

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 16864 of 2011
 With
 SPECIAL CIVIL APPLICATION NO. 10789 of 2003
 With
 SPECIAL CIVIL APPLICATION NO. 10790 of 2003
 With
 SPECIAL CIVIL APPLICATION NO. 10792 of 2003
 With
 SPECIAL CIVIL APPLICATION NO. 9084 of 2007
 With
 SPECIAL CIVIL APPLICATION NO. 7993 of 2009
 With
 SPECIAL CIVIL APPLICATION NO. 7994 of 2009

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

and

HONOURABLE MS JUSTICE SONIA GOKANI

1.	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2.	To be referred to the Reporter or not ?	Yes
3.	Whether their Lordships wish to see the fair copy of the judgment ?	No
4.	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	No
5.	Whether it is to be circulated to the civil judge ?	No

BHAVNAGAR DISTRICT CHAMBER OF INDUSTRIES....Petitioner(s)

Versus

STATE OF GUJARAT THRO THE CHIEF SECRETARY & 2....Respondent(s)

Appearance in Special Civil Application No.16864/2011:

MR HARSHIT S TOLIA, ADVOCATE for the Petitioner(s) No. 1

MR PARTH S TOLIA, ADVOCATE for the Petitioner(s) No. 1

MR JAIMIN GANDHI, ASSTT. GOVERNMENT PLEADER for the Respondent(s) No. 1

MR HS MUNSHAW, ADVOCATE for the Respondent(s) No. 3

Appearance in Special Civil Application NoS.10789/2003, 10790/2003 & 10792/2003:

MR MANAV A. MEHTA, ADVOCATE for the Petitioner(s) No. 1

MS MANISHA LAVKUMAR, ADVOCATE for the Respondent(s) No. 3

Appearance in Special Civil Application NoS.9084/2007, 7993/2009 & 7994/2009:

MR HARSHIT S. TOLIA, ADVOCATE for the Petitioner(s) No. 1

MR JAIMIN GANDHI, ASSTT. GOVERNMENT PLEADER for the Respondent(s) No.1

MS MANISHA LAVKUMAR, ADVOCATE for the Respondent(s) No. 3

=====

CORAM: HONOURABLE MR.JUSTICE M.R. SHAH

and

HONOURABLE MS JUSTICE SONIA GOKANI

Date : 30/08/2013

COMMON CAV JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

[1.0] As common question of law and facts arise in this group of petitions, all these petitions are disposed of by this common judgment and order.

[2.0] In all these petitions under Article 226 of the Constitution of India, respective petitioners have prayed for an appropriate writ, direction or order quashing and setting aside the impugned order dated 31.03.1997 issued by respondent No.3 herein – Commissioner, Bhavnagar Municipal Corporation [annexure A to the main Special Civil Application No.16864/2011] and all purported assessment notices / demand / bills in respect of the properties of the members of petitioner of Special Civil Application No.16864/2011 – Bhavnagar District Chamber of Industries issued in pursuance to the aforesaid order dated 31.03.1997.

[3.0] That at the relevant time property tax / general tax, water tax, conservancy tax were leviable as per the provisions of the Bombay Provincial Municipal Corporations Act [hereinafter referred to as “BPMC Act”]. As per the provisions which were applicable at the relevant time, the Corporation was authorized to impose the property tax under section 129 and other taxes as mentioned in section 127 of the BPMC Act. As per sub-section (3) of section 127, the municipal taxes were required to be assessed and levied in accordance with the provisions of the BPMC

Act and the Rules. Section 129 of the BPMC Act provided for the property taxes of what to consist and at what rate leviable. Section 99 of the BPMC Act provided for fixing of the rates of taxes. It is required to be noted that at the relevant time when the impugned order dated 31.03.1997 was issued by the Commissioner, Bhavnagar Municipal Corporation [impugned in the present petition], the tax was leviable on rateable value / annual letting value of the property in question. Annual letting value is defined under section 2(1)(a) of the BPMC Act. That by impugned order issued by the Commissioner, Bhavnagar Municipal Corporation dated 31.03.1997 for the purpose of determination of the letting value for the purpose of property tax on building and open land, firstly the properties are bifurcated in four parts with respect to their uses i.e. (1) Residential, (2) Commercial, (3) Industrial and (4) Special Class. Thereafter, with respect to the open lands for which the assessment was not made earlier and upon which there is no construction, it came to be bifurcated in four different classes subject to their uses i.e. (1) Non-Agriculture open land for residential use; (2) non-agriculture open land for commercial use; (3) non-agriculture open land for industrial purpose and (4) open agricultural land. That for annual letting value the area of Bhavnagar Municipality has been divided into two zones to be determined as per Schedule A [for residential properties] and as per Schedule B [for commercial building]. It further provides how to determine the annual letting value. It further provides the rates for annual letting value for all the properties i.e. residential, commercial, industrial etc. It further provides the methodology for deciding the annual letting value on the basis of the different uses more particularly on carpet area basis. It also further provides the said formula and the rate on carpet area basis shall be applicable with respect to all the pending cases in the concerned courts and the pending appeals shall be disposed of as per the formula mentioned in the said order

dated 31.03.1997.

Feeling aggrieved and dissatisfied with the impugned order dated 31.03.1997 issued by the respondent No.3 – Commissioner, Bhavnagar Municipal Corporation, the petitioners have preferred the present Special Civil Applications.

[4.0] Shri Tolia, learned advocate and Shri Manav Mehta, learned advocate have appeared on behalf of the respective petitioners. It is submitted by the learned advocates appearing on behalf of the respective petitioners that the impugned order dated 31.03.1997 passed by the Commissioner, Bhavnagar Municipal Corporation is absolutely illegal and without jurisdiction and without authority under the law and as such without following the procedure for assessment of the properties as required to be followed under the provisions of the BPMC Act.

[4.1] It is submitted that as such the order dated 31.03.1997 of the Commissioner, Municipal Corporation is in the nature of Executive Fiat laying down standard formula based on sq. meter floor area for computing / assessing annual letting value for the purpose of levy of property tax in the Bhavnagar City, which is contrary to and not substantive of the provisions of the BPMC Act and the Taxation Rules in Chapter VIII thereof which under section 455(3) are part of the Act.

[4.2] It is submitted that while issuing the order dated 31.03.1997, rates for assessing the tax on the basis of sq. meter floor area is fixed without there being adopted/approved/based in accordance with law, more particularly, section 99 of the BPMC Act.

[4.3] It is further submitted by learned advocates appearing on behalf of the petitioners that as such and as per the law prevailing at the relevant time the property tax was required to be levied on the basis of the annual letting value and that too approved by the Corporation /

Standing Committee. It is submitted that as per sub-section (3) of section 27, the municipal taxes shall be assessed and levied in accordance with the provisions of the BPMC Act and the Rules only. It is submitted that the manner and method provided in the impugned order dated 31.03.1997 issued by the Commissioner, Municipal Corporation is concerned, to assess / levy the municipal tax on carpet area basis, the same was placed before the Standing Committee and/or General Board of the Corporation and the Commissioner on its own by way of administrative instruction has virtually amended the provisions of the BPMC Act, which is not permissible. It is submitted that as such considering the provision of law prevailing at the relevant time the municipal tax was required to be levied on the basis of the annual letting value and that too subject to the rates approved by the standing committee and approved by the State Government. It is, therefore, submitted that impugned order dated 31.03.1997 is absolutely illegal, without jurisdiction and authority under the law.

[4.4] It is further submitted by the learned advocates appearing for the respective petitioners that as such assessment/levy of a municipal tax on the basis of the carpet area came to be introduced for the first time in the BPMC Act in the year 2007 and so far as the Bhavnagar Municipal Corporation is concerned, they have adopted the same only recently i.e. in the month of April 2013. It is, therefore, submitted that even the impugned order dated 31.03.1997 proposing to assess and levy the municipal tax on the basis of the carpet area and that too at the rates mentioned in the said order is without jurisdiction and even contrary to the provisions of the BPMC Act. It is submitted by the learned advocates appearing on behalf of the respective petitioners that as such what was required to be done by the standing committee/general board and that too subject to the approval of the State Government, by impugned order

dated 31.03.1997 it is done by the Commissioner, which is without authority under the law.

[4.5] It is further submitted that by impugned order the Commissioner has passed an order to dispose of all the pending appeals before the District Court on the basis of the rights / procedures/assessment as per the said order dated 31.03.1997, which is not permissible. It is submitted that as such the Commissioner has communicated to the learned District Judge, Bhavnagar to dispose of the pending appeals against the assessment/municipal property bills as per the formula/rates mentioned in the said order dated 31.03.1997, which is arbitrary, illegal and without jurisdiction and authority under the law. It is submitted that the Commissioner could not have and ought not to have communicated to the learned District Judge, Bhavnagar to dispose of the appeals as per the formula/rights mentioned in the order dated 31.03.1997.

[4.6] It is further submitted that admittedly by the impugned order dated 31.03.1997, it was proposed to assess and levy the municipal tax on the land. It is submitted that before making the assessment and levying the municipal tax, the Corporation was required to prepare and maintain the assessment book for which prior notice was required to be given to the property holder as required in the Rules. It is submitted that in the present case neither any assessment book is prepared and/or maintained as required under the provisions of the taxation rules nor any notice was given to the property holder before such assessment and the property bills have been issued without following any procedure as required under the provisions of the BPMC Act and the Taxation Rules, which deserves to be quashed and set aside.

[4.7] Learned advocates appearing on behalf of the respective

petitioners have heavily relied upon the following decisions of the Hon'ble Supreme Court as well as this Court.

1. 1965(6) GLR 228
The Municipal Corporation of the City of Ahmedabad vs. Jhaveri Keshavlal Lallubhai
2. (1971)2 SCC 54
Harivansh Lal Mehra vs. The State of Maharashtra
3. (1976)4 SCC 830
Municipal Corporation of City of Hubli vs. Subha Rao Hanumanthrao Prayag & Ors.
4. 1980(2) GLR 224
Shah Ranmal Somchand vs. State of Gujarat & Ors.
5. (1988)3 SCC 306
Kalyan Municipal Council & Ors. vs. Usha Paper Products (P) Ltd. & Anr.
6. 1993(2) GLH 897
(The) Anant Mills Co. Ltd. (under liquidation) vs. Municipal Corporation for the City of Ahmedabad & Ors.
7. 1995(1) GLH 1198
L.M. Patel & Ors. vs. Baroda Municipal Corporation

Making above submissions and relying upon above decisions, it is requested to allow the present Special Civil Applications.

[5.0] All these petitions are opposed by Shri H.S. Munshaw, learned advocate and Ms. Manisha Lavkumar, learned advocate appearing on behalf of the respondent Corporation.

Ms. Manisha Lavkumar, learned advocate appearing on behalf of the respondent Corporation has vehemently submitted that the order dated 31.03.1997 issued by the Commissioner, Bhavnagar Municipal Corporation is in larger public interest and with a view to streamline the process of assessment and levy of municipal tax.

[5.1] It is further submitted that it was found that for number of years many of the properties situated within the local limits of corporation were not infact assessed at all and consequently the property holders were not subjected to the municipal taxes and they were not paying the municipal taxes and therefore, with a view to see that all those properties are assessed and the property holder pay the taxes in the larger public interest, the Commissioner has come up with the aforesaid order/policy/procedure for assessment of the municipal taxes, which is in the larger public interest and therefore, it is requested to dismiss the present petitions.

[5.2] It is further submitted that to streamline the method and manner of assessment and collection of property tax, it was thought fit by the Municipal Commissioner to evolve a method which can be easily understood and implemented by one and all and it was thought fit to evolve a transparent method so that there is no scope for any grievance or complaint from the assessee against the method and manner of assessment of the taxes by the Municipal Corporation. It is submitted that after careful consideration of all the aspects from all angles, the then Municipal Commissioner exercised his powers and issued an order dated 31.03.1997. It is submitted that as such by the method provided in the order dated 31.03.1997, it has simplified the assessment system. It is submitted that under the aforesaid order dated 31.03.1997, the superstructure are divided into four categories namely (1) Residential Building, (2) Commercial Building, (3) Industrial Building and (4) Special Class Building. It is submitted that even the open pieces of land are also divided into four categories. It is submitted that in the new policy of 1997, there were manifold problems for administration of the Corporation and collection of the property tax, was on lower side and the citizens / assesseees were non-cooperative in payment of taxes. It is

submitted that with the introduction of the new method as provided under the order dated 31.03.1997, there is overall change and simplified method had yield results. It is submitted that earlier it was noticed by the administration that compared to the area of Bhavnagar Municipal Corporation, development of city and number of properties the income from the source of property tax and other taxes was on lower side and therefore, it was thought fit to make survey of all the properties located within the territorial areas of Bhavnagar Municipal Corporation. It is submitted that survey work took nearly two years and each and every property of the city of Bhavnagar were visisted and surveyed and Survey Engineers submitted complete details of the properties provided by the owners and occupants of the properties. It is submitted that at the end of the work, astonishing figure came to the notice of the respondent No.3. It was found that approximately 50,000 properties were not assessed for one or the other reason. It was submitted that 1,67,000 properties were assessed properties and the property tax bills were issued regularly to only those owners/occupants of the properties. It is submitted that thus the Municipal Corporation and ultimately public exchequer was losing property tax and other taxes on approximately 60,000 properties i.e. approximately 25% of the total properties. It is submitted that thereafter the special notices were issued under the provisions of Rule 15 of the Taxation Rules to the owners/occupants of approximately 60,000 properties. It is submitted that in response to that, objections from 2272 owners / occupants of the properties were received and they were granted the hearing as provided under the aforesaid Rules and ultimately necessary orders were passed by the competent authority and only thereafter all the properties are assessed and tax bills are issued to all. It is submitted that number of citizens / occupants/property holders have accepted their properties being assessed/ tax levied as per the impugned order dated 31.03.1997. It is

submitted that therefore the present petition at the instance of the petitioner who have not paid the municipal taxes deserves to be dismissed.

[5.3] Ms. Manisha Lavkumar, learned advocate appearing on behalf of the Corporation has further submitted relying upon section 2(1A) of the BPMC Act that section 2(1A) of the BPMC Act empowers the Municipal Commissioner to determine the old method for easy estimation of taxes and determine the annual letting value. It is submitted that in the present case, the said powers are exercised judiciously in the interest of administration and public at large by way of evolving the said method through order dated 31.03.1997. It is submitted that for those exercise of powers and ultimately formation of method, it is not necessary for the Municipal Commissioner to get sanction or approval from standing committee as well as General Board of the Municipal Corporation. It is submitted that therefore by issuing the order dated 31.03.1997, the Commissioner has acted bonafidely and as per the provisions of the BPMC Act.

[5.4] Now, so far as the contention on behalf of the petitioners with respect to imposition of property tax for the past year is concerned, Ms. Lavkumar, learned advocate appearing on behalf of the Corporation has heavily relied upon Rules 1, 3 and 5 of the Taxation Rules. It is submitted that Rule 3 of the Taxation Rules laid down that the liability for payment of property tax continues in absence of any notice of transfer. It is submitted that if any person primarily liable to make payment of property tax fails to give notice to the Commissioner, then his liability continues for all the time to come. It is submitted that even Rule 5 also holds that person responsible for issuance of notice to Commissioner about construction of new building or re-building or

enlargement of the building. It is submitted that it also provides that even in the case of change of user, such information are to be brought to the notice of the Municipal Commissioner. It is submitted that provision of Rule 7 is with regard to determination of ratable value of the property. It is submitted that it deals with the industrial premises as well as other premises and the Commissioner is empowered to take appropriate decision after considering various aspects. It is, therefore, submitted that as such the Corporation can impose the property tax even for the past years. It is submitted that the aforesaid is permissible in the present case as for number of years the property taxes were not assessed and levied and consequently all those property holders/occupants did not pay the municipal taxes.

[5.5] It is further submitted that even against the property tax bills and even assessment the respective owners/occupants are required to prefer appeal before the District Court/Small Causes Court and therefore, on the ground of alternative remedy the present petitions challenge the municipal tax bills and/or assessment deserves to be dismissed. In support of her above submissions, she has relied on the decision of Division Bench of this Court in the case of **Municipal Corporation of the City of Ahmedabad vs. Oriental Fire and General Insurance Company Ltd.** reported in **1994(2) GLH 433**.

[5.6] It is further submitted by Ms. Shah, learned advocate appearing on behalf of the Corporation that after the order dated 31.03.1997 and during the pendency of the present petitions as such and under the various schemes of rebut etc. and/or settlement of disputes etc., number of occupants / owners have paid the taxes. It is submitted that therefore while considering the present petitions and considering legality and validity of the impugned order dated 31.03.1997, the aforesaid aspect is

also required to be considered. It is submitted that if in case the present petitions are allowed and the impugned order dated 31.03.1997 is quashed and set aside, in that case there is a possibility of irreversible situation and/or those persons who have already paid the municipal taxes as per the order dated 31.03.1997, they may also claim the refund etc.

[5.7] Ms. Manisha Lavkumar Shah, learned advocate appearing on behalf of the Corporation has also stated at the Bar that in the alternative the Corporation is also ready and willing to consider the case of the petitioners/those persons who are objecting the impugned order dated 31.03.1997 and assessed through properties upto year 2009 as per the old policy and for the period after 2009 as per the new policy of 1997 and/or subsequent policy of 2003, however, there cannot be any zero liability.

[5.8] Now, so far as the impugned order dated 31.03.1997 issued by the Municipal Commissioner insofar as it provides that the said rates/procedure of assessment and levying the municipal tax on the properties of the lands shall be applicable to the pending appeals before the District Court and consequential communication to the learned District Judge, Bhavnagar is concerned, Ms. Shah and Shri Munshaw, learned advocates appearing on behalf of the Corporation has fairly conceded that the same cannot be sustained. Therefore, it is requested to pass appropriate order with respect to the same.

Making above submissions, it is requested to dismiss all these petitions and in the alternative permit the Corporation to assess and levy the municipal tax on the properties which are not assessed as per the policy of 1997 with effect from 01.04.2009 [as per the recent order dated 28.09.2012 passed by the Commissioner, Bhavnagar

Municipal Corporation which has been issued pursuant to the resolution dated 14.09.2012 of the standing committee of the Corporation approved by the General Board in its meeting held on 25.09.2012.

[6.0] Shri Jaimin Gandhi, learned Assistant Government Pleader has requested to pass appropriate order under the provisions of the BPMC Act however, has stated that recently the State Government has passed a resolution dated 02.04.2013 granting permission to the Corporation to assess and levy the municipal tax on carpet area basis as per sections 141B and 141AA of the Gujarat Provincial Municipal Corporation Act with effect from 01.04.2013.

[7.0] Heard learned advocates appearing on behalf of the respective parties at length. At the outset it is required to be noted that in the present group of petitions, the present petitioners inclusive of Bhavnagar District Chamber of Industries have as such challenged the impugned order dated 31.03.1997 issued by the Commissioner, Bhavnagar Municipal Corporation under which it was decided to assess and levy the municipal tax on the properties/open land on the basis of the carpet area and as per the rate mentioned in the said order. Before considering the rival submissions made on behalf of the respective parties and to appreciate the controversy raised in the present petitions, it is required to consider what is provided under the impugned order dated 31.03.1997.

[7.1] Under the impugned order dated 31.03.1997 issued by the Commissioner, Bhavnagar Municipal Corporation for the purpose of assessment and levy of municipal taxes on the properties/open land, the properties are divided into four categories viz. (1) Residential Building, (2) Commercial Building, (3) Industrial Building and (4) Special Class Building. In the said order dated 31.03.1997, the area of Bhavnagar

Municipal Corporation is divided into two zones [as per schedule 'A']. The residential properties for the purpose of determining the annual letting value / rent, the area is divided into two zones [as per schedule 'A'], for the building use for industrial also the area is divided into two zones [as per schedule 'B']. Thereafter, the said order dated 31.03.1997 provides that the annual letting value for the purpose of determining the rates shall be as per the rates per sq. meter mentioned in Statement 'A' with respect to residential building as per the rates mentioned in the Statement 'B' with respect to commercial building as per Statement 'C' for industrial building. The impugned order dated 31.03.1997 also further provides with respect to fixing the annual letting value for the purpose of determining municipal tax rates with respect to the open lands as per Statement 'E'. Thus, under the impugned order dated 31.03.1997, the Municipal Commissioner directed to assess and levy the tax as per the rates to be determined on the basis of the carpet area and as per the annual letting value fixed as mentioned in the rate per sq. meter mentioned as per statements 'A' and 'E'.

[7.2] The impugned order dated 31.03.1997 also further provides [as per clause 8] that the pending court cases/appeals with respect to the assessment also shall be disposed of on the basis of the assessment made as per the said order dated 31.03.1997 and also on the basis of the carpet area [clause 9]. In backdrop of above, the challenge to the impugned order dated 31.03.1997 is required to be considered.

While considering the challenge to the impugned order dated 31.03.1997, the relevant provisions of the BPMC Act and the Taxation Rules deserves consideration, which are as under:

2. Definitions.- In this Act, unless there be something repugnant in the subject or context,--

[(1A) "**annual letting value**" means,-

(i) in relation to any period prior to 1st April, 1970, the annual

rent for which any building or land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might, if the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (Bom. LVII of 1947). were not in force, reasonably be expected to let from year to year with reference to its use;

(ii) in relation to any other period, the annual rent for which any building or land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might reasonably be expected to let from year to year with reference to its use;

and shall include all payments made or agreed to be made to the owner by a person (other than the owner) occupying the building or land or premises on account of occupation, taxes, insurance or other charges incidental thereto :

Provided that, for the purpose of sub-clause (ii),-

(a) in respect of any building or land or premises the standard rent of which has been fixed under section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (Bom. LVII of 1947). the annual Rent thereof shall not exceed the annual amount of the standard rent so fixed;

[(aa) in respect of any building or land or premises, the standard rent of which is not fixed under section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (Bom. LVII of 1947). the annual rent received by the owner in respect of such building or land or premises shall, notwithstanding anything contained in any other law for the time being in force, be deemed to be the annual rent for which such building or land or premises might reasonably be expected to let from year to year with reference to its use;

(aaa) clause (aa) shall not apply to a case where the annual rent received by the owner in respect of such building or land or premises is in the opinion of the Commissioner less than the annual rent for which such building or land or premises might, notwithstanding anything contained in any other law for the time being in force, reasonably be expected to let from year to year with reference to its use;]

(b) in the case of any land of a class not ordinarily let the annual rent of which cannot in the opinion of the Commissioner be easily estimated, the annual rent shall be deemed to be six per cent. of the estimated market value of the land at the time of assessment;

(c) in the case of any building of a class not ordinarily let, or in the case of any industrial or other premises of a class not ordinarily let, or in the case of a class of such premises the building or buildings in which are not ordinarily let, if the annual rent thereof cannot in the opinion of the Commissioner be easily estimated, the annual rent

shall be deemed to be six per cent. of the total of the estimated market value, at the time of the assessment, of the land on which such building or buildings stand or, as the case may be, of the land which is comprised in such premises, and the estimated cost, at the time of the assessment, of erecting the building or, as the case may be, the building or buildings comprised in such premises;]

(1) "Appendix" means an Appendix to this Act;

(2) "appointed day" means with reference to any local area the day on which such area is constituted the City of Ahmedabad, 3 * * * or any other city, as the case may be, under section 3;

[(2A) "approved co-operative bank" means such co-operative bank registered or, deemed to be registered under the 5 [Bombay Co-operative Societies Act, 1925, as may be approved by the State Government by general or special order;]

2(54) "rateable value" means the value of any building or land fixed whether with reference to any given promises or otherwise, in accordance with the provisions of this Act and the rules for the purpose of assessment to property taxes;

99. Fixing of rates of taxes

The Corporation shall, on or before the twentieth day of February, after considering the Standing Committee's proposals in this behalf, determine, subject to the limitations and conditions prescribed in Chapter XI, the rates at which municipal taxes referred to in subsection (1) of section 127 shall be levied in the next ensuing official year and the rates at and the extent to which any of taxes referred to in subsection (2) of the said section which the Corporation decides to impose shall be levied in the next ensuing official year.

127. Taxes to be imposed under this Act

(1) For the purposes of this Act, the Corporation shall impose the following taxes, namely:--

- (a) property taxes ;
- (b) a tax on vehicles, boats and animals :
- (c) a tax on mobile towers:]

[Provided that in the case of a local area constituted to be a City under subsection (2) of section 3, until the expiry of a period of two years from the appointed day or of such further period not exceeding two years as the State Government] at the request of the Corporation for such City may, by notification in the Official Gazette, specify, the provisions of this section shall have effect as if there had been substituted for the words "the Corporation shall impose" the words "the Corporation may impose".]

[(1A) Notwithstanding anything contained in the proviso to subsection (1), in the case of the Municipal Corporation of the City of

Rajkot, for a period of two years commencing on the 19th November, 1975, the provisions of sub-section (1) shall have effect, and shall be deemed to have had effect, as if with effect on and from the 19th November, 1975 there had been substituted for the words "the Corporation shall impose" the words "the Corporation may impose" in the said sub-section (1).]

(2) In addition to the taxes specified in sub-section (1) the Corporation may for the purposes of this Act and subject to the provisions thereof impose any of the following taxes, namely:--

[***]

[(b) Subject to and in accordance with the provisions of the Gujarat State Tax on Professions, Trades, Callings and Employments Act, 1976 (President's Act No.11 of 1976) and the rules thereunder, a tax on professions, trades, callings and employments;]

(c) a tax on dogs;

(d) a theatre tax ;

(e) a toll on animals and vehicles [* * *] entering the City;

(f) any other tax ⁶[(not being a tax on professions, trades, callings and employment)] ⁸[or a tax on payments for admission to any entertainment] which the ⁸[State] Legislature has power under the ⁹[Constitution] to impose in the ¹⁰[State].

¹⁰[(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), no tax or toll shall be levied on motor vehicles save as provided in section 20 of the Bombay Motor Vehicles Tax Act 1958, (Bom. LXV of 1958).]

(3) The municipal taxes shall be assessed and levied in accordance with the provisions of this Act and the rules.

¹¹ ¹²(4) Nothing in this section shall authorise the imposition of any tax which the ¹³[State] Legislature has no power to impose in the ¹⁴[State] under the ¹⁵[Constitution].

129. Property taxes of what to consist and at what rate leviable

For the, purposes of sub-section (1) of section 127 property taxes shall comprise the following taxes which shall, subject to the exceptions, limitations and conditions hereinafter provided, be levied on buildings and lands in the City:--

(a) a water tax at such percentage of their rateable value as the Corporation shall deem reasonable, for providing a water supply for the city:

¹[Provided that the minimum amount of such tax to be levied shall,--

(i) in respect of any one separate holding of land or of any one building (not being premises used exclusively for residential

purpose) or of any one portion of a building which is let as a separate holding and which is not used exclusively for residential purpose, be not less than five rupees per mensem for any official year commencing on the first day of April, 1993;

(ii) in respect of any premises used exclusively for residential purpose, be not less than three ruppes per mensem for any official year commencing on the first day of April 1993;

(b) a conservancy tax at such percentage of their rateable value as will in the opinion of the Corporation suffice to provide for the collection, removal and disposal, by municipal agency, of all excrementitious and polluted matter from privies, urinals and cess-pools and for efficiently maintaining and repairing the municipal drains constructed or used for the reception or conveyance of such matters:

Provided that corporation shall, with the previous sanction of the State Government, fix the minimum amount of such tax to be levied and may fix different minima for different classes of properties:

Provided further that the minimum amount of such tax to be levied in respect of any one separate holding of land or of any one building or of any one portion of a building which is let as a separate holding shall be than two rupees per mensem for any official year commencing on the first day of April, 1993 and that the amount of such tax to be levied in respect of any hotel, club, industrial premises or other large premises may be specially fixed under section 137:

Provided also that while determining the rate of such tax under section 99 or section 150, the rate at which conservancy tax shall be levied for any official year or part of an official year, the Corporation may determine different rates for different classess of properties];

(c) a general tax of not less than twelve per cent. 5 [but not more than thirty per cent.] of their rateable value, which may be levied, if the Corporation so determines on a graduated scale;

² [* * * * *]

³ [(d) betterment charges leviabale under Chapter XVI.]

141. Property taxes to be a first charge on premises on which they are assessed

(1) Property-taxes due under this Act in respect of any building or land shall, subject to the prior payment of the land revenue, if any, due to the¹ [State] Government thereupon, be a first charge, in the case of any building or land held immediately from the²[Government], upon the interest in such building or land of the

person liable for such taxes and upon the movable property, if any, found within or upon such building or land and belonging to such person; and in the case of any other building or land, upon the said building or land and upon the movable property, if any, found within or upon such building or land and belonging to the person liable for such taxes.

Explanation.--The term "property taxes" in this section shall be deemed to include charges payable under section 134 for water supplied to any premises and the costs of recovery of property-taxes as specified in the rules.

(2) In any decree passed in a suit for the enforcement of the charge created by subsection(1), the Court may order the payment to the Corporation of interest on the sum found to be due at such rate as the Court deems reasonable from the date of the institution of the suit until realisation, and such interest and the cost of enforcing the said charge, including the costs of the suit and the cost of bringing the premises or moveable property in question to sale under the decree; shall, subject as aforesaid, be a fresh charge on such premises and moveable property along with the amount found to be due, and the Court may direct payment thereof to be made to the Corporation out of the sale proceeds.

³[141A. Levy of interest on the sum due on account of property tax

(1) If any person liable to pay property tax under this Chapter does not pay the property tax within the time prescribed for its payment under the rules made therefor, there shall be paid by such person for the period commencing on the date of the expiry of the aforesaid prescribed time and ending on the date of the payment of the amount of property tax, simple interest at the rate of eighteen per cent, per annum on the amount of property tax not so paid or any less amount thereto remaining unpaid during such period: Provided that where the property tax for an official year commencing on the first day of April, 1986 or for any official year thereafter in respect of premises used exclusively for residential purpose the rateable value of which does not exceed three hundred rupees is not paid before the end of the official year to which such tax relates but is paid thereafter, the interest shall be leviable for the period commencing on the date immediately after the expiry of the official year and ending on the date of the payment of the property tax.

(2) The interest levied under sub-section (1) may be recovered in the manner specified in section 128 for recovery of a municipal tax.]

151. Refunds of taxes how obtainable Refunds

Refunds of a municipal tax shall be claimable in the manner and subject to the conditions prescribed by rules.

Taxation Rules**1. Notice to be given to Commissioner of all transfers of title of persons primarily liable to payment of property tax.-** (1)

Whenever the title of any persons primarily liable for the payment of property taxes on any premises to or over such premises is transferred the person whose title, is so transferred and the person to whom the same shall be transferred shall within three months after execution of the instrument of transfer, or after its registration, if it be registered or after the transfer is effected if no instrument be executed give notice of such transfer, in writing to the Commissioner. (2) In the event of the death of any person primarily liable as aforesaid the person to whom the title of the deceased shall be transferred, as heir or otherwise shall give notice of such transfer to the Commissioner within one year from the death of the deceased.

3. Liability for payment of property taxes to continue in the absence of any notice of transfer.- (1)

If any person primarily liable for the payment of a property-tax whose title to or over such premises is transferred fails to give notice of such transfer to the Commissioner, he shall, in addition to any other liability which he incurs through such neglect, continue liable for the payment of all property-taxes from time to time payable in respect of the said premises until he gives such notice, or until the transfer shall have been recorded in the Commissioner's books.

(2) Nothing in this rule shall be held to diminish the liability of the transferee for the said property-taxes, or to affect the prior claim of the Commissioner on the premises conferred by section 141 for the recovery of the property-taxes due thereupon.

5. Notice to be Commissioner of the erection of a new building, etc.- (1)

When any new building is erected, or when any building is rebuilt or enlarged, or when any building which has been vacant is reoccupied, [or when the user of any building is changed], the person primarily liable for the property-taxes assessed on the building shall within fifteen days give notice thereof, in writing, to the Commissioner.

(2) The said period of fifteen days shall be counted from the date of the completion or of the occupation, whichever first occurs, of the building which has been newly erected or rebuilt, or of the enlargement, as the case may be, and in the case of a building which has been vacant, from the date of the reoccupation thereof [and where the user has been changed from the date of such

change].

³[**7.Rateable value how to be determined.-** (1) In respect of industrial premises and in respect of any other premises, which the Commissioner may decide to treat as one property having regard to the nature of the premises and the use or uses to which they are put or are capable of being put the rateable value of the buildings and land comprised in such premises shall be determined premises-wise. (2) For the purpose of fixing the rateable value, different parts of any premises may be valued according to their use.

(3) In order to fix rateable value of any building or land or premises assessable to a property tax there shall be deducted from the amount of the ⁴[annual letting value of such building, land or premises a sum equal to ten per cent of such annual letting value] and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever.]

9.Assessment book what to contain.- The Commissioner shall keep a book, to be called "the assessment-book", in which shall be entered every official year--

(a) a list of all ²[buildings or lands or as the case may be, premises] in the City, distinguishing each either by name or number as he shall think fit and containing such particulars, regarding the location or nature of each as will, in his opinion be sufficient for identification;

(b) the rateable value of each such ³[building or land or as the case may be, premises] determined in accordance with the provisions of this Act and the rules;

(c) the name of the person primarily liable for the payment of the property taxes,if any, leviable on each such building or land ⁴[or as the case may be, premises];

(d) if any such building or land ⁵[or as the case may be, premises] is not liable to be assessed to the general tax,the reasons of such non-liability;

(e)when the rates of the property-taxes to be levied for the year have been duly fixed by the Corporation ⁶[and either the period] fixed by public notice, as hereinafter provided, or the receipt of complaints against the amount of rateable value entered in any portion of the assessment book has expired, ⁷ [or the complaint if any, made against any entry has been disposed of in accordance with the provisions hereinafter contained], the amount a which each building or land ⁸[or premises] entered in such portion of the assessment-book is assessed to each of the property-taxes, if any, leviable therein;

(f) if under section 134 or 135,a charge is made for water supplied to any building or land ⁹[or premises] by measurement, or the water-tax or charge for water by measurement is compounded for,

or if, under section 137, the conservancy tax for any building or land¹[or premises] is fixed at a special rate the particulars and amount of such charge, composition or rate;

(g) such other details, if any, as the Commissioner from time to time thinks fit to direct.

13. Public notice to be given when valuation of property in any ward has been completed.- (1) When the entries required by clauses (a), (b), (c) and (d) of rule 9 have been completed, as far as practicable, ¹[in the assessment-book or any section thereof], the Commissioner shall give public notice thereof and of the place²[where the assessment-book or the section], or a copy of it, may be inspected.

(2) Such public notice shall be given by advertisement in the local news-papers and also by posting placards in conspicuous places³[in the City].

15. Time for filing complaints against valuations to be publicly announced.- (1) The Commissioner shall, at the time and in the manner prescribed in rule 13, give public notice of a day, not being less than fifteen days from the publication of such notice, on or before which complaints against the amount of any rateable value entered in the ¹[assessment-book] will be received in his office.

(2) In every case in which any premises have for the first time been entered in the assessment-book as liable to the payment of property-taxes, or in which the rateable value of any premises liable to such payment has been increased, the Commissioner shall, as soon as conveniently may be after the issue of the public notice under sub-rule (1), give a special written notice to the owner or occupier of the said premises specifying the nature of such entry and informing him that any complaint against the same will be received in his office at any time within fifteen days from the service of the special notice.

Considering the aforesaid provisions of the BPMC Act, the Corporation shall impose the property taxes as provided under section 127 of the BPMC Act and at what rate the property tax is leviable is provided under section 129 of the BPMC Act. As per section 129 of the BPMC Act, the general tax is required to be levied on the basis of the ratable value determined. As per section 99 of the BPMC Act, the corporation is required to determine the rates of the taxes, after considering the standing committee's proposal and that too subject to

sanction of the State Government. The ratable value is defined under section 2(54). Thus, the rates at which the properties are to be levied are those provided under section 177(3) & (4) namely they can be assessed and levied in accordance with the provisions of the Act and the Rules. Thus, the municipal tax can be levied as per the rates determined by the corporation on the proposal of the standing committee and sanctioned by the State Government. Considering the provisions at the relevant time [in the year 1997] as such there was no provision under the BPMC Act to assess and levy the municipal tax on the basis of the carpet area and the tax was required to be determined on the basis of the ratable value / annual letting value of each property and the rates of taxes first sanctioned by the standing committee / general board and thereafter by the State Government. The Commissioner alone on his own cannot prescribe the rates of taxes and/or the procedure for assessment of the properties that too on the basis of the carpet area without the same is approved/sanctioned by the standing committee and general board of the corporation and also without the sanction of the State Government.

[7.3] The contention on behalf of the Corporation that as per section 2(1A), the commissioner can determine the annual letting value and therefore, the procedure for determining the annual letting value as provided under the impugned order dated 31.03.1997 is within the powers of the corporation is concerned, the same has no substance. Only in a case when it is not possible to determine the annual letting value with respect to a particular property, the Commissioner can determine the annual letting value. It does not confer any general power upon the commissioner to determine the annual rent/annual letting value at uniform rate and to assess and levy the tax uniformly with respect to all the properties and that too on the basis of altogether a new

formula on the basis of carpet area, dehors the provisions of the BPMC Act. Therefore, the contention on behalf of the corporation for the purpose of order dated 31.03.1997, the commissioner was not required to have the approval/sanction of the standing committee / general board and/or the State Government cannot be accepted. As stated hereinabove and even considering section 129 of the BPMC Act, the property tax was required to be determined on the basis of the annual ratable value or the annual letting value of the properties and at the relevant time, there was no provision to assess / levy the property tax on the basis of carpet area.

[7.4] At this stage it is required to be noted that even the rules proposed by the Bhavnagar Municipal Corporation to assess and levy the municipal tax on the basis of the carpet area has been granted sanction/approval by the State Government in the month of April 2013. However, it is also required to be noted that as per the amendment in the BPMC Act under section 141AA, the municipal tax on the properties and the open land can be assessed and levied on the basis of the carpet area and even there was amendment in section 127 in the year 1999 however, all these are subject to the same being adopted by the concerned corporation and the same being approved/sanctioned by the State Government. In any case at the relevant time i.e. in the year 1997, there was no provision at all to assess and levy the tax on the basis of carpet area and/or to determine the annual letting value on the basis of the carpet area and that too on uniform basis. As stated hereinabove, at the relevant time the municipal tax was leviable on the basis of the annual ratable value / annual letting value. Under the circumstances, the impugned order dated 31.03.1997 is wholly without jurisdiction and/or authority, under the law, of the commissioner and without following any procedure as required under the provisions of the BPMC

Act.

[7.5] Now, so far as the impugned order dated 31.03.1997 which also provides that all pending disputes with respect to assessment and even appeals before the concerned District Court shall be disposed of as per the rates mentioned in clause 9 of the order dated 31.03.1997 would tantamount to applying the procedure / rates mentioned in the order dated 31.03.1997 retrospectively. Even the learned advocates appearing on behalf of the corporation have also as such fairly conceded that such a provision to dispose of all the pending appeals against the assessment/appeals pending before the District Court, on the basis of the rates mentioned in clause 9 of the impugned order dated 31.03.1997 cannot be sustained.

[7.6] Now and after holding that the impugned order dated 31.03.1997 issued by the Commissioner, Bhavnagar Municipal Corporation is without authority under the law and without jurisdiction and dehors of the provisions of the BPMC Act, we are required to consider what will be the consequences. The consequences shall be that all the respective properties are required to be assessed and levied the municipal taxes considering the provisions prevailing prior to 31.03.1997 and the concerned property holders / owners / occupants are required to pay the municipal taxes considering the provisions prevailing prior to 31.03.1997. There cannot be any zero liability. All the owners / occupants are required to pay the municipal taxes as provided under the BPMC Act [now GPMC Act]. Therefore, the corporation is required to have the fresh assessment and levy the municipal taxes considering the provisions and the rates prevailing prior to 31.03.1997 till there is an amendment in the Act and subject to the rates of the taxes as determined under section 99 of the BPMC Act and amended from time

to time.

[7.7] Now, the submission made by the learned advocate appearing on behalf of the respondent Corporation that after the impugned order dated 31.03.1997 and in the meantime till the present petitions are heard and in view of the various schemes of rebate etc. is concerned, so many occupants/occupiers have already paid municipal taxes as per the impugned order dated 31.03.1997 deserves consideration. It is empathetically submitted before us that these directions shall create the situation whereby one set of assesseees would be governed by the law in fact operating at the relevant time and those who voluntarily chose to pay the property tax without a murmur on carpet area basis are precluded from re-agitating the very issue. However, to our mind, from the entire gamut of facts and circumstances emerging on record, if this is not done the same may lead to create unimaginably chaotic situation as the amount of tax collected so far by the Corporation must have already been spent towards public causes by now. This, according to us, is the best possible measure/solution while quashing the order impugned. Those occupants/owners who have as such accepted the impugned order dated 31.03.1997 and in fact paid the municipal taxes on the basis of the impugned order dated 31.03.1997 without protest and they have already paid the municipal taxes, their cases are not required to be reassessed again and on quashing and setting aside the impugned order dated 31.03.1997, they cannot claim the refund of the taxes which they have already paid without protest. If the aforesaid is not considered in that case there shall be irreversible situation and the municipal corporation will have to refund the amount of taxes already collected which they have already spent for public purpose. To overcome the aforesaid situation, it is directed that the present judgment and order shall not be applicable with respect to those occupants/owners of the

properties / land who have already paid their municipal taxes on the basis of the impugned order dated 31.03.1997 without protest.

[7.8] Now, so far as the challenge to the assessment and tax bills and the objection raised on behalf of the respondents against the assessment/municipal tax bills, the respective occupants/occupiers are required to prefer appeal before the District Court is concerned, it is required to be noted that the impugned assessment/bills are issued on the basis of the impugned order dated 31.03.1997 which is held to be illegal and without authority under the law and therefore, the respective petitioners shall be entitled to the consequential reliefs. It is also required to be noted that as per the settled proposition of law laid down by the Hon'ble Supreme Court as well as this Court in catena of decisions that once the petitions are admitted, respective petitioners cannot be normally non-suited on the ground of availability of the alternative remedy. In any case when the impugned order dated 31.03.1997 on the basis of which the assessment is made and the impugned bills are issued is held to be illegal and without jurisdiction and authority under the law, the impugned assessment/bills deserves to be quashed and set aside.

[8.0] In view of the above and for the reasons stated above, all these petitions succeed. The impugned order dated 31.03.1997 issued by the Commissioner, Bhavnagar Municipal Corporation and the consequential assessment/tax bills issued to the respective occupants/owners are hereby quashed and set aside and consequently the corporation to make a fresh assessment and levy the municipal taxes on the respective properties / lands as per the taxes / rates / provisions / procedures prevailing prior to 31.03.1997 and as per the rates/taxes determined on the basis of the amendment made from time to time and considering the

provisions of BPMC Act and concerned occupants/occupiers to pay the same as there cannot be any zero liability. The aforesaid procedure shall be completed within a period of six months from today. However, it is clarified at the cost of reiteration that the aforesaid exercise shall be done and the present judgment and order shall not be applicable with respect to those occupants/owners who have already paid the municipal taxes on the basis of the impugned order dated 31.03.1997 without protest, meaning thereby their cases are not required to be reopened and they are not required to be reassessed again as per the judgment and order. Consequently, the concerned District Court to decide and dispose of the pending appeals in accordance with law and on merits as the impugned order dated 31.03.1997 which provides that the appeals pending before the District Court shall be disposed of as per clause 9 of the order dated 31.03.1997 is also quashed and set aside. Rule is made absolute to the aforesaid extent in each of the petitions.

Sd/-
(M.R.SHAH, J.)

Sd/-
(MS SONIA GOKANI, J.)

Ajay