past revisions and recoveries, and contains a non-obstante clause governing its interaction with other laws and judicial decisions.

Whether the newly substituted Section 179(2)(d) of the Kolkata Municipal Corporation Act, 1980 is unconstitutional.

- 61.** The constitutional validity of the substituted Section 179(2)(d) of the Kolkata Municipal Corporation Act, as introduced by the Amendment Act of 2022, falls to be examined in the light of the settled principles governing retrospective and validating legislation. While it is beyond dispute that the

Legislature is competent to enact laws with retrospective effect, including fiscal statutes, such competence is circumscribed by constitutional limitations and cannot be exercised in a manner that transgresses fundamental rights or undermines binding judicial determinations.

62. There is no controversy as to legislative competence. The State Legislature is fully empowered under Entry 5 of List II of the Seventh Schedule, read with Part IX-A of the Constitution, to legislate on municipal taxation. The challenge, therefore, is not to the source of power, but to the manner and extent of its exercise.
63. The controlling principle, consistently articulated in ***Shri Prithvi Cotton Mills Ltd.***, (*supra*), ***Rai Ramakrishna*** (*supra*), ***Municipal Corporation of the City of Ahmedabad*** (*supra*), ***Amarendra Kumar Mohapatra*** (*supra*), ***D. Cawasji & Co.*** (*supra*), ***Jayam & Company*** (*supra*), and reaffirmed in ***Madras Bar Association*** (*supra*), is that while the Legislature may neutralise the basis of a judicial decision by curing the defect identified therein, it cannot, by a mere declaration or by employing a non-obstante clause, render a binding judgment ineffective without removing the underlying constitutional infirmity.
64. In ***Sahujain charitable Society*** (*supra*), the Division Bench did not strike down Section 179(2)(d) simpliciter. The Court identified the constitutional infirmity as the conferment of an unguided, excessive, and uncanalised power of retrospective revision, unlimited in point of time, which was held to offend Article 14. To preserve the provision, it was read down by prescribing a maximum retrospective limit of three years, derived from the

statutory scheme and settled precedent. This interpretation was carried in challenge up to the Hon'ble Supreme Court and has since attained finality.

65. The substituted Section 179(2)(d) introduces a materially altered statutory framework. By employing an expansive non-obstante clause, *"notwithstanding anything contained in this Act or any judgment, decree or order to the contrary"*, the Legislature has expressly conferred overriding effect upon the amended provision, both over the existing statutory framework and over binding judicial pronouncements. Sub-clause (i) enlarges the permissible period of retrospective revision to six years from the expiry of the relevant assessment period.
66. Sub-clause (ii) of the impugned provision extends to validating revisions of annual valuation made beyond the prescribed six-year period and deems lawful the assessment, levy, and realisation of property tax founded thereon, whether such revisions were undertaken prior to or subsequent to judicial pronouncements. The validating fiction is framed to operate notwithstanding any judgment, decree, or order to the contrary, including the decision in ***Sahujain charitable Society*** (*supra*). Clause (i), on the other hand, appears to prescribe a statutory limitation by restricting the revision of annual valuation within a period not exceeding six years from the expiration of the relevant period. When read together, the two clauses raise a question as to whether the introduction of a temporal restriction under clause (i) retains independent legal significance, given that clause (ii) accords validity to revisions undertaken beyond that period and permits recovery of tax on that basis. Considered holistically, the amendment appears to do more than merely clarify procedure or remove ambiguity; it arguably re-enlarges the scope of retrospective revision and seeks to

validate actions that had earlier been subjected to judicial scrutiny. The issue that thus arises for consideration is whether the amendment effectively addresses the defect identified in **Sahujain charitable Society** (*supra*), which related not merely to the phrase “at any time”, but to the substantive width of the power to reopen concluded assessments and the resulting impact on certainty and finality in fiscal matters.

67. The judgments relied upon by the State and the Municipal Corporation, including **D.G. Gose & Co. (Agents) Pvt. Ltd.**, (*supra*), **Commissioner of Income Tax v. Vatika Township Pvt. Ltd.**, (*supra*), and **Ghanshyam Mishra & Sons Pvt. Ltd.**, (*supra*), undoubtedly recognise the permissibility of retrospective fiscal legislation. However, those authorities proceed on the premise that such legislation cures the defect identified by the Court and does not unsettle final judicial determinations or validate exactions held to be constitutionally infirm. None of those decisions sanction legislative nullification of a judgment that has attained finality without curing its foundational defect.
68. Conversely, the line of authority in **Municipal Corporation of the City of Ahmedabad** (*supra*), **D. Cawasji & Co.** (*supra*), **Jayam & Company** (*supra*), and **Madras Bar Association** (*supra*) caution against legislative measures that retrospectively validate illegal exactions, resurrect time barred liabilities, or directly trench upon judicial power by overriding binding decisions through statutory fiat.
69. The validating and overriding features of the substituted Section 179(2)(d), particularly the deeming fiction that renders lawful even those revisions and recoveries made contrary to binding judicial determinations, have the effect of unsettling finality, reviving liabilities that had ceased to exist in

law, and subjecting assesseees to retrospective fiscal burdens beyond what was judicially sanctioned. These consequences implicate the guarantees of equality and non-arbitrariness under Article 14, the protection against deprivation of property save by authority of law under Article 300A, and the doctrine of separation of powers.

70. While courts proceed on a presumption of constitutionality and ordinarily seek to preserve legislation through harmonious construction, the doctrine of reading down cannot be employed to rewrite a statute or efface express legislative intent. Where the Legislature has, in clear terms, enacted a retrospective validating provision intended to override judicial decisions without curing the constitutional infirmity identified therein, the scope for judicial salvaging is necessarily limited.
71. Viewed in isolation, sub-clause (i), which prescribes a finite temporal limit, may be capable of a constitutionally compliant construction if confined within the outer boundary already delineated in **Sahu Jain Charitable Society** (supra). A power of retrospective revision within a reasonable and constitutionally permissible period is not, per se, alien to fiscal legislation.
72. Sub-clause (ii), however, appears to leave limited scope for a saving or harmonising construction. Its language is explicit and it is expressly retrospective, with the consequence that it accords statutory validity to actions that had been the subject of binding judicial determinations which have since attained finality. The question that thus arises is whether sustaining the provision would require the Court either to read into it limitations not borne out by its text or to substantially alter its legislative content, an exercise that may fall outside the permissible bounds of constitutional interpretation. It also calls for examination whether sub-

clause (ii), in its present form, operates in tension with sub-clause (i), which prescribes a six-year temporal limitation for revision of valuation, inasmuch as the validating fiction under sub-clause (ii) declares revisions undertaken beyond that period to be valid and enforceable. If so construed, the further issue for consideration is whether the limitation introduced under sub-clause (i) retains any independent legal significance or stands effectively diluted by the overriding effect of sub-clause (ii).

- 73.** The impugned validating provision contained in sub-clause (ii) is also assailed as violative of Article 300A, inasmuch as the deprivation of property it authorises is alleged to be disproportionate and arbitrary. By retrospectively validating assessments and recoveries long after liabilities had attained finality through binding judicial determinations, the amendment is contended to impose an excessive fiscal burden unrelated to the stated objective of revenue protection. Such deprivation, though clothed with the authority of law, is urged to be unconstitutional in its effect.
- 74.** The substituted Section 179(2)(d)(ii), therefore, is stated to traverse the permissible limits of validating legislation in three distinct respects: first, by effectively nullifying a judicial pronouncement that has attained finality; secondly, by re-enlarging and resurrecting a power previously held to be constitutionally infirm; and thirdly, by retrospectively validating actions interdicted by judicial decision without curing the underlying defect.
- 75.** In these circumstances, the provision, viewed as a whole, does not appear to be wholly amenable to being saved by the doctrine of reading down. The question of severability of its components, however, remains to be considered.

76. Having considered the scope, effect, and constitutional implications of the impugned amendment, the Court proceeds to record its conclusions on the validity and severability of the substituted provisions.
77. The opening non-obstante clause, namely, the words '*notwithstanding anything contained in this Act or any judgment, decree or order to the contrary*', insofar as it purports to override or nullify binding judicial pronouncements, is unconstitutional, void, and is accordingly quashed. The said portion shall be inoperative and unenforceable.
78. Sub-clause (i) of the substituted Section 179(2)(d), insofar as it empowers revision of annual valuation within a defined temporal framework, is not per se unconstitutional. The limitation of three years prescribed in **Sahujain charitable Society** (*supra*) arose only because the unamended provision conferred an unlimited retrospective power. The Legislature, by specifying a finite period of six years in sub-clause (i), has imposed a clear temporal boundary, which is within its legislative competence and does not, on its face, offend constitutional limitations. However, the six-year limit operates prospectively and generally in relation to assessments not already concluded, it cannot reopen liabilities already crystallised by final judicial determination.
79. Sub-clause (ii), which retrospectively validates revisions and recoveries notwithstanding binding judicial determinations, is unconstitutional and inoperative, being violative of Articles 14 and 300A of the Constitution and the doctrine of separation of powers.
80. The offending portion is severable. Its invalidation does not render the remainder of Section 179(2)(d) unworkable or defeat the broader statutory scheme governing assessment and revision.

81. Consequently, Section 179(2)(d) of the Kolkata Municipal Corporation Act, 1980, as substituted by Section 3 of the Amendment Act of 2022, shall operate without the non-obstante clause and without sub-clause (ii).
82. Consequently, all revisions of annual valuation and consequential demands of property tax shall be governed by Section 179(2)(d) as amended by the Kolkata Municipal Corporation (Amendment) Act, 2022, with the non-obstante clause and sub-clause (ii) rendered inoperative. Sub-clause (i) shall operate as enacted, permitting retrospective revision within the clearly defined period of six years from the expiration of the relevant assessment period. Assessments or recoveries founded solely upon the invalidated portion shall be unenforceable.
83. It is clarified that this declaration shall not affect revisions lawfully made within the permissible retrospective period of three years in accordance with **Sahujain charitable Society** (supra), nor preclude the Municipal Corporation from undertaking fresh assessments in accordance with law, subject to the aforesaid constitutional limitations.

Assessment of the Factual Matrix vis-à-vis the Amendment

84. The sequence of events following the enactment of the Kolkata Municipal Corporation (Amendment) Act, 2022 assumes relevance. By communication dated 23.07.2024, the Respondent Corporation informed the Petitioners that Section 179(2)(d) of the Act had been substituted by the said Amendment. Relying upon the amended provision, the Corporation asserted that, notwithstanding anything contained in the parent Act or in any judgment, decree, or order to the contrary, the annual valuation of the subject premises could be revised within a period of six years from the expiry of the relevant assessment period, and that all revisions effected

earlier, even beyond such period, stood validated by statutory fiction, rendering the resultant tax dues recoverable. On this basis, the Petitioners were furnished with a revised computation alleging outstanding dues of Rs. 11,24,27,669/-, inclusive of interest of Rs. 8,22,14,498.62/- and penalty of Rs. 39,40,847.22/-, with a sum of Rs. 10,05,080/- shown as lying in suspense.

- 85.** As noticed above, the substituted provision is characterised by a sweeping non-obstante clause, namely, “notwithstanding anything contained in this Act or any judgment, decree, or order to the contrary.” By employing this formulation, the Legislature sought to confer overriding effect not only over the existing statutory framework but also over binding judicial pronouncements which had previously circumscribed the permissible temporal reach of retrospective revision. Sub-clause (i) purports to authorise revision within a six year window, while sub-clause (ii) seeks to retrospectively validate revisions made beyond such period, irrespective of prior judicial adjudication.
- 86.** However, it is important to be note that, the substitution of Section 179(2)(d) by the Kolkata Municipal Corporation (Amendment) Act, 2022 came into force with effect from 09.06.2023 and operates prospectively. There is nothing in the Amendment Act, either expressly or by necessary implication, to indicate a legislative intent to apply the substituted provision retrospectively so as to reopen assessments or liabilities which had already attained finality prior to its commencement. Consequently, the six-year window contemplated under sub-clause (i) can govern only revisions undertaken after 09.06.2023 and cannot be invoked to displace judicially settled limitations governing earlier periods.

87. When the substituted provision is examined in conjunction with the demand dated 23.07.2024, it becomes evident that the said demand proceeds on the erroneous premise that the amended Section 179(2)(d) retrospectively displaces the constitutional limitation judicially affirmed in **Sahujain Charitable Society** (supra). In that case, the Division Bench prescribed a maximum retrospective limit of three years, which stood affirmed by dismissal of the special leave petitions and review petitions by the Hon'ble Supreme Court, thereby attaining finality inter parties. The demand seeks to reopen and recompute liabilities beyond this period by applying the substituted provision retrospectively, which is impermissible in law.
88. What distinguishes the present case from ordinary validating legislation is that the impugned amendment is sought to be applied against the very same assessee, in respect of the very same assessments, which stood conclusively governed by a final judicial determination. A legislative amendment, even where retrospective operation is claimed, cannot be employed as a device to resurrect a liability which, by operation of a binding judgment inter parties, had ceased to exist in law. To permit such application would amount to an impermissible annulment of judicial decisions *in personam*, offending the principles of finality, separation of powers, and constitutional governance.
89. In view of the foregoing, the impugned exercise cannot be sustained qua the Petitioners. Sub-clause (i) of the substituted Section 179(2)(d) may operate prospectively within its legislatively defined six year period in respect of assessments initiated after 09.06.2023, but insofar as the Petitioners are concerned, the three-year limitation laid down in **Sahujain**

Charitable Society (supra) continues to govern the field for periods prior to the amendment. Sub-clause (ii), having been held unconstitutional and inoperative, cannot furnish the basis for any demand. Consequently, the demand dated 23.07.2024, insofar as it seeks to reopen or resurrect liabilities that had attained finality under binding judicial determination, is legally unsustainable and is liable to be quashed.

Conclusion

90. Having considered the rival contentions and the statutory scheme, this Court records the following conclusions:

- (i) Section 179(2)(d) of the Kolkata Municipal Corporation Act, 1980, as substituted by Section 3 of the Kolkata Municipal Corporation (Amendment) Act, 2022, shall be operative without the opening non-obstante clause and without sub-clause (ii). Sub-clause (i) shall be enforced as enacted, permitting revision of annual valuation within six years from the expiration of the relevant period.
- (ii) In consequence, the letter dated 23.07.2024 issued by the Respondent Corporation, raising a demand of Rs. 11,24,27,669/- (including interest of Rs. 8,22,14,498.62/-) and penalty of Rs. 39,40,847.22/-, in respect of various parts and portions of the basement, 11th floor, part of the 12th floor, and the 13th to 16th floors of Premises No. 8, Camac Street (now known as Abanindranath Thakur Sarani), Kolkata is quashed and set aside. The Respondent Corporation shall be at liberty to issue a revised demand strictly in accordance with **Sahu Jain Charitable Society**

(*supra*), with retrospective revision only to the extent permitted under the final judicially settled period applicable to the Petitioners. The Petitioner shall be entitled to refund of any amount paid in excess of what is legally recoverable under the said judgment.

- 91.** This declaration shall not reopen or disturb assessments that have attained finality or were lawfully made within the permissible retrospective period, nor shall it affect the Corporation's power to make fresh assessments in accordance with law, it removes protection only from actions taken beyond constitutional or judicial limits.
- 92.** With this directions, the present writ petition is partly allowed.

(Gaurang Kanth, J.)

SAKIL AMED (P.A)

