

o/c
(L) 2434/13

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. OF 2013

Property Owners' Association & Ors.

...Petitioners

Versus

State of Maharashtra through the
Chief Secretary & Ors

...Respondents

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO.****OF 2013**

Property Owners' Association

... .. **Petitioners**

Versus

State of Maharashtra through the
Chief Secretary & Anr.... .. **Respondents****SYNOPSIS AND LIST OF DATES AND EVENTS****I. SYNOPSIS OF THE CASE:**

1. This Petition is filed by an Association of owners of properties/ buildings. The rents of more than 90% of the tenements are fixed at 1st September 1940 levels.
2. In 1947, the Respondent No. 2 was charging property tax at 20% of the Rateable Value (RV). The RV was fixed by taking the annual letting value, on the basis of the Standard Rent, after giving a deduction of 2 months' rents to cater for the expenses for maintenance of the property etc. The annual letting value virtually amounted to 10 months the Standard Rent.
3. It is judicially recognized that out of 36,000 residential buildings in the City nearly 17,500 were constructed prior to 1905. As per the system adopted by the Respondent No. 2, the method of levying property tax by arriving at capital value takes

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into account only a lifespan of 50 years. In other words, a majority of the buildings, which are already more than 100 years old at present, have been treated as being on par.

4. In its XII report of 1979, the Maharashtra Law Commission recorded that 46% of the landlords belong to low income group; 27% belong to middle income group; and only 25% belong to the high income group 75% of the so-called landlords are depending on the rent of property for their livelihood.
5. As per the MMC Act,
 - a) The primary liability to pay the property tax is on the lessors.
 - b) The landlord could pass on the taxes to the tenant [i.e. increase in taxes since 1947]. If the tenant fails to pay the owner and consequently, the owner defaults in payment, the building could be auctioned.
6. Since the year 2001, the Respondent has been toying with the idea of giving up the rateable value system which had been in existence for more than a century and they wanted to introduce a new system of taxation based on the capital value of the building.
7. Despite several objections made by the Petitioners, the Respondent No. 1 went ahead and amended the provisions of the Mumbai Municipal Corporation Act, 1888 (for short MMC Act). By the said amendment, the Respondent No. 2 was given

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an option to either continue with RV system or to adopt the capital value system from such date as it deem fit and proper.

8. The Respondent No. 2 decided to collect property taxes on the capital value system.
9. The Respondent No. 1 came out with a telescopic method of fixing of property tax and also stated that for the first 5 years there would be a cap on the tax would be levied. In so far as residential tenements were concerned, the cap was fixed as twice the tax levied in the previous year and in so far as non-residential premises were concerned, the cap was fixed at thrice the property tax levied in the previous year.
10. The Respondent No. 1 amended the MMC Act to enable the Respondent No. 2 to issue provisional bills which would later on be treated as if the bills had been raised under the capital value system.
11. It is the case of the Petitioners that
 - (a) The levy of property tax proposed to be levied under the provisions of the MMC Act is is not a tax on lands or buildings but a compensatory tax;
 - (b) The provisions of Section 140 (1) (a); 140 (1) (b); 140 (1) (ca) read with Section 195 (E) and 195 (G) and 140 (1) (d) read with Section 354(UA) are infringe Articles 243-X and 243-Y of the Constitution of India;

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- (c) In any event, the provisions of Section 140 (1) (a); 140 (1) (b); 140 (1) (ca) read with Section 195 (E) and 195 (G) and 140 (1) (d) read with Section 354(UA) are ultra vires as interalia the legislature has delegated its power of taxation to the Respondent No. 2.
- (d) The Respondent No. 2 seeks to give retrospective effect to the assessments made by them. This is ultra vires the provisions of the MMC Act including Section 128.
- (e) There is no nexus between the object of taxation and the methodology adopted to levy the tax as interalia the amount required for performing the services and duties could have no co-relation whatsoever with a capital value of the building by taking into account the Stamp Duty Ready Reckoner for Mumbai [for short SDRR] as the basis.
- (f) In any event, if property tax is treated as a tax simplicitor it should have taken into account the paying capacity of the owners of these buildings. The owners of these buildings do not get any return on the basis of the capital value of the property as interalia their rents are regulated by the Maharashtra Rent Control Act.
- (g) The levy of tax in the capital value system is confiscatory by nature as the owners would not have their wherewithal to pay high taxes especially when they do not get an adequate return from the property due to the rent restrictions imposed on them by the MRC Act.

- (h) The Respondent No. 2 has issued circulars calling upon the members of the Association to file their complaints in a particular format with a rider that the complaints would not be entertained if there are deviations from the format. Such a condition affects the Petitioners' rights guaranteed under Article 19(1)(a) as their freedom of expression is impaired.
 - (i) The demand that the Petitioners should take interest at the rate of 2% per month in case payments are not made before 31st March 2013 is ultra vires.
 - (j) The Petitioners cannot be held liable to pay property taxes until and unless the Respondent No. 2 has disposed off the complaints made by the property owners.
 - (k) The proposed levy violates Art. 265 and 19(1)(g) of the Constitution.
12. For a period of 5 years, the property tax in respect of residential tenements or buildings having a carpet area of 46.45 square metres or less would not exceed the amount of property tax levied and payable in the year immediately preceding the year of adoption of capital value as the basis (fourth proviso of Section 140A).
13. The Municipal Corporation over the past 5 years, as per the period 2007 – 2008 till 2011 – 2012, has been showing substantial surpluses in their balance sheet. The average surplus for 5 years has been about 44%.

14. The Respondent No. 2 has taken the SDRR as the basis for arriving at the capital value of the building. The SDRR has adopted the concept of rates of built-up area. In other words, the rates mentioned in the RR are for the built-up area of the flat/building and not for the carpet area. Further, SDRR takes into account the potential of the building (FSI). These factors have no relevance for the purpose levy of property tax.
15. The Petitioners have filed their objections before the Respondent No. 1 against the proposed change in law. They also filed complaints before the Respondent No. 2.
16. In view of the stand of the Respondent No. 2 that they would not consider complaints which do not confirm to their formats, the Petitioners have left with no other alternative but to file this Writ Petition as interalia the Respondents seek to levy taxes without following the mandate of law.
17. Hence, the present Petition.

II. LIST OF DATES:

S. No.	Date	Event
1.		The historical background of the Bombay province came into the rule of British Empire in the year 1818. Initially, the Corporation had jurisdiction only over the Island City.

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2.	25.04.1887	The statement of objects and reasons of the Bombay Municipal Corporation 1888 sets out that the ultimate power of determining the amount of taxation be imposed each year on the objects on which the Municipal funds shall be expended as vested in the Respondent No. 2 because no money can be either raised or expended unless provisions thereof have been made in the budget estimates approved by them.
3.	1950	By Maharashtra Act VII of 1950, Suburbs were merged with the Respondent No. 2
4.	1957	By Bombay Act 1958 of 1956, extended suburbs were merged with the Respondent No. 2.
5.	01.06.1993	By Constitution (74 th Amendment, 1992) Chapter 9-A was inserted. By virtue of Article 243-X, the legislature of the State made it by-law which could authorise a Municipality to levy and collect taxes in accordance with such procedure and subject to such limits specified in the law. Article 243-Y has left it to a Finance Commission to recommend to the Governor as to the measures needed to improve the financial position of the Municipal departments.
6.	April 2001	As required by the Respondent No. 2, a report was filed by a study group consisting of the Tata Consultancy and the Bombay University to

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		recommend ways of increasing and rationalising the levy of property taxes. The Group recommended levy of taxes by taking the capital value of the property.
7.	13.07.2006	L.A. Bill 72 of 2006 was introduced to amend the MMC Act and introduced the concept of Capital Value. The Bill interalia set out that due to restrictions or limitations the income from property tax has remained static and it has become incumbent on the Corporation to make adequate provisions to perform all its obligatory and discretionary functions. The cost of maintaining and laying roads etc. have gone up steeply over the last more than 65 years. The capital value would be determined on the basis of the SDRR.
8.	10.07.2008	The joint committee finalized the amendment to the bill and adopted its report.
9.	20.03.2011	The Maharashtra Municipal Property Tax Board Act being Maharashtra Act XIV of 2011 was enacted interalia to perform orders of the assessment done by the Respondent No. 2 and to review the property tax system and suggest suitable basis for valuation of the properties and assessment of property tax. The Mumbai Municipal Corporation Act also made amendments to the

		MMC Act.
10.	20.03.2012	The Respondent No. 2 issued a notification setting out the rules for fixing capital value of Lands and Buildings.
11.	Dec. 2012	Respondent No. 2 purported to forward bills, based on the capital value system and called for complaints to be filed within 21 days from the date of rate receipt of notice as per the format issued by the Respondent. The Respondent purported to issue bills with effect from 1 st April 2010.
12.	Feb. 2013	The members of the Petitioner No. 1 filed their complaints under Section 160(2) of the Act.
13.	2013	Without deciding the complaints as required by the MMC Act, the Respondent demanded payment of the bills before 31 st March 2013 and extended the date to 30 th Sept. 2013

III. POINTS TO BE URGED:

- A. The levy of property tax proposed to be levied under the provisions of the MMC Act is not a tax on lands or buildings but a compensatory tax.
- B. The provisions of Section 140 (1) (a); 140 (1) (b); 140 (1) (ca) read with Section 195 (E) and 195 (G) and 140 (1) (d) read with

Section 354(UA) violate Articles 243-X and 243-Y of the Constitution of India.

- C. The provisions of Section 140 (1) (a); 140 (1) (b); 140 (1) (ca) read with Section 195 (E) and 195 (G) and 140 (1) (d) read with Section 354(UA) are ultra vires.
- D. The action of the Respondent No. 2 in seeking to give retrospective effect to the assessments made by them is ultra vires the provisions of the MMC Act.
- E. The levy of property tax under the CV system violates Articles 14, 19(1)(g) and 265 of the Constitution of India.
- F. The action of the Respondent No. 2 affects the Petitioners' rights guaranteed under Article 19(1)(a).
- G. The purported change in assessment with retrospective effect is ultra vires the MMC Act.
- H. The provisions of s. 146 of the Act which seeks to fix the primary responsibility to pay the property tax on the owner/lessor violates Articles 14 and 21 of the Constitution of India?

IV. LIST OF BOOKS

1. Constitution of India 1950, as amended from time to time
2. Mumbai Municipal Corporation Act, 1888, as amended from time to time
3. Bombay Stamp Act, 1958

4. The Mumbai Municipal Property Tax Board Act 2011
5. Maharashtra Finance Commission [Miscellaneous Provisions] Act, 1994, as amended from time to time
6. Stamp Duty Ready Reckoner

And such other relevant book as may be permitted by this Hon'ble Court.

V. **LIST OF AUTHORITIES**

1. Union of India v. State of U. P. AIR 2008 SC 521;
2. Nagar Mahapalika, Varanasi v. Durga Das Bhattacharya AIR 1968 SC 1119
3. Municipal Corporation of Greater Bombay v. M/s. New Standard Engineering Co. Ltd. AIR 1991 SC 1362;
4. Pradeep Oil Corporation v. Municipal Corporation of Delhi AIR 2011 SC 1869
5. Assistant Commissioner of Urban Land Tax Madras v. Buckingham and Carnatic Co. Ltd AIR 1970 SC 169;
6. Assistant Commissioner of Urban Land Tax Madras v. Buckingham and Carnatic Co. Ltd. AIR 1970 SC 169
7. Jindal Stainless Ltd. v. State of Haryana AIR 2006 SC 2550
8. Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan AIR 1962 SC 1406.
9. Srikant Kashinath Jituri v. Corporation of the City of Belgaum AIR 1995 SC 288.
10. Municipal Corporation of Hyderabad v. P. N. Murthy AIR 1987 SC 802;

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11. Municipal Council, Madurai v. R. Narayanan AIR 1975 SC 2193
12. C. G. E. Society v. Calcutta Municipal Corpn. AIR 2003 SC 4278
13. R. Sai Bharathi v. J. Jayalalitha AIR 2004 SC 692
14. Lal Chand v. Union of India AIR 2010 SC 170
15. Jawajee Nagnatham v. Revenue Divnl. Officer, Adilabad 1994 AIR SCW 2852.
16. State of Himachal Pradesh v. Yash Pal Garg 2003 AIR SCW 2519
17. Municipal Corporation of Greater Bombay v. M/s. New Standard Engineering Co. Ltd. AIR 1991 SC 1362
18. State of West Bengal v. Kesoram Industries Ltd. AIR 2005 SC 1646
19. Government Servant Co-operative House Building Society Ltd. v. Union of India AIR 1998 SC 2636
20. State of Bihar v. Indian Aluminium Company AIR 1997 SC 3592;
21. AIR 1980 SC 271 D. G. Gouse and Co. (Agents) Pvt. Ltd. v. State of Kerala
22. Union of India v. H.S. Dhillon, AIR 1972 SC 1061
23. D. G. Gouse and Co. (Agents) Pvt. Ltd. v. State of Kerala AIR 1980 SC 271.
24. Shinde Brothers, M/s. v. Deputy Commissioner, Raichur AIR 1967 SC 1512.

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25. New Manek Chowk Spg. and Wvg. Mills Co. Ltd. v. Municipal Corporation of the City of Ahmedabad AIR 1967 SC 1801
26. Hingir-Rampur Coal Co., Ltd. v. State of Orissa AIR 1961 SC 459
27. Govt. of A.P. v. Hindustan Machine Tools Ltd. AIR 1975 SC 2037
28. A. B. Abdul Kadir v. State of Kerala AIR 1976 SC 182
29. Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi AIR 1968 SC 1232
30. Pradeep Oil Corporation vs Municipal Corporation of Delhi (2011) 5 SCC 270]

And such other relevant authority as may be permitted by the Hon'ble Court.

Dated this day of September 2013

Mulla & Mulla & Craigie Blunt & Caroe

Partner
Advocates for the Petitioners

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.

OF 2013

In the matter of Articles 14, 19(1)
(a), 19(1)(g), 21 and 265 of the
Constitution of India;

AND

In the matter of Sections 128(3);
129A, 140, 140(A), 154(1A), 154
(1B), 154(1C), 154(A) 144, 144A,
144E, 146; 140 (1) (a); 140 (1) (b);
140 (1) (ca) read with Section 195
(E) and 195 (G); 140 (1) (d) read
with Section 354 (UA) 144B, 146,
154 and lastly Section 202 of the
Mumbai Municipal Corporation
Act, 1888, [as amended from time
to time];

AND

Notification No. AC/NTC/ 1310/
2011-12 dated 20th March 2012
notifying the "Rules for fixing
capital value of lands and
buildings" and in particular Rule
22 thereof ;

AND

Special Notices issued by the
Brihan Mumbai Municipal

Corporation under Section 162(2) fixing the CV and providing for complaints to be filed the against under Section 163(2) of the Mumbai Municipal Corporation Act, 1888, [as amended from time to time];

AND

The Levy & recovery of Tax based on such CV without complying with Sections 165 & 166 of Mumbai Municipal Corporation Act, 1888.

1. Property Owners' Association,)
 204, Chandra Mahal, Room No. 9, First)
 Floor, Thakurdwar Road, Mumbai -)
 400 002 through M. N. Pittie,)
 President, B. R. Bhattad (Vice)
 President and Executive President) and)
 Ateeq Agboatwala (Hon.Secretary))
2. Smt. Rajnibai Jamnadas Sampat,)
 W/o. Shri. Jamnadas Chapsey Sampat,)
 aged about 88 years, Indian Inhabitant)
 of Mumbai, residing at 72-78,)
 Shamaldas Gandhi Road, Dava Bazar,)
 'C' Ward, Mumbai - 400 002.)
3. Antonio Jose Dias,)
 aged about 80 years, son of Antonio)
 Saud Dias, occupation: retired, Indian)

Inhabitant residing at Jubilee Building,)
 1st Floor, 84/86, Trinity Street, S. S.)
 Gaikwad Marg, Mumbai – 400002.)

4 Hosi Dali. Dastur,)
 aged about 58 years, son of Mr. Daly J.)
 Dastur, Indian Inhabitant residing at)
 Dhana Patel Building, 2nd floor, 232)
 Tardeo Road, Mumbai – 400007.)

5. Harshadkumar Chimanlal Bhavsar,)
 aged about 58 years, son of Chimanlal)
 Bhavsar, Indian Inhabitant, resident of)
 302, Vyom Arcade, 3rd Floor, Opposite)
 EU Pharma, off Subhash Road, Near)
 Gokul Arcade, Tejpal Scheme No. 5,)
 Vile Parle, Mumbai – 400057.)

6. Patel Bhogilal Hargovindas Charitable)
 Trust)
 having its address at Das Chambers, 25)
 Dalal Street, Fort, Mumbai – 400001)
 through its constituted attorney Mr. C.)
 M. Dave)

...Petitioners

Versus

1. State of Maharashtra,)
 through its Principal/Chief Secretary,)
 Mantralaya, Mumbai – 400 032.)

2. Municipal Corporation Greater)
 Mumbai,)
 having its address at Mahapalika Marg,)

- Fort, Mumbai – 400 001.)
- 3 Municipal Commissioner, Municipal)
Corporation Greater Mumbai,)
having his address at Mahapalika)
Marg, Fort, Mumbai – 400 001.)
4. The Assessor & Collector, Municipal)
Corporation of Greater Mumbai,)
Mumbai.) ...Respondents

TO:

**THE HON'BLE THE CHIEF JUSTICE
AND OTHER PUISNE JUDGES OF
THIS HON'BLE COURT**

**THE HUMBLE PETITION OF THE
PETITIONER ABOVENAMED**

MOST RESPECTFULLY SHEWETH :

1. The Petitioner No. 1 is interalia an Association of owners of properties and old buildings in the City of Mumbai and State of Maharashtra. It was established in the year 1924. The Petitioner No.1 was incorporated under the Companies Act, 1945 and is currently governed by the provisions of the Bombay Non Trading Corporation Act, 1959. The objects of the Petitioner No.1 are interalia to protect the interests of the owners of immovable properties in the city of Bombay (now Mumbai) and in the State of Maharashtra and to safeguard their rights by all constitutional means. The Articles of Association of the Petitioner No.1 defines "Property" to mean and include an immovable property either vacant or built upon or agricultural land. The Article further permits Corporates to become members of the Petitioner No.1. Petitioners 2 to 6 are owners of property within Mumbai City. The Petitioners state that the

present Petition is supported at least by 610 property owners. The said 610 property owners have executed affidavits in support of the present Petition. The Petitioners crave leave to refer to and rely upon the said affidavits of 610 property owners, being the members of Petitioners No.1, when produced. The Petitioners state that similar the Petitioners have also received representations from various cooperative housing societies indicating the total baseless method of computation of rateable value of tax and supporting the present Petition by challenging the Constitutional validity of the said Amending Act.

2. By the present Petition the Petitioners are interalia challenging:-

- i) the vires of the provisions of the Mumbai Municipal Corporation Act, 1888 including the provisions introduced by Maharashtra Act 11 of 2011, insofar as it relates to levy of property tax on the capital value (for short CV) and rate thereof is concerned;
- ii) the vires of Rule 22 introduced by the Municipal Corporation by issuing Notification No.AC/NTC/1310/2011-12 dated 20th March 2012 setting out the Rules therein for fixation of capital value of lands and buildings by the Commissioner in exercise of power conferred under Section 154(1A) & (1B) with the approval of the Standing Committee;
- iii) the basis and method of computation of the CV in contravention of the provisions contemplated by Special Notice under Section 166(2) of Mumbai Municipal Corporation Act deciding the said complaint by the Municipal Corporation under Section 165(1) of the said Act;

- iv) the action of Respondents Nos. 2 to 4 in demanding & recovering the property taxes (fixed on the basis of CV) communicated by the Special Notices issued by the Brihan Mumbai Municipal Corporation under Sec 162(2), without first investigating and deciding the complaints (filed there against under Section 163(2) of the Mumbai Municipal Corporation) after hearing the Complainant / in the presence of the complainant as mandatorily required by Sec 165(1) of the said Act, 1888 and complying with the requirements of Sec 166 of the said Act.

The Petitioners state that the aforesaid provisions of the Act are challenged as arbitrary, ultra vires and unconstitutional.

3. Respondent No. 1 is the State of Maharashtra, inter alia, conferred with the power of enactment and amendment of the Mumbai Municipal Corporation Act, 1888. Respondent No.2 Municipal Commissioner. Respondent No. 2 is the Municipal Corporation of Greater Mumbai. Respondent No.3 is the Municipal Commissioner and Respondent No.4 is the Assessor & Collector who is entrusted and empowered with the powers and duties to collect tax in accordance with the amended provisions under the said Act.
4. The Respondent No 2 has resolved on 27th Jan 2010 to levy property taxes on the capital value. The Respondent Nos.2 & 3 have also fixed the capital value & taxes due on the basis thereof, though by virtue of Sec 140(A)(1) the taxes payable till 2015 are capped at two or three times the existing taxes payable on the RV Basis. The Respondent No 4 has on the basis thereof issued notices to the Petitioners and its members, under Section 162(2) of the Mumbai Municipal Corporation Act 1888 (for short the "Act"), as amended from time to time, calling upon

them to pay property taxes as per the provisional bills raised by them for the years 2010-11; 2011-12 and 2012-13.

5. The Petitioner Nos. 2 to 6 are owners of properties which are sought to be taxed on the basis of the CV as mentioned hereinbelow :

- a) The Petitioner No. 2 is inter alia a co-owner of two properties. One building was constructed in the year 1917 on a plot area admeasuring about 520 sq. mtrs. It was constructed on leasehold land given for 982 years. The property belongs to a family Trust. On the said plot of land there is a building of ground plus 5 floors with 17 tenants. In the said building, there is a godown in which there are 2 tenants. The total rent from the tenants is Rs.2,76,636/- (excluding taxes, cess etc.). While fixing the Capital Value of the building the Respondent No.2 has taken the age factor of only 50 years. The Capital Value of one building is Rs.7,52,66,645/- and of the other building is Rs.97,58,965/-. The Tax on Capital Value is Rs.947861/- whereas the Tax on Rateable Value is Rs.68,078/-. In 2015, the tax on Capital Value basis i.e., on CV basis will become a minimum of Rs.13,27,005.40 which is about 19.5 times the tax on RV basis. In so far as the second building is concerned, the tax on CV basis is Rs.1,72,150/-. In 2015, the tax on CV would be a minimum of Rs.2,41,010/- which is 14.18 times the tax on RV.
- b) The Petitioner No. 3 is the owner of a building which consists of Ground plus 5 stories. There are 10 of tenants/occupants in the building. The Petitioner is residing in the said building. The building is about 120 years old. It consists of load bearing walls and has

wooden pillars, beams and joints. The total rent received from the building (including Property Taxes and Repair Cess) is Rs.1,05,504/-. The Property Tax is Rs.12,754/- and Repair Cess is Rs.43,292/-. The net amount in the hands of the Petitioner after payment of all taxes including land revenue of Rs.1,190/- . The Cash in Hand that was fixed for the building was Rs.48,268/-. The Capital Value that is fixed for the building is Rs.3,90,17,975/-. The total tax on Capital Value is shown as Rs.3,79,808/-. The Tax after capping is Rs.30,786/-. After 2015, the tax payable would be Rs.5,31,731/- i.e., 41.61 times the tax that was payable under the Rateable Value System.

- c) The Petitioner No. 4 is a co-owner of a building which consists of Ground plus 2 Floors. There are 6 tenants/occupants in the building. The total rent received by the Petitioner (excluding Municipal taxes and repair cess) is Rs.248/- per annum. The Capital Value that was fixed for the building was Rs.33,56,79,320/-. The total tax on Capital Value was fixed at Rs.12,44,996/-. The existing tax is shown as Rs.19,854/-. The building is 60 years old. For the purpose of arriving at the Capital Value, the age factor was taken as 49 years. After 2015, the tax would increase by 87.79 times the present tax on Rateable Value.
- d) The Petitioner No. 5 is the owner of a building which consists of Ground plus 3 Floors. There are 63 tenants/occupants in the building. The Capital Value that was fixed for the building was Rs.11,96,73,755/-. The tax on Capital Value has been fixed as Rs.19,98,407/-. In 2015, it would become atleast Rs.27,97,769.80 which is about 44.2 times the tax on RV basis.

e) The Petitioner No. 6 is a Charitable Trust. They are the owners of a building which consists of Ground Floor unit. The building is classified as a semi-permanent / kutchha building and is shown as self-occupied. The Capital Value that was fixed for the building was Rs.1,13,55,155/-. The tax, based on RV was Rs.2,600/-. The total tax on CV basis is Rs.1,59,766/-. In 2015, the Tax on CV would be at least Rs.2,23,672.40 which would be about 86.03 times the tax on RV i.e. 8603%. The facts and circumstances giving rise to the present Writ Petition are set out hereinafter.

6. The Respondent No. 2 was constituted, when the Act came into force in 1888. The Act permitted the Respondent No.2 to impose taxes, cess and charges. The purpose of levy of property tax was essentially to enable the Respondent No.2 to raise funds for meeting the expenses of the civic services to be provided by it. Section 61 of the Act laid down several statutory obligations on the Respondent No.2. The tax is a compensatory tax and was not intended to be a source of income/revenue of the Respondent No. 2.
7. The Bombay Municipal Corporation Act being Act III of 1888 was enacted to consolidate and amend various Municipal Acts which were in force affecting the Municipal administration of the City. The Act sought to repeal 11 enactments set out in Schedule 'A' to the Act. The provisions of those Acts which were considered to be relevant were inserted in the Bill which sought modifications, explanations and improvements based on the experience and the needs of that day. Hereto annexed and marked as **EXHIBIT 'A'** is a true copy of the Statement of Objects and Reasons of the Act of 1888.

8. Since the year 1888, the concept of Rateable Value (for short RV) held the field. RV was fixed on the basis of the annual letting value of a property or the rent that a property might reasonably be expected to fetch. The 1939 Act and the subsequent laws that regulated the rent that a landlord could charge his tenants, created a situation where the basis of the levy of taxes by the Municipal Corporation on the owners of the building was also frozen.
9. Between 1939 and 1944 there was considerable increase in rent. The legislature felt that it was necessary to put a cap on the amount of rent that a owner could charge the tenant. Accordingly, the Rent Act set out that a landlord was only entitled to the rent as of 1st September 1940 or the rent that he charged when he first let out the premises. If the base is taken as 2004-05 = 100, the wholesale price index [for short WPI] in 1940 was 1.0. Hereto annexed and marked as **EXHIBIT 'B'** is a true copy of the relevant pages of the times series for WPI prepared by Tata Services Limited published in book "Statistical Outline of India 2012-13".
10. In its XII Report of 1979, the Maharashtra Law Commission recorded that 46% of the landlords belong to low income group, 27% belong to middle income group and only 25% belong to the High Income Group. These figures indicate that 75% of the so called landlords are really people *who* depend on the rent of the property for their livelihood. The Petitioners crave leave to refer to and rely upon the said Report, when produced.
11. The Petitioners state the cost of building materials has risen substantially between the 1940s and the 1990s. The Indian Valuer – a prominent magazine in its January/February 1977 edition has set rates for lands. The Petitioner craves leave to refer to and rely upon the January/February 1977 edition of the

Indian Valuer, when produced. The land rates for different areas was shown as under:-

Area/location of the plot	Rate per Sq. Yard
Santa Cruz	6.50
Dhobi Talao	95.00
Andheri	3.00 to 5.00
Ghatkopar	9.00
Juhu	6.00
Fort	100.00
Sion-Matunga	7.00 to 11.50
Churchgate Reclamation	91 to 102

12. The rates of land and construction costs and other builder's prices have substantially increased between 1940 and 1985. As per an article in the Indian Valuer of November 1988, the average land price has gone up from 1.00 per sq. yd in 1940 to about Rs. 800.00 per sq. yd in 1985 and the cost of construction has gone up from Rs.2.00 to Rs.240.00. Hereto annexed and marked as EXHIBIT 'C' is a true copy of the article written by one S.K. Moorthy in the November 1988 edition of the Indian Valuer. As per the SDRR of 2010, the cost of land and flats constructed thereon has considerably increased. Hereto annexed and marked as "EXHIBIT 'D'" is a statement showing the zone-wise land rates and rates of constructed flats (only the maximum and minimum have been taken) as set out in the SDRR of 2010.
13. The Petitioners state that it would be self evident that the cost of a flat/building constructed in the suburbs in the 1980s and 1990s would be far higher than the cost of a similar flat/building constructed in the 1940s or even earlier. The Petitioners have shown these rates as they are relevant for arriving at the RV.

14. The Respondent No. 2 had issued a circular containing a table of the rates to be adopted for the year 1995 – 96 for assessment purposes for owner occupied buildings and buildings belonging to Co-operative Housing Societies. A perusal of the said table shows that the rates in south Bombay varied from Rs. 601-609 for 10 sq. metres for A ward while the rates in the suburbs – Vile Parle was about 330-338 for 10 sq. metres. The Petitioner does not have access to the figures of the present day. Hereto annexed and marked as EXHIBIT 'E' is a true copy of the circular issued by the Respondent No. 2 fixing the rates for self-occupied flats for the year 1995 – 96.

15. Till the enactment of Mah Act 11 of 2009, property taxes which (under Sec. 139A, included water tax, water benefit tax, sewerage tax, sewerage benefit tax , general tax , education cess, street cess and betterment charges) were levied as a percentage of the RV of lands and buildings computed under Sec 154 of the Act : i.e. the annual rent for which such land or building might reasonably be expected to let from year to year less ten percent in lieu of all allowances for repairs or on any account whatsoever.

16. Property taxes levied under the Act are compensatory in nature and leviable on the Owners of lands or building within the Corporation area, (except in the case of premises held by an occupier from the Government or Corporation or from a fazendar, when this liability is on the occupier) in order to enable the Corporation to have funds to perform its statutory duties for the Corporation Area under the said Act. This has been judicially recognised by the Hon'ble Supreme Court in the case of " Pradeep Oil Corporation vs Municipal Corporation of Delhi [reported in (2011) 5 SCC 270] and is also evident from the statutory terms of Sec 140 :
 Sec 140(1)(a)(i) : water tax "*for providing water supply*" ;

Sec 140(1)(a)(ii) Additional water tax “ *for meeting the whole or part of the expenditure incurred on capital works for making and improving the facilities of water supply and for maintaining and operating such works.*”

Sec 140(1)(b)(i) Sewerage tax ; “*for collection , removal and disposal of human waste and other wastes*”;

Sec 140(1)(b)(ii) additional sewerage tax “ *for meeting the whole or part of the expenditure incurred on capital works for making and improving facilities for the collection , removal and disposal of human waste and other wastes and for maintaining and operating such works.*”

Sec 140(c) : General tax ; “ *in order to provide for the expense necessary for fulfilling the duties of the corporation arising under clause (K) of sec 61 and Chapter XIV* “

17. As a result of the Bombay Rent Act 1947, Rents payable by tenants were restricted to the Standard Rent. As a consequence the Respondent No. 1 had from time to time increased the percentage of rateable value on the basis of which the property tax would be levied. In the year 1947, the Respondent No. 2 had collected property taxes as 20.5% of the RV without any distinction between Residential and Non- Residential premises. In the year 1987 different percentages/ rates of taxes were fixed depending upon the user being “Residential” or “Non-Residential”. By the year 2009, the property tax had been increased to 187.50% of the RV for residential premises and 320.50% of the RV for non-residential premises. Hereto annexed and marked as **EXHIBIT “F”** is a statement showing the increase in the rate of Property Taxes from 01.04.1936 till 2008–09. The aforesaid statement is based on information published by BMC on their website.

18. The published Accounts of Respondent No.2 for the period 2008 to 2012 establish that even on the basis of property taxes

computed at the aforesaid levels on RV basis alongwith other existing source of funds/ revenues, the 2nd Respondents have always had a substantial surplus and have in fact been transferring substantial sums to the reserve Fund each year. Moreover the amounts levied & collected from Property Taxes each year has been in excess of the 2nd Respondents expenditures on Establishments, Administrative Expenses & operations & Maintenance. Hereto annexed and marked as **EXHIBIT "G"** are tabular extracts of the 2nd Respondents income and expenditure, income from property taxes and expenditure on establishment, administrative expenses, operations and maintenance expenses, taken from the web site <http://www.mcgm.gov.in> and duly certified by a chartered accountant.

19. Since long, the Respondent No. 2 has been making surpluses every year. The Petitioners crave leave to refer to the relevant portions of the balance sheets of the Respondent No. 2, as obtained from the internet, when produced. The Petitioners state that a perusal of the said balance sheets of the Respondent No. 2 for the past 5 years shows that there has been a considerable surplus of income over expenditure as set out below:

Year	Income in Rs. (Crores)	Expenditure in Rs. (Crores)	Surplus in Rs. (Crores)	Surplus %
2007-08	12,035.27	8,328.36	3,745.19	44.97
2008-09	13,229.60	8,915.72	4,366.15	48.97
2009-10	15,037.53	10,459.63	4,626.31	44.23
2010-11	15,440.07	10,363.28	5,094.94	49.16
2011-12	16,960.05	14,119.54	4,626.31	32.77

20. Notwithstanding the aforesaid position, the 1st Respondents purported to introduce amendments by Act 11 of 2009 – introducing levy of property taxes on capital value as computed by the Ready Reckoner / market values of lands & buildings ,

on the basis [as stated in the Statement of Objects & Reasons of L. A. Bill No LXXII of 2006] that :

“ 3. To continue to compel the Corporation to levy & collect the property tax on the basis of fair rent or standard rent alone while at the same time under sec 61 in Ch III and other provisions of the Mumbai Municipal Corporation Act making it incumbent on the Corporation to make adequate provisions to perform all its obligatory and discretionary functions laid down by the Act may be to ask the impossible. The cost of maintaining and laying roads , drains, water supply lines and providing other essential civic services and amenities, the salaries of staff and wages of employees, and all other types of expenditure have gone up steeply over the last more than 65 years.

21. It is a modest attempt to enable the corporation to augment its revenue so as to meet the ever rising expenditure in providing appropriate and adequate infrastructure for rendering civic services in the city like Mumbai and its Suburbs. ”
22. By Amendment Act XI of 2009, provision was made :
 - (i) empowering the Corporation by a Resolution to levy property taxes as a percentage of capital value of buildings and lands [sec 140A]
 - (ii) empowering Respondent No 3 to fix the capital value of lands & buildings by having regard to the value indicated in the Stamp Duty Ready Reckoner prepared under the Bombay Stamp Act & Bombay Stamp Rules 1995 - or where the Ready Reckoner does not indicate the value of any property by taking into consideration the market value of such land or building [sec. 154(1A)].
 - (iii) revise / increase the property tax upto 40% of the property tax every five years [Sec 154(1C) read with sec 140A]

- (iv) that for a period of five years from the date on which property tax is levied on capital value the tax shall not exceed in respect of residential buildings , two times the tax leviable in respect thereof in the immediately preceding year (i.e. under the RV Basis) and in the case of non residential buildings three times the tax leviable in respect thereof in the immediately preceding year (i.e. under the RV Basis) [Sec 140A]

23. By Amendment Act XI of 2009, Section 154 of the Act was amended and new sub-sections 1A, 1B and 1C were inserted by Maharashtra Act XI of 2009. These sections came into force with effect from 1st April 2010. By section 154(1A) the Commissioner was required to have regard to -
- a) the value of any building or land as indicated in the SDRR, as the base value.
 - b) Several other factors set out in clauses (a) to (d) of the said section.
24. Significantly, the factor "tenanted" is not mentioned as one of the factors for arriving at the CV of the building. The Petitioners state that this was a very relevant factor as most of the pre -1940 buildings are tenanted wholly or in part. These buildings could not be expected to have any market value at all to the owner. The value that the buildings would have to the owner was only the rent which he would receive from the building and nothing more. The net amount that remains in the owner's hand would be the amount left after deducting the property taxes, repair cess that he has to pay under the provisions of the MHADA Act and after making provisions for tenantable repairs, under the provisions of the MRC Act.
25. The Respondent No. 2 sponsored a study to be made by the Tata Institute of Social Sciences (for short TISS) and the

Department of Economics, University of Mumbai on the rationalization of property tax in Brihan Mumbai. The Petitioners crave leave to refer to a copy of the said Report dated 2001, when produced. The Petitioners submit that a perusal of the report shows that TISS did not take into account the purpose of levying property taxes under the Act. The study, accepts the fact that the CV is the price that the property would sell for in the market. The report records that -

- a) The Respondent No. 2 approached the TISS to develop "a logical mathematical model" on the basis of some "scientific procedure" so that the tax liabilities in the new model are as close as possible to the existing rate of tax being levied on various property owners;
- b) The Respondent No.1 has had already decided to abandon the existing mode of taxation from rateable value system and to shift to the area based system.
- c) For arriving at the CV, the market values specified in the Ready Reckoner to be used as a base value.

26. The Constitution, (Seventy Third Amendment) Act, 1992 came into force w.e.f. 24th April 1993. Article 243-I required the Governor of a State to constitute a Finance Commission to review the financial position of the Panchayats etc. The Constitution (Seventy Fourth Amendment Act, 1992 introduced Part IXA into the Constitution w.e.f. 1st June 1993. Article 243-Y gave the power to a Finance Commission to recommend to the Governor the measures needed to improve the financial position of the Municipalities.

27. The Petitioners state that the scheme of the Constitution prescribes for appointment of a Finance Commission for making recommendations to the State for the purpose of improving the financial position of Municipalities. The said power under Article 243Y of the Constitution of India can be

exercised by the State, through the Government, for appointment of a Finance Commission for necessary recommendations in that behalf. Article 243 X confers powers on the State Legislature to enact the law and prescribe the procedure to levy and appropriate taxes and duties in respect of the Municipal Corporation. The constitutional scheme contemplates a procedure which is required to be followed for the purpose of enhancement of any tax by the Municipal Corporation and it is to be done through the recommendation of the Finance Commission as appointed by the State Government under Article 243Y of the Constitution of India. The Petitioners states that instead of following the procedure prescribed the Respondent No.2, Municipal Corporation in the present case, through the Standing Committee appointed a firm of Chartered Accountant named Singrodiya Goyal & Co to recommend enhancement of property tax for the year 2010-11 based upon the market value of the properties in the city of Mumbai. Based on the report of the said Singrodiya Goyal & Company, the Municipal Corporation has passed the necessary resolution for the purpose of levy of tax which is contrary to the powers contemplated and the procedure prescribed under Article 243Y of the Constitution of India.

28. Section 154(1A) requires the Respondent No. 2 to fix the Capital Value of any land & building having regard to the value as indicated in the SDRR or where the SDRR does not indicate the value to fix the capital value by taking into consideration the market value of such land & building. By a resolution dated 27th Jan 2010, the Respondent No. 2 resolved to levy property tax on the basis of the Capital Value of Lands/Buildings. The Respondent No 2 published the rates of property taxes due on CV with effect from 1.04.2010. With the approval of the Standing Committee the Respondent No. 3 in exercise of powers under sec 154(1A) & 154(1B) by notification

AC/NTC/1310/2011-12 dated 20th March 2012 issued "Rules for fixing the capital value of lands and buildings". The said Rules provide for the base value to be taken from the SDRR with the value for the purpose of fixing the CV of lands and buildings within the jurisdiction of the Respondent No. 2 to be increased or decreased depending on the category of land or building, type of use & other factors. The said rates were stated to come into effect from 1st April 2010. For the year 2010-11 to 2012-13 the percentage/ rate of tax on capital value is to range from .348% for open land & residential properties to from .651% to 2.606% for shops, industrial units, commercial offices & banks. Hereto annexed and marked as **EXHIBIT 'H'** is a true copy of the Notification AC/NTC/1310/2011-12 dated 20th March 2012. The said Notification came into effect from 20th March 2012.

29. As stated above sec 154(1A) requires the Respondent No 2 to fix the capital value by having regard to the value indicated in the SDRR or where that is not available/ possible on the basis of the market value of the land/ building. However the Respondent No 3, while adopting the value as per the SDRR, has purported by Rule 22 of the 2010 Rules, to provide that Notwithstanding anything contained in the "Important Guidelines of Stamp Duty Valuation" as specified in the Ready Reckoner, the provision made in these rules shall have primacy over those guidelines and none of those guidelines shall apply for fixing Capital Value under the Act & the Rules." The SDRR essentially stipulates the value of vacant lands & buildings & by the "Important Guidelines of Stamp Duty Valuation" and particularly Guideline No. 1 provides that where the Building is fully tenanted the value shall be computed at 112 times the monthly rent receivable from Tenants. However by purporting to exclude such Guidelines of the SDRR relating to the valuation of tenanted buildings, the Respondent No. 3 has in

contravention of the requirement / mandate of Sec 154(1A) purported to fix the capital value/ market value of fully tenanted buildings, not on the basis of 112 times their rental as stipulated in the SDRR read with the said Guidelines, but by applying the value mentioned in the SDRR for vacant / non tenanted buildings.

30. The Petitioners have addressed representations/ objections by their letter dated 26th March 2003, 8th December 2004, 26th Nov 2010 and 16th January 2013 to the Respondents 1 to 3 The Petitioners had interalia pointed out that Municipal tax on the basis of RV is between 5 paise to 10 paise per sq. feet per month whereas in the CV method it would be between Rs.2.50 to Rs.4.50 per sq. feet per month for residential properties and Rs.10 to Rs.18 per sq. feet per month for commercial properties resulting in an average increase of 40 – 50 times. The Petitioners crave leave to refer to and rely upon the said letters dated 26th March 2003, 8th December 2004, 26th November 2010 and 16th January 2013, when produced.
31. In or about the third week of January 2013 , Special Notice under sec 162(2) were received mentioning the SDRR Rate, the Capital Value after applying the factors to the SDRR Rate; the tax on capital value , the existing tax , the tax payable till 2015 on the basis of capping under sec 140A. The tax payable on capital value varies from 10 times to 100 times the existing tax payable although till 2015 the same has by sec 140A been capped at two or three times the existing tax payable as per RV basis. However by 2015 the Tax on capital value will stand increased by 10 times to 100 times the existing property tax. Moreover in 2015 the Respondents will be entitled to further increase this tax (which is already 10 times to 100 times the existing Tax) by a further max of 40% under sec 154(1C) read with sec 140A. Hereto annexed and marked as **EXHIBIT ' I '**

is a tabular statement prepared by Petitioner No.1 giving the property, the Capital Value, the tax on Capital Value, the existing Tax and the Capped Tax. The members of the Petitioner No.1 provided details of the Property Taxes that are being levied on them as well as the financial impact of the taxes on them. The Petitioner No. 1 prepared a statement showing the financial impact of the levy of the property taxes both under the RV system and the CV system. The analysis of the data provided by the members of the Petitioner No.1 shows that the said members are suffering losses by virtue of the change in the taxation system. Hereto annexed and marked as **EXHIBIT 'J'** is a tabular statement giving the details of the rent received from the tenants, income after deducting the present property tax, capital value of the property, the property tax on CV, existing property tax, property tax with capping upto 31st March 2015 and the losses that could be incurred upto 31st March 2015 and after 1st April 2015. Based on the information given by their members, the Petitioner No. 1 has prepared a statement which shows that the owners are facing losses due to the taxation. Hereto annexed and marked as **EXHIBIT 'J-1'** is a statement showing the financial impact of the levy of tax under the CV system.

32. The said Special Notices are annexed as **EXHIBITS 'K', 'K-1', 'L', 'M', 'N' and 'O'** hereto. By the said Notices it was directed that complaint should be filed in the format forwarded therewith.
33. In January & February 2013 the Petitioners & others filed complaints under sec 163 against the said Notices under Sec. 162(2). The true copies of the complaints filed by the Petitioners 2 to 6 are annexed hereto and marked as **EXHIBITS 'P', 'P-1', 'Q', 'R', 'S' and 'T'**.

34. However, without investigating and deciding the complaints made by the Petitioner Nos. 2 to 6 in their presence as mandated by s. 165(1), the Respondents 2 & 3 have been demanding and requiring payment of the property taxes as per the bills raised by them.

35. The Petitioners state that the incidence of Property Tax as per the CV system shows substantial differences in the levy of taxes in various parts of Bombay. The Petitioners state that the cost calculations to be made on the basis of the SDRR for the year 2010 in respect of residential, commercial rates for upper floors and commercial rates for lower floors in respect of various areas covering not only the South Bombay but also parts of Central Bombay and the Suburbs upto Borivali. Hereto annexed and marked as **EXHIBIT 'U'** is a statement prepared by Petitioner No. 1 showing the rates of properties as per SDRR for 2013, and the municipal taxes calculated by the Petitioner as per CV for water metered properties for residential accommodation, office accommodation and banks etc.

36. The Petitioner No. 1 states that several of their members expressed their support for filing the above Writ Petition. They executed affidavits to the effect that they would like to file the affidavits so as to reduce the number of petition filed in this Hon'ble Court. Hereto annexed and marked as **EXHIBIT 'V'** is a copy of the affidavit dated 27th May 2013 sworn by one Austin C. Perera. The Petitioners state that similar affidavits were signed by 610 members. Hereto annexed and marked as **EXHIBIT 'W'** is a list of the members who have sworn the affidavits. The Petitioners crave leave to refer to and rely upon the said affidavits, when produced.

37. The Petitioners say and submit that the impugned Act 11 of 2009 read with the Rates of Tax on Capital value fixed by the

Respondents 2 & 3 for the year 2012-13 and as communicated by the said Special Notices issued under sec 162(2) is ultra vires & unconstitutional and should be declared to be null & void in law on the following amongst other grounds:

- (A)(i) As stated above Property taxes are compensatory in nature and are levied to provide the Corporation funds to perform its statutory duties . This is settled not only by judicial pronouncements of the Hon'ble Supreme Court in Pradeep Oil Corpn vs Mun Corpn of Delhi [(2011) 5 SCC 270] & Municipal Corpn of Greater Bombay vs New Standard Engineering Co. Ltd. [AIR 1991 SC 1362] and Mun Corpn of Delhi vs Birla Cotton , Spg & weaving Mills [AIR 1968 SC 1322] but is also evident from the provisions of sec 140 set out above.
- (ii) The published Accounts of Respondent No 1 for the period 2008 to 2012 establish that even on the basis of property taxes computed at the aforesaid levels on RV basis alongwith other existing source of funds/ revenues, the 1st Respondents have always had a substantial surplus and have in fact been transferring substantial sums to the reserve Fund each year. Moreover, the amounts levied & collected from Property Taxes each year has been in excess of the 1st Respondents expenditures on Establishments, Administrative Expenses & operations & Maintenance. The tabular extracts of the 1st Respondents income and expenditure, income from property taxes and expenditure on establishment, administrative expenses , operations and maintenance , expenses, taken from the web site "<http://www.mcgm.gov.in>" and duly certified by a Chartered Accountant have been annexed as Exhibit "G" hereto.

- (iii) Notwithstanding the above surplus position, the Respondents are purporting to increase the tax levied (as the stipulated % of the CV) to 10 times to 100 times the tax which was levied under the RV basis. The Petitioners say and submit that having regard to the compensatory nature of property taxes the purported increase of the tax levied from 10 times to 100 times the tax levied as per the RV basis, is *ex facie* without competence and arbitrary, illegal null and void.
- (B) The Petitioners say and submit that increasing property taxes from 10 times to 100 times the existing tax levels/ amounts under the RV basis, especially when property taxes are compensatory levies and the Respondent No 2 already has budget surpluses and has been transferring substantial sums to reserves each year, is *ex facie* arbitrary, extortionate & confiscatory and as such violates Arts 14, 19(1)(g) and 265 of the Constitution of India.
- (C) The surplus over expenditure of the Respondent No. 2 for the period 2007 – 2008 to 2011 – 2012 has shown an average surplus of nearly 44.02%.
- (D) Fixing the amount of property tax as a percentage of the market value of property / land & buildings is *ex facie* arbitrary. It is well known (and the basis of the rent Acts) that property values have appreciated disproportionately. For owners of property the said accretion of value has no relevance during the subsistence of their ownership of the property. In the circumstances to fix property taxes on the basis of market values is arbitrary & irrational.
- (E) In any event, the SDRR does not make any distinction between a leasehold property and free-hold property.

The nature of the property is very relevant for the purposes of valuation of a land and consequently the building constructed thereupon. The methodology adopted by the Respondent No. 2 does not take into account relevant factors while converting the carpet area into built-up area.

- (F) It is settled law that the rates set out in the SDRR are not sacrosanct but only a guide for ascertaining the value of a property for the purpose of levy of stamp duty.
- (G) Taking the stamp SDRR value as the base value is ultra vires as interalia it cannot and does not reflect the true market value of the land and building.
- (H) The Petitioners submit that there is no rational nexus between the object or purpose of the taxation (property taxes to compensate for the cost of services, facilities, infrastructure and the cost of performing statutory duties) and the basis adopted for the levy, as the value of the building has no relation whatsoever with the cost of services to be provided. Property tax is being levied and collected in order to enable the Respondent No. 2 to perform its obligatory and discretionary functions set out in the Act including the cost of maintaining and laying roads, drains, water supply lines and providing other essential civic services and amenities, the salary of staff and wages of employees. The value of the building has no co-relation whatsoever with the resources that are required for providing the aforesaid services. The money expended by the Respondent No. 2 for providing the municipal services does not depend on the value of the property in a ward in which the services are provided as

interalia all the factors for arriving at the cost of services and/or infrastructure would remain the same.

- (I) In any event, Sections 140 (1) (a); 140 (1) (b); 140 (1) (ca) read with Section 195 (E) and 140 (1) (d) read with Chapter XII-A do not set out any limits when it authorized the Respondent No. 2 to levy and collect the taxes. The provisions are hit by Article 243-X of the Constitution of India.
- (J) Without prejudice to the aforesaid the Petitioners say and submit that Rule 22 of the "Rules for fixing the capital value of lands and buildings" is ex facie ultra vires sec 154A & is also arbitrary and illegal . Sec 154(1A) requires the Respondent No 2 to fix the capital value by having regard to the value indicated in the SDRR or where that is not available/ possible on the basis of the market value of the land/ building. However the Respondent No 3 while adopting the value as per the SDRR , has purported by Rule 22 of the 2010 Rules , to provide that *"Notwithstanding anything contained in the " Important Guidelines of Stamp Duty Valuation" as specified in the Ready Reckoner, the provision made in these rules shall have primacy over those guidelines and none of those guidelines shall apply for fixing Capital Value under the Act & the Rules."* The SDRR essentially stipulates the value of vacant lands & buildings & by the "Important Guidelines of Stamp Duty Valuation" and particularly Guideline No 1, provides that where the Building is fully tenanted the SDRR value shall be computed at 112 times the monthly rent receivable from Tenants. However by purporting to exclude the said Guidelines of the SDRR relating to the valuation of tenanted buildings, the Respondent No. 3 has in

contravention of the requirement / mandate of Sec 154(1A) purported to fix the capital value/ market value of fully tenanted buildings, not on the basis of 112 times their rental as stipulated in the SDRR read with the said Guidelines, but by applying the value mentioned in the SDRR for vacant / non tenanted buildings. Such value is clearly not representative / relevant for computing the market value/ capital value of a building which is fully let/ occupied by tenants, who are protected under the Rent Act. For such a building the market value / capital value can only be computed on the basis of a multiple of monthly rent received, as has been provided in the SDRR itself, which has been made statutory applicable for computing the CV of a land or building by Sec 154(1A). The Petitioners accordingly say and submit that Rule 22 is liable to be quashed and the CV of fully tenanted buildings are required to be computed on the basis of 112 times the total rent received , as provide in Guideline No 1 of the SDRR.

- (K) Alternatively & without prejudice to the aforesaid, the Petitioners say and submit that the action of Respondents 2 to 4 in demanding & recovering the enhanced property tax without first deciding the complaints with a personal hearing as mandated by sec 165 , is ex facie illegal & without jurisdiction. The Petitioners say & submit that even sec 154(1A) only requires the capital value to be fixed by Respondent No 2 having regard to the value fixed by the SDRR. The Petitioners say & submit that it is open to the Petitioners & notices to point out that the area calculations are in accurate / incorrect or that for special circumstances the value fixed in the SDRR should not be applied. The Petitioners say and submit that under the Act the Respondents can demand &

recover payment only after the complaints have been decided & the assessment book finalised under Sections 165 & 166. The Petitioners accordingly say and submit that the Respondents action in demanding & recovering property tax as per the Notices sent under 162(2) without first deciding the complaints filed under Section 165 (1) is ex facie illegal & without jurisdiction.

- (L) The levy of property taxes under Act is outside the field of Entry 49 of List II and is beyond legislative competence as it is not a tax on lands and buildings but a *tax* to compensate for services rendered by the Respondent No. 2.
- (M) It is submitted that the entire basis of giving a power to the Corporation to fix property taxes on capital value is fallacious. The power which is given is to delegate to the Commissioner to frame taxes based on the Stamp Duty Ready Reckoner. The Stamp Duty Ready Reckoner is a guide for charging stamp duty for the purposes of valuation of property in the matter of transfers. The said basis is an unsatisfactory basis for the purpose of levy and collection of property taxes. In any event, the applicable taxes which are liable to be paid by the Petitioners are relatable to the actual supply of water and performance of services and cannot conceivably be based on capital value. The Ready Reckoner has no statutory backing and has been held to be an unreliable guide.
- (N) It is submitted that by the provisions of Section 154 the Commissioner is required to frame rules with the approval of the Standing Committee for the purpose of determination of applicable taxes. It is respectfully submitted that this is also void for excessive delegation

as the Corporation which is itself a delegate cannot abdicate its responsibilities to one of its Committees namely, the Standing Committee or to the Commissioner. It is submitted that such uncanalized delegation without any guidelines is void. In any event, a delegate cannot further delegate its legislative power. It is submitted for this reason the impugned provisions are void and unconstitutional.

- (O) The Petitioners submit that the whole basis of imposition of the applicable taxes namely water tax, water benefit tax, sewerage tax and sewerage benefit tax as set out in Section 169 to Section 174 is that rules are to be framed by the Standing Committee as may be necessary to collect revenue for the supply of water and for services to be rendered by the Corporation. It is submitted that the amounts to be charged are required to be based on the cost and expenses which are likely to be incurred for the supply of water. The water tax is an alternative to a water charge which is based on measurement of the quantity of water supplied. Likewise, the rules for sewerage taxes and charges have to be framed by taking into account what is necessary to meet the cost of removing human waste, excrementitious, polluted matters, liquid waste, effluents and any other material. This is also based on the expenses which are required to be incurred as also the cost of such services. It is submitted that this clearly shows that imposing of these applicable taxes based on capital value without considering the cost and expenses required to supply water or render services in the matter of removal of sewage is hopelessly arbitrary, capricious and void. It is submitted that the Rules framed by the Standing Committee are ultra vires the provisions of the MMC Act as there is no justification to impose a levy

based on capital value in the matter of imposition of these applicable taxes.

- (P) It is submitted that as is evident from Sections 169 and 170 that these taxes can only be imposed prospectively taking into account the budgeted expenses and the possible amounts that can be recovered with reference to collection of the applicable taxes. This can only be done when the budget is presented showing the prospective expenses and need to recover the same by way of applicable taxes. Such a levy cannot be retrospective. Retrospective imposition is, in any event, bad for want of power as also ultra vires the provisions of the MMC Act.
- (Q) The budgetary income and expense set out hereinabove shows a surplus on the existing income. It is therefore submitted that there is no basis for imposition of an increase retrospectively from 1st April 2010.
- (R) It is settled law that Entry 49 of List II of the VII Schedule to the Constitution contemplates the levy of tax on lands and buildings or both as units.
- (S) Property tax under the Act does not fulfil the criteria of a tax on land and building as it is settled law that the requisites of a tax in Entry 49, List II are
- a) It must be a tax on units that is lands and buildings separately as units;
 - b) The tax cannot be a tax on totality, i.e. it is not a composite tax on the value of all lands and buildings;
 - c) The tax is not concerned with the division of interest in the building or land. In other words, it is not concerned whether one person owns or

occupies it or two or more persons own or occupy it; and

- d) In short, the tax under Entry 49, List II is not a personal tax but a tax on property.

- (T) The provisions of sections 128 (3) and 129A are arbitrary and violate Art. 14 of the Constitution of India as interalia they militate against the very object of the levy of property taxes and seek to give primacy to a budget estimate which has not even been considered by the Standing Committee or the elected *representatives*.

- (U) There is no nexus between the object or purpose of taxation and the methodology adopted to levy the tax as interalia the value of the building has no relation whatsoever with the cost of services to be provided.

- (V) In any event, the sanction of the respondent No. 2 ought to be given during the course of the financial year and not later as interalia the budget estimates could be valid only for the year in question.

- (W) Keeping in view the financial situation of the majority of the owners of buildings, the provisions of Section 146 of the Act has, by the passage of time, become unreasonable and arbitrary and violative of Article 14 of the Constitution.

- (X) Assuming, without admitting, that the levy of property taxes under the Act is a tax and not a charge or a compensatory tax, the levy should take into account the capacity of the owner of the land or building to pay the amount.

- (Y) By taking the year 2004 – 2005 as 100.0 the wholesale price index in 1940 was 1.0 and in 2009 – 2010 it is 130.40. In other words, an article which cost Re.1 in 1940 would in 2009 – 2010 cost Rs.130.40. The price has therefore gone up 130 times and the real value of Rs.100/- of 1940 would be less than 77 paise in 2009. It would thus be seen that the landlord's real income from rents is next to nothing.
- (Z) It is judicially recognised that nearly 75% of the landlords depend the rental income for their source of livelihood. The imposition of property tax under the CV system by taking the SDRR as the basis for assessment of property tax makes the tax not only confiscatory and extortionate but also grossly unreasonable as inter alia the real value of the rents that are being received by the property owners has eroded to such an extent that the wholesale price index which would 1.0 in 1940 (taking the 2004 – 2005 being equal to 100.00 as the basis) whereas the WPI in 2009 – 2010 is 130.4. Thus the rent of Rs.100/-, which was received in the year 1940, would in real terms be less than 75 paise.
- (AA) In view of the subsequent enactments namely the Slum Act, MRTP Act, MMRDA Act and MHADA Act, Chapter XIIA of the Act is deemed to have been repealed and the Respondent cannot levy any betterment charges.
- (BB) In any event, betterment charges could not be a property tax simpliciter as it is not levied on all the owners or in respect of all the properties but it would be charged on a case to case basis depending upon the improvement that has been made to the property in question. This levy is a

pure fee though included in the heading of "Property Taxes".

(CC) In any event, clause (d) of Section 140 (1) was inserted into the Act by Bombay Act XXXIV of 1954. The levy was introduced at a time when the subsequent statutes were not in force. Consequently by virtue of the subsequent statutes which also provide for betterment charges, the levy of betterment charges under the Act is illegal as the provision is deemed to be impliedly repealed.

(DD) A proper reading of Section 154(1)(A) of the Act shows that in fact and in effect the property tax is made to depend on the SDRR which, in any event, takes the rate per sq. feet of a residential building at 1.85 times the value of a land and at some places 2.22 times the value of the land. The basis of arriving the CV of the property is arbitrary and without any basis.

(EE) For that one of the reasons for shifting from rateable to CV is the high taxes being paid by the residents in the suburbs. The said basis is not at all relevant as it does not take into account that the buildings in the City were constructed long before 1940 whereas major constructions in the suburbs started in the year 1960 or thereabouts. The cost of construction, building materials and land in the early 1920's was far less than the buildings that were constructed in the suburbs. Obviously, the Respondent No. 2 would have expended more money in making arrangements for the provision of Municipal and/or civic services in the suburbs compared to the city. The people in the suburbs are mostly living in their own flats and the small percentage of people who

let out their flats are getting far more rents than the landlords of the buildings in the city of Bombay.

(FF) The money expended by the Respondent No.2 for providing the municipal services does not depend on the ward in which the services are provided as interalia all the factors for arriving at the cost of services and/or new infrastructure would remain the same.

(GG) In any event, Article 243-I of the Constitution of India confers the duty on a Finance Commission constituted by the Respondent No. 1 to review the financial position of the Respondent No. 2 and to make recommendations to the Governor as to the measures needed to improve the financial position of the Respondent No. 2. The action of the Respondent No. 2 in taking an aid of the TISS, for the purposes of ascertaining the ways and means of improving the revenue, infringes on the duty cast on the Finance Commission by the Constitution of India.

(HH) The reliance placed on the said report made by TISS for the purpose of taking the SDRR as the basis for arriving at the CV of the land and building is unconstitutional as interalia it was the duty of the Finance Commission to go into those aspects and to make a recommendation to the Governor.

(II) The failure of the Respondent No. 1 to seek for and obtain the recommendation of the Finance Commission regarding the measures needed to improve the financial position of the Municipalities and to submit the bill that the views of the Finance Commission is ultra vires the Constitution.

- (JJ) The Statement of Objects and Reasons set out in LA Bill LXXII of 2006 shows that the Respondent No. 2 was exploring the possibility of reframing property tax system so as to augment its resources and it entrusted the job to TISS to suggest alternate system for such levy. The approach adopted by the Respondent No. 2 is ultra vires the Constitution. The Respondent No. 2 ought to have addressed its problems to the Finance Commission and it was the constitutional duty of the Finance Commission to explore and make recommendations to the Governor as to the measures needed to improve the financial position of the Respondent No. 2.
- (KK) After 10th March 2011, the Municipal Commissioner and the Standing Committee ceased to have any power or jurisdiction to take any steps with regard to suggest suitable basis for valuation of properties and assessment of property tax. The notification No. AC/NTC/1310/2011-12 dated 23rd March 2012 which has fixed the rules for fixing CV of lands and buildings is ultra vires as inter alia it is only the Property Tax Board that could suggest basis for valuation of properties and assessment of property tax.
- (LL) The Respondent No. 2 did not have any right to ask private parties to suggest a method for improving the revenue as inter alia the provisions of Article 243I read with 243Y empowered the Governor to constitute a Finance Commission to review the financial position of the municipalities and to make recommendations as to the measures needed to improve the financial positions of the municipalities.

(MM) The Respondents could not have referred the matter relating to fixing of a rate of tax to a private Chartered Accountant as inter alia the provisions of Section 12(c) of the Property Tax Board Act empowered the Government to require the Board to review the property tax system and to suggest suitable basis for valuation of property and assessment of property tax.

(NN) The provisions of sec. 129A which was inserted by Maharashtra Act 32 of 2011 w.e.f. 21st May 2011 are arbitrary as it permits the Respondent No. 2 to levy taxes without following the normal fiscal procedure that taxes cannot be levied without the approval of the Respondent No. 2.

(OO) In any event, the levy is ultra vires Article 265 of the Constitution as the levy is confiscatory in nature.

(PP) The surplus over expenditure of the Respondent No. 2 for the period 2007 – 2008 to 2011 – 2012 has shown an average surplus of nearly 44.02%.

(QQ) The provisions of Section 140A of the Act is a piece of excessive delegated legislation as inter alia it confers power on the Respondent No. 2 to adopt levy of property tax on the basis of Capital Value of the Buildings and lands on and from such date and at such rates as the Respondent No. 2 may determine in accordance with provisions of Section 128. The said provision leaves it to the delegate, namely the Respondent No. 2 to switch the policy from rateable value system to the capital value system at its sweet will and pleasure.

(RR) Section 128 (3) of the Act does not override the provisions of sections 125, 125A, 126, 127 or the other provisions of the Act and therefore the Standing Committee could not fix a rate of tax with retrospective effect as inter alia section 128 (3) does not override the provisions requiring the Commissioner to prepare and lay before the Standing Committee inter alia a statement as to the proposals of taxation which it will in his opinion be necessary or expedient to impose under the provisions of the Act in the next ensuing official year.

(SS) It is submitted that the provisions of section 128 (3) which has been brought into force by the Maharashtra Act 11 of 2009 are clearly arbitrary, unfair, unjust and violative of Article 14 of the Constitution of India. The said provision namely section 128 (3), as amended, gives the Corporation the authority to impose property taxes on a retrospective basis which can be effective from 1.4.2010. It is submitted that the Corporation has not imposed any tax retrospectively but the same has been done by the Commissioner by rules for determination of capital value which have a retrospective effect. The said provision namely, S. 128(3) is grossly unfair and defeats the entire basis and method of imposition of property taxes. When taxes are sought to be imposed which are in the nature of an enhancement, the said Act requires that they have to be put in the form of entries in the Assessment Books maintained under section 156 of the said Act. Public Notice is required to be given under section 160 of the said Act. The Assessment Book is open for inspection. Time for filing complaints against valuation is to be announced and special notices have to be issued as provided in section 162 of the said Act. Complaints are required to be investigated and finally

disposed off in accordance with the procedure prescribed in section 163 to 166 of the MMC Act. It is submitted that section 128 (3) cannot operate to bypass this entire procedure. The MMC Act does not contemplate any retrospective imposition of tax which obviously runs counter to the safeguards provided in the matter of giving notice of the enhancement, giving an opportunity to contest the same and fixing it after a full hearing on any complaint against the Assessment Value. It is respectfully submitted that this salutary safeguard which is there in the MMC Act from the time of its enactment cannot be bypassed by making a provision purporting to empower the Corporation to impose property taxes from a retrospective period. It is respectfully submitted that section 128(3) which has been brought in by Maharashtra Act 11 of 2011 is clearly unfair, unjust, violative of Article 14 of the Constitution of India and void.

(TT) The Act does not give any power either to the Municipal Commissioner or the Standing Committee of the Respondent No. 2 to fix the rate of tax de-hors the budget estimates for the ensuing year.

(UU) In any event, the Rules framed under the Act have made a significant departure from the SDRR. The SDRR contains a formula for arriving at the valuation of a property which is tenanted. The said formula takes into account the rent received by the landlord and applies a simple multiplier if the FSI of the area occupied by the tenants is greater than area equal to the normal FSI of the plot. In cases where there is surplus FSI, the SDRR gives a formula to cater to the additional potential FSI that could be loaded on the plot and multiplies it by the value set out in the SDRR.

(VV) In any event, the SDRR does not make any distinction between a leasehold property and free-hold property. The nature of the property is very relevant for the purposes of valuation of a land and consequently the building constructed thereupon. The methodology adopted by the Respondent No. 2 does not take into account the relevant factors while converting the carpet area into built-up area.

(WW) In any event, the Rules take into account the built-up area of a land or building whereas the Act requires the Respondent to only take into account the carpet area of the building. The carpet area of the building is the liveable area of the building and does not take into account the thickness of the walls of the building or the amenities that are provided outside the liveable area of the flat.

(XX) The rules for fixation of CV has taken a maximum depreciation of 30% in respect of buildings which are more than 50 years old. The SDRR, on the other hand, gives the depreciation of 70% in respect of buildings which are more than 60 years. The SDRR gives separate rates of depreciation for semi-pucca or kachcha structures. The SDRR gives a depreciation of 60% for buildings which are 50 – 60 years old. The Rules framed, however, classifies all buildings which are more than 50 years in the single category and only grants 30% depreciation for such buildings and seeks to bypass the Guidelines fixed by the Respondent No. 1 by inserting Rule 22.

(YY) Section 144A of the Act has made provisions for giving concession in the payment of property tax. In these concessions, no guidelines have been given to the Corporation as to the limits within which the concessions would operate. The said concessions are illegal and amount to an excessive piece of delegated legislation. For that, in any event, the concessions for the effect of imposing upon the landlords [a vast majority of whom belong to a lower middle and middle class and depend on rental income as the sole source of livelihood] to subsidise expenses to be incurred by the Municipal Corporation on the services to be rendered to the categories/class of persons for whom these concession have been provided.

(ZZ) The penalty sought to be levied under section 202 of the Act is nothing but interest for delayed payment.

(AAA) Charging interest at 2% per month is exorbitant and militates against the provisions of the Interest Act, 1978.

38. In the premises aforesaid the Petitioners say and submit that :

A) this Honble Court be pleased to declare that the amendments effected vide Act 11 of 2009 to provide for levy & recovery of property tax as a percentage of Capital value read with the percentage of property Tax fixed for 2012-13 (i.e. .348 % for residential properties to 2.606% for banks) is ultra vires & unconstitutional & this Honble Court be pleased to issue a writ of Mandamus directing the Respondents to forbear from enforcing the same.

B) Without prejudice to Prayer (a) above, Rule 22 of the "Rules for fixing the capital value of lands and buildings" be

declared ultra vires , illegal & be quashed and the base CV of tenanted buildings be directed to be computed on the basis of 112 times the total rent received, as provide in Guideline No 1 of the SDRR.

- C) Without prejudice to prayers (a) & (b) above, the Petitioners pray that this Honble Court be pleased to issue a writ of Mandamus directing the Respondents 2 to 4 to forbear & refrain from demanding & recovering property tax as per the Notices sent by them under 162(2) without first deciding the complaints filed after granting a personal hearing as required by sec 165.
39. Without Prejudice to the aforesaid submissions, the Petitioners submit that it is just, fair and equitable that this Hon'ble Court.
- (A) Declare that the levy of property taxes under the Act is compensatory in nature;
 - (B) Declare that the fixation of the rate of tax by the Respondent No.2 is arbitrary and ultra -vires Article 14 of the Constitution
 - (C) Declare that the fixation of the rate of tax by Respondent No.2 and levying property taxes with retrospective effect is ultravires Act;
 - (D) Declare that the action of Respondent No.2 in taking the assistance of private parties for fixing the basis as well as rate of tax is ultra-vires;
 - (E) Declare that the notices issued by the Respondent No.2 to the Petitioners calling upon them to submit their objections impinges upon the Petitioners' rights under Article 19(1) (a) of the Constitution of India;

- (F) Declare that the demand of the Respondent No.2 that the Petitioners should pay penalty at the rate of 2% per month for the delay in payment of property taxes is ultra-vires the provisions of the Interest Act.
 - (G) Declare that the Rules for fixing CV are ultravires the Act.
 - (H) Declare that in any event, rule 22 of the Rules for fixing the CV is arbitrary and ultra vires the Act;
 - (I) Declare that the Respondent No. 1 does not have any legislative competence to levy property tax on the basis of CV system;
 - (J) Declare that, in any event, the levy of property taxes under the Act is exorbitant and confiscatory in nature and violates Articles 14 and 21 of the Constitution of India;
 - (K) Declare, in the alternative , that the levy of property taxes under the Act should take into account the paying capacity of the owner of the building;
 - (L) Declare that the impugned provisions of the Act are ultravires ;
40. The impugned provisions of Act 11 of 2009 & the decision of the Respondents 2 & 3 to levy & recover property taxes at the rates stipulated on the basis of the Capital Value fixed thereunder, results in the property taxes increasing from 10 times to 100 times of the existing property taxes computed on the basis of RV. This will (when the Capping expires in 2015) constitute an extortionate & confiscatory levy & recovery. As stated above the Respondent No 2 has since 2008 had a surplus budget & has been transferring funds to reserves. In the circumstances the impugned provisions are ex facie illegal, arbitrary and unconstitutional. In the premises the interests of

justice requires that the provisions of Mah Act 11 of 2009 be stayed. In the alternative & without prejudice to the above, the provisions of Rule 22 of the Rules which purport to exclude the Rules in the SDRR regarding the valuation of tenanted properties & purport to value the said tenanted properties on the basis of the SDRR Value for vacant premises, is ex facie ultra vires sec 154(1A) and arbitrary. The Petitioners accordingly submit that the interests of justice as well as the balance of convenience requires that Rule 22 of the "Rules for fixing the capital value of lands and buildings" be stayed and the base CV of tenanted buildings be directed to be computed on the basis of 112 times the total rent received, as provide in Guideline No 1 of the SDRR.. Without prejudice to the aforesaid the interests of justice as well as the balance of convenience requires that Respondents 2 to 4 be restrained by an interim order and injunction from demanding & recovering property tax as per the Notices sent by them under 162(2) without first deciding the complaints filed in the presence of the Complainants/ after granting a personal hearing as required by sec 165. The Petitioners say and submit that unless interim and ad interim reliefs are granted, grave & irreparable harm injury and prejudice will be caused to the Petitioners.

41. That having regard to the nature of reliefs claimed the Petitioners do not have any other equally efficacious or adequate alternate remedy.
42. That the Petitioners have not filed any other writ petition on the same cause of action either in this Hon'ble Court or in other High Court or in the Hon'ble Supreme Court of India.
43. That the properties of the Petitioners are situated in Mumbai and the entire cause of action arose in Mumbai and this Hon'ble Court has territorial jurisdiction to entertain the writ petition.

44. The Petitioners will rely upon the documents a list whereof is enclosed.
45. The Petitioners have paid the requisite Court fees of Rs. _____.

THE PETITIONERS, THEREFORE, PRAY:


- (a) declare that the amendments effected vide Act 11 of 2009 to provide for levy & recovery of property tax as a percentage of Capital value read with the percentage of property Tax fixed for 2012-13 (i.e. .348 % for residential properties to 2.606% for banks) is ultra vires and unconstitutional and this Hon'ble Court be pleased to issue a writ of Mandamus directing the Respondents to forbear from enforcing the same.
- (b) That this Hon'ble Court be pleased to declare sections 128(3); 129A, 144, 144A, 144E, 146; 140 (1) (a); 140 (1) (b); 140 (1) (ca) read with Section 195 (E) and 195 (G); 140 (1) (d) read with Section 354(UA) 144B, 146, 154 and lastly section 202 of the Act of Mumbai Municipal Corporation Act, '1886 as void and unconstitutional;
- (c) Declare that the fixation of the rate of tax by the Respondent No. 2 is arbitrary and ultra-vires Article 14 of the Constitution;
- (d) Declare that the fixation of the rate of tax by the Respondent No. 2 and levying Property taxes with retrospective effect is ultravires the Act;
- (e) Declare that the demand of the Respondent No. 2 that the Petitioners should pay interest at the rate of 2%


per month for the delay in payment of property taxes is ultra-vires the provisions of the Interest Act;

- (f) Without prejudice to Prayers (a) to (e) above, Rule 22 of the "Rules for fixing the capital value of lands and buildings" be declared ultra vires, illegal & be quashed and the base CV of tenanted buildings be directed to be computed on the basis of 112 times the total rent received, as provide in Guideline No 1 of the SDRR.
- (g) Without prejudice to prayers (a) and (f) above, the Petitioners pray that this Hon'ble Court be pleased to issue a writ of Mandamus directing the Respondents 2 to 4 to forbear & refrain from demanding & recovering property tax as per the Notices sent by them under 162(2) without first deciding the complaints filed after granting a personal hearing as required by Sec 165.
- (h) Declare that the Respondent No.1 does not have any legislative competence to levy property tax on the basis of the CV system;
- (i) Declare that the levy of property taxes under the Act is compensatory in nature.
- (j) Strike down the levy of property taxes under the Act as being is exorbitant and confiscatory in nature thereby violating Articles 14 and 21 of the Constitution of India;
- (k) Declare in the alternative, that the levy of property taxes under the Act should take into account the paying capacity of the Owner of the building;

- (l) Declare that the action of the Respondent No.2 in taking the assistance of private parties for fixing the basis as well as the rate of tax is ultra-vires;
- (m) Pending the hearing and final disposal of the Writ Petition, the Respondent be restrained by an Order and injunction of this Hon'ble Court from collecting property taxes based on Capital Value System.
- (n) Pending the hearing and final disposal of the Petition, the Respondents be restrained by and order and injunction of this Hon'ble Court from taking any coercive steps to enforce payment of the taxes demanded by the Respondent No. 2;
- (o) Pending the hearing and final disposal of the Writ Petition, the Respondents be directed to collect property taxes as per the Rateable Value System.
- (p) For ad interim reliefs in terms of prayers (m), (n) and (o) above.
- (q) For costs.
- (r) For such further and other reliefs as this Hon'ble Court may consider fit and proper on the facts and in the circumstances of the case.

For Property Owners' Association


Petitioner No. 1


Petitioner No. 2

Petitioner No. 3

Petitioner No. 4

Petitioner No. 5

Petitioner No. 6

Petition drawn by
Mr. H. Devarajan
Advocate,
High Court, Bombay

And

Settled by
Mr. S. U. Kamdar
Senior Advocate
High Court, Bombay

Mulla & Mulla & Craigie Blunt & Caroe

sd/-

Partner
Advocates for the Petitioners

VERIFICATION

I, Bhagwandas Ramchandra Bhattad, the Executive President and Vice President of the Petitioner No. 1 having my office at 104, Bajaj Bhavan, Nariman Point, Mumbai – 400 021 do hereby declare that what is stated in the foregoing paragraph Nos.1, 4, 5, 30 and 42 are true to my own knowledge and belief and what is stated in the remaining paragraph Nos.2, 3, 6 to 29, 31 to 41 and 43 to 45 is on information and I believe the same to be true.

Solemnly declared at Mumbai)
 this 23rd day of September 2013)

sd/-

Before me:

Mulla & Mulla & Craigie Blunt & Caroe

sd/-

sd/-

Partner
 Advocates for the Petitioners

Sr No. 146/2013

IN THE HIGH COURT OF JUDICATURE AT
BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. OF 2013

Property Owners' Association & Ors. ...Petitioners

Versus

State of Maharashtra & Ors. ...Respondents

WRIT PETITION

Dated this 23rd day of September 2013

Mulla & Mulla & Craigie Blunt & Caroe
Advocates for the Petitioners
Mulla House, 51, M, G, Road,
Fort, Mumbai – 400 001.

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