IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.801 OF 2004
IN
WRIT PETITION NO. 2120 OF 2004
...

1. The Municipal Corporation of Brihanmumbai
a statutory Corporation constituted under the
Mumbai Municipal Corporation Act, 1888,
having its office at Mahapalika Bhavan,
Mahapalika Marg, Fort, Mumbai 400 001.
2. The Municipal Commissioner,
The Municipal Corporation of Brihanmumbai
having his office at Mahapalika Bhavan,
Mahapalika Marg, Fort, Mumbai 400 001.
3. The Deputy Assessor & Collector (City)
having his office at Municipal Head Office,
Building, Mahapalika Bhavan, Ground Floor,
East Wing, Mahapalika Marg, Fort,
Mumbai 400 001.
4. The Asstt. Assessor & Collector, `A' Ward,
having his office at `A' Ward Municipal
Office, 134-E Shahad Bhagatsingh Road,
Fort, Mumbai 400 001. .. Appellants
(original Respondents)

v/s.

1. Dalamal Tower Premises,
Co-operative society Limited, a Society
registered under the Maharashtra
Co-operative Societies Act, 1960 having
its office at B-11, Basement, Dalamal
Tower, Plot No.211, Free Press Journal
Marg, Nariman Point, Mumbai 400 021.
2. Ramesh Ramchandani of Mumbai,
Indian inhabitant, the Secretary,
Dalamal Tower Premises Co-operative
Society Limited, having his office at
B-11, Basement, Dalamal Tower,
Plot No.211, Free Press Journal Marg,

Nariman Point, Mumbai 400 021.
3. The State of Maharashtra through
Government Pleader, High Court,
Bombay having his office at P.W.D.
Building, Ground Floor,
Mumbai 400 032. .. Respondents
(original Petitioners)

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Mr.K.K.Singhvi, Sr.Advocate with Ms.V.S.Gharapure and Ms.Priti Purandare for the Appellants.

Dr.Milind Sathe, Sr.Advocate with Mr.A.S.Doctor i/b Junnarkar & Associates for the Respondents Nos.1 & 2.

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CORAM: D.K.Deshmukh &
R.G.Ketkar, JJ

DATED: 9th September, 2011

JUDGMENT: (PER D.K.DESHMUKH, J.)

The Municipal Corporation of Greater Mumbai and its functionaries have preferred this appeal feeling aggrieved by the judgment and order dated October 14, 2004, passed by the learned Single Judge. The learned single Judge allowed the writ petition filed by the present respondent Nos.1 and 2 and quashed and set aside the orders dated 24th March, 2004 (Exhibits `O1', `O2' and `P') and the demands of payment pursuant to the bills (Exhibits `R', `S1' to `S8') so far as the present appellants sought to reassess the rateable value with effect from 1st April, 2000.

2. For the sake of convenience, I shall refer the first appellant- the Municipal Corporation of Greater Mumbai as " the Corporation" and the present respondent No.1- Dalamal Tower Premises Co-operative Society Limited "the petitioner".

3. The petitioner claims to hold the property being plot of land with building `Dalamal Tower', situate at Plot No.211, Backbay Reclamation, Municipal A Ward No.1315 (127), Nariman Point, Mumbai (for short "the said property"). The said property consists of a building comprising of basement, ground and 15 upper floors. There are 116 open car parks, two enclosed garages in the basement and 274 units in the building. The said building is a non-residential (commercial) building. According to the petitioner, out of 274 units, 199 units are self- occupied by its members and 75 units are given on leave and licence to third parties by the members.

4. On 29th March, 2001, the special notice being No. 312 of 2000-2001 was issued by the Corporation under section 167 of the Mumbai Municipal Corporation Act, 1888 (for short, `the Act') in respect of the year 2000-2001 stating that the assessment has been amended in the official year (1.4.2000 to 31.3.2001)

increasing the rateable value of the said property to Rs. 1,74,59,615/-. In the said notice, it was indicated that complaint thereagainst may be made.

5. On 29th March, 2001 another special notice being No.312A of 2000-2001 was issued by the Corporation under section 162 (2) in respect of the year 2001-02 stating that the rateable value of the said property has been fixed at Rs.1,74,59,615/- for the year 2001-02 (1.4.2001 to 31.3.2002). In this notice also it was indicated that complaint thereagainst may be made.

6. In the month of April, 2001, the petitioner filed the complaint regarding the special notices Nos.312 and 312A of 2000-2001 aforenoticed which were issued on 29th March, 2001. The said complaint was registered as complaint No.ACR/310/2000-2001.

7. On 22nd March, 2002, the special notice No.164/2001-2002 was issued by the Corporation under section 167 in respect of the year 2001-02 stating that the assessment book had been amended for the official year 2001-02 (1.4.2001 to 31.3.2002) increasing the rateable value of the said property to Rs.5,07,38,165/-.

8. Another notice being special notice No.164A of 2001-2002 was issued by the Corporation on 22nd March, 2002 under section 162(2) for the year 2002-03 stating that the rateable value of the said property has been fixed at Rs.5,07,38,165/- for the year 2002-03 (1.4.2002 to 31.3.2003).

9. The petitioner filed the complaint regarding special notice No. 164 dated 22nd March, 2002 for the period 2001-02. The same was registered as complaint No.ACR/257/2001-2002.

10. It appears that in the meantime, several petitions including writ petition No.1116 of 2002 and writ petition No.1721 of 2002 were filed in this court challenging the circulars dated 8.12.2000, 6.1.2001, 25.9.2001, 16.3.2002 and 3.4.2002 issued by the Corporation in relation to the rateable value of various properties in Nariman Point area including the said property. While the petitions were pending, the Corporation investigated the complaint No.ACR/310/2000-2001 filed by the petitioner and by the order dated 27th May, 2002, the Corporation fixed the rateable value of the said property of Rs.53,27,085/- with effect from 1st April, 2000 to 31st March, 2001.

11. The Division Bench disposed of the writ petitions including writ petition No.1116 of 2002 and writ petition No.1721 of 2002 and other similar writ petitions by the order dated 23.10.2002. In the order, the Division Bench recorded the statement of the Corporation that the impugned circulars were being withdrawn and, in view thereof, the action taken or reassessment done pursuant to the circulars cannot stand. The court directed the Corporation to reassess the properties for the purpose of property tax in accordance with law.

12. It is pertinent to note that on 23.10.2002 when the group of writ petitions was disposed of, the complaint No.ACR/257/2001-2002 filed by the petitioner regarding special notice No.164 dated 22nd March, 2002 for the year 2001-02 was pending and no order had been made in the said complaint. In the light of the order that was passed on 23.10.2002, the Corporation by its communication dated 20th January, 2003, addressed to the Dalamal & Sons Investment Company through petitioner, recorded that the assessment for the year 2000-2001 has been rendered ineffective and that it was proposed to reassess the rateable value of the said property at Rs.1,74,59,615/-.

13. On 21st January, 2003, the petitioner filed its objections. The petitioner supplemented the said objections by further detailed objections filed on 8.1.2004 and 27.1.2004.

14. The Corporation sent the notices which were received by the petitioner on 11th December, 2003 and 12th December, 2003. By the notice which was received by the petitioner on 11th December, 2003, it was informed that the complaint regarding the year 2000-01 in respect of ACR/310/2000-2001 relating to special notice under section 167 dated 29th March, 2001 would be investigated and disposed of on 29th December, 2003. Similarly, by the notice that was received by the petitioner on 12th December, 2003, it was informed that the complaint regarding the year 2001-02 i.e. ACT/257/2001-2002 relating to special notice under section 167 dated 22nd March, 2002 would be investigated and disposed of on 29th December, 2003.

15. The petitioner filed its objections on 29th December, 2003 and the personal hearing was granted to the petitioner on 30th December, 2003. As already indicated above, the petitioner filed supplementary objections on 8.1.2004 and 27.1.2004. The petitioner also submitted a tabulated statement showing details of

owner occupied premises and other details as required by the Corporation with respect to the said property on 21.1.2004. The complaints were adjourned on 11th March and 17th March, 2004. On 24th March, 2004, the Corporation made an order in complaint No.ACR/310/2000-2001 relating to the special notice dated 29th March, 2001 under section 167 fixing the rateable value at Rs. 90,44,455/- from 1.4.2000 to 31.3.2001. On this day, the Corporation also made another order in complaint No.ACR/257/2001-2002 relating to the special notice dated 22nd March, 2002 under section 167 fixing the rateable value at Rs. 1,56,53,350/- to Rs.1,57,33,070/- for 2001-2002 and the different rates ranging from Rs.1,43,65,495/- to 1,55,72,620/- from 1.4.2003 to 31.3.2004. The petitioner was provided with the tabulated statement giving break-up of calculation of the rateable value for each individual unit in the said building.

16. The petitioner filed two appeals (848 of 2004 and 849 of 2004) under section 217 of the Act before the court of Small Causes on 2.4.2004 aggrieved by the orders dated 24th March, 2004. On 29.5.2004, the petitioner was served with 8 supplement bills (dated 31st March, 2004) for payment of property tax for the period 1.4.2000 to 31.3.2004 at the reassessed rateable value for an

amount aggregating to Rs.4,28,51,911/-. Prior thereto on 26.4.2004, the petitioner received the bill dated 1.4.2004 for payment of property tax for the period from 1.4.2004 to 31.9.2004.

17. Though the petitioner has already filed appeals under section 217 of the Act challenging the orders dated 24th March, 2004, passed by the Corporation in complaint ACR/310/2000- 2001 and ACR/257/2001-2002, the petitioner filed the writ petition challenging the said two orders dated 24th March, 2004 and bills/demands dated 31st March, 2004 and 1st April, 2004.

The reliefs prayed in the writ petition read thus-

> (a) that this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari, or any other appropriate writ, order or direction under Article 226 of the Constitution of India, calling for the papers and proceedings relating to the orders dated 24th March, 2004 (being Exhibits `O- 1', `O-2' and `P' hereto) and the demands for payment made by the Respondents pursuant thereto by Bills (being Exhibits R, S-1 to S-9 hereto), and after ascertaining the legality thereof to quash and/or set aside the same is so far as they seek to re- assess the rateable value of the petitioner's property and to impose the same with retrospective effect from 1st April, 2000.
>
> (b) that this Hon'ble Court be pleased to issue a writ of Prohibition or a writ in the nature of Prohibition, or any other writ, order or direction under Article 226 of the Constitution of India against the Respondents restraining

> them, their servants, officers and agents from imposing the re-assessed rateable value on the Petitioner or from taking any steps to recover amount from the Petitioner on the basis of the said revision made by the impugned Orders dated 24th March, 2004 (being Exhibits `O-1', `O-2' and `P' hereto) and the demands for payment made by the Respondents pursuant thereto by bills (being Exhibits `R', `S-1' to `S-8' hereto).

18. Before the learned Single Judge, on behalf of the petitioner, the following contentions were raised;

(i) That the impugned order and the bills/demands issued are bad in law being in violation of law laid down by this court in the matter of Municipal Corporation of Greater Mumbai v. Jeeven Jyot Office & Business Premises Cooperative Society Limited.

(ii) That the assessee for the purposes of property taxes is the society in relation to the said building and not the occupants of the units in the building independently. The repeal of the then existing Bombay Rent Control Act and the applicability of the Maharashtra Rent Control Act, 1999 to the said building does not change the situation so as to enable the Corporation to assess the self-occupied units separately from the units which are in occupation of the third parties on tenancy/leave and licence basis.

(iii) That the Corporation has no authority to impose revised rateable value retrospectively for a period prior to the commencement of the current official year. The Corporation acted contrary to the statutory mandate of section 167 and several binding judgments of this court as well as the Apex Court.

19. The learned Single Judge issued rule and at the motion hearing disposed of the rule by the impugned order dated October 14, 2004 by making it absolute in terms of prayers (a) and (b) aforequoted.

20. This is how the Corporation and its functionaries have come up in appeal aggrieved by the order dated October 14, 2004 passed by the learned Single Judge.

21. This appeal was decided by the Division Bench of this court by judgment dated 27-3-2006. The Division Bench allowed the appeal and set aside the judgment and order dated 14th October, 2004 passed by the learned single Judge and dismissed the writ petition filed by the Respondents.

22. The Respondents approached the Supreme Court by way of filing Civil Appeal No.100 of 2007. Civil Appeal No.100 of 2007 was disposed of by the Supreme Court by its order dated 8-3-2011. The order of the Supreme Court reads as under:

"This Appeal has been filed against the impugned judgment of the High Court of Judicature at Bombay dated 27-03-2006 passed in Appeal No.801 of 2004 in Writ Petition No.2120 of 2004.

The facts have been given in the impugned judgment and hence we are not repeating the same here. Mr.R.F.Nariman, learned senior counsel for the appellants, submitted that the decision of this Court in Municipal Corpn. Of Greater Mumbai & Anr. Vs. Kamla Mills Ltd.(2003) 6 SCC 315, has not been properly appreciated by the High Court in the impugned judgment.

Mr.Shekhar Naphade, learned senior counsel for the respondents Nos. 1 to 4, submitted that the aforesaid decision of this Court is not applicable in view of the new law in the State of Maharashra. We are not deciding this controversy one way or the other, but we are merely remanding the case to the High Court for reconsideration after taking into consideration the aforesaid decision of this Court in Municipal Corpn. Of Greater Mumbai & Anr. vs. Kamla Mills Ltd. (supra). Of course, it will be open to the respondents to submit before the High Court that the aforementioned decision of this Court does not apply to the facts of the present case and that contention will also be decided by the High Court. Accordingly, we set aside the impugned judgment of the High Court and remand the matter to the High Court with a request to decide the case expeditiously in accordance with law, preferably within six months from the date of production/receipt of a copy of this Order. Till the decision of the High Court, interim order dated 11.09.2006 passed by this Court shall continue to operate.

All the contentions are left open to the parties.
Intervention allowed.
The Appeal is disposed of accordingly.

23. As a consequence of the order of the Supreme Court, the matter was listed before us. The first question that was debated before us was whether we have to consider all the contentions that were raised before the Division Bench of this court or we have to consider the controversy in the light of the judgment of the Supreme Court in the case of Municipal Corporation of Greater Mumbai & Anr. v/s. Kamla Mills Ltd. , AIR 2003 SC 2998. But considering the law laid down by the Supreme Court in its judgment in the case of United Bank of India, Calcutta v/s. Abhijit Tea Co.Pvt.Ltd. and ors. (2000) 7 Supreme Court Cases 357, specially what is stated by the Supreme Court in paragraph 16 quoted below, in my opinion, as the Judgment of the Division Bench of this court has been set aside by the Supreme Court, I will have to consider all the contentions that were urged by the parties before the Division Bench, when it decided the Appeal. The observations of the Supreme Court referred to above in paragraph 16 of its judgment in the case of United Bank of India, Calcutta (supra) reads as under:

> 16. But, it is now well settled that an order of remand by the appellate Court to the trial Court which had disposed of the suit revives the suit in full except as to matters, if any, decided finally by the appellate Court. Once the suit is revived, it must, in the eye of the law, be deemed to be pending - from the beginning when it

> was instituted. The judgment disposing of the suit passed by the Single Judge which is set aside gets effaced altogether and the continuity of the suit in the trial court is restored, as a matter of law. The suit cannot be treated as one freshly instituted on the date of the remand order. Otherwise serious questions as to limitation would arise. In fact, if any evidence was recorded before its earlier disposal, it would be evidence in the remanded suit and if any interlocutory orders were passed earlier, they would revive. In the case of a remand, it is as if the suit was never disposed of (subject to any adjudication which has become final, in the appellate judgment). The position could have been different if the appeal was disposed of once and for all and the suit was not remanded.

24. Before the Division Bench, it appears two questions were argued. They are,

(one) Whether for the determination of the rateable value of the said property (`Dalamal Tower') the Corporation was justified in taking into account the rent/compensation received by the members (or estimate of rent contained in its circulars) from their tenants/licencees in respect of the units exempted from the applicability of Maharashtra Rent Control Act, 1999.

(two) Whether the assessment orders dated 24th March, 2004 cannot in law have effect from any date prior to 1st April, 2003 and, therefore, the assessment orders effective from 1.4.2000 are illegal?

25. The property to which this appeal relates is in Mumbai. In Mumbai City before its repeal by the Maharashtra Rent Control Act, 1999, The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (herein after referred to as the Bombay Rent Act) was in force. Thus, to the building to which this appeal relates , provisions of the Bombay Rent Act were applicable. Therefore, it is common ground before us that for determination of ratable value of the building, provisions for fixing of standard rent contained in the Bombay Rent Act were taken into consideration. Perusal of Section 4 of the Bombay Rent Act shows that the provisions of the Act did not apply to any premises belonging to the Government or a local authority. Any tenancy created in favour of the Government was also exempted from the provisions of the Act. Similar exemption was granted in relation to the premises owned by the local authority as also to the premises taken on lease by the local authority. The Supreme Court in its judgment in the case of Municipal Corporation of Gr.Mumbai v/s. Kamala Mills Ltd. (supra) has considered the question of determination of ratable value of a building in Mumbai while Bombay Rent Act was in force and has held that the ratable value is to be limited by the standard rent determined or determinable under the Bombay Rent Act. By Section 58 of the

Maharashtra Rent Control Act 1999, Bombay Rent Act was repealed. Maharashtra Rent Act came into force on 31-3-2000. Section 3 of the Maharashtra Rent Act exempts from the application of the Act the premises belonging to the Government or the local authority, premises let to the Government or the local authority, premises let to the Banks, public sector undertakings etc. as also the companies, paid up share capital of which is Rs.1 crore or more. As certain units in the building of the Petitioner were let out to the Banks and other Corporations to which the provisions of the Maharashtra Rent Act were not applicable according to the Corporation it can now take the actual rent received by the owner of the Units into consideration for fixing annual letting value of those units, and therefore the Corporation undertook the exercise of revising the ratable value. The real question, therefore, that arises for consideration in this appeal is, whether the repeal of the Bombay Rent Act and coming into force of the Maharashtra Rent Act makes such a change in the situation that now for determination of the ratable value in relation to the properties to which because of their letting to the persons or institutions mentioned in Section 3 of the Maharashtra Rent Act the provisions of the Rent Act do not apply , the actual rent paid by the tenants can be taken into consideration.

26. Fixation of ratable value for the purpose of property taxes under the various Municipal Corporation Acts has been in the nature of perennial dispute. The Supreme Court in its judgment in the case of Kamala Mills (supra) has considered this question with reference to the provision of the M.M.C. Act and the Bombay Rent Act. The Supreme Court refers to the relevant provisions of the M.M.C. Act in para 14 of its judgment thus:

> Under Section 139 of the Bombay Municipal Corporation Act, the Corporation is inter alia empowered and obligated to impose property taxes. The property taxes comprise general tax, water tax, sewage tax and so on. All these taxes are leviable at such percentage of the rateable value as determined by the Municipal Corporation. The manner of determination of rateable value, therefore, becomes crucial to the debate before us. The material portion of Section 154 of the Mumbai Municipal Corporation Act relevant for our discussion reads as under:
>
> "Section 154(1) - In order to fix the rateable value of any building or
> land assessable to a property tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten per centum of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever."

The observations of the Supreme Court found in para 15 are crucial because in that paragraph the Supreme Court observes that the

words “"the amount of the annual rent for which such land or building might reasonably by expected to let from year to year" have been interpreted on the touch stone of whether the Rent Act applies to the area or not. Paragraph 15 of the judgment reads as under:

> The key words of Section 154(1) are "the amount of the annual rent for which such land or building might reasonably be expected to let from year to year" (emphasis added). Considerable forensic skill and judicial talent have been expended to ascertain the meaning of these words. Depending upon whether the area in question is subject to Rent Restriction Legislation or not, the Courts have answered the question differently. (emphasis supplied.)

The Supreme Court in paragraph 16 of its judgment in the case of Kamala Mills (supra) has mentioned following 11 judgments of the Supreme Court on the topic of fixation of ratable value.

1. [1998] 6 SCC 381. Govt. Servant Coop. House Building Society Ltd.v. Union of India

2. [1998] 4 SCC 368, East India Commercial Co. (?) Ltd. v. Corpn. ofCalcutta.

3. [1995] 4 SCC 696, Asstt. G.M., Central Bank of India v. Commr. ,Municipal Corpn. For the City of Ahmedabad.

4. [1995] 4 SCC 96, Indian Oil Corpn. Ltd. v. Municipal Corpn

5. [1994] 6 SCC 572, Srikant Kashinath Jituri v. Corpn. of the-City of Belgaum.

6. [1985] 1 SCC 167, Balbir Singh (Dr.) v. MCD.

7. [1980] 1 SCC 685, Dewan Daulat Rai Kapoor v. New Delhi MunicipalCommittee

8. [1976] 4 SCC 622, Municipal Corpn., Indore v. Ratnaprabha

9. [1970] 2 SCC 803, Guntur Municipal Council v. Guntur Town Rate Payers' Assn.

10. [1970] 2 SCC 44, Corpn, of Calcutta v. L1C of India.

11. AIR (1962) SC 151, Corpn. of Calcutta v. Padma Debi.

Thereafter, the Supreme Court in paragraph 17 has observed thus,

> “We are, fortunately, spared the effort of having to analyse these judgments in detail and ascertain their ratios, as two judgments of this Court have already anticipated and carried out this task for us.

. The Supreme Court then refers to its judgment in the case of East India Commercial Co.(P) Ltd. v. Corporation of Calcutta, 1998 (4) SCC 368 and has quoted from paragraph 17 of that judgment as follows:

> "From the aforesaid decisions, the principle which is deducible is that when the Municipal Act requires the determination of the annual value, that Act has to be read along with Rent Restriction Act which provides for the determination of fair rent or standard rent. Reading

> the two Acts together the rateable value cannot be more than the fair or standard rent which can be fixed under the Rent Control Act. The exception to this rule is that whenever any Municipal Act itself provides the mode of determination of the annual letting value like the Central Bank of India case relating to Ahmedabad or contains a non obstante clause as in Ratnaprabha case then the determination of the annual letting value has to be according to the terms of the Municipal Act. In the present case, Section 168 of the Municipal Act docs not contain any non obstante clause so as to make the Tenancy Act inapplicable and nor does the Act itself provide the method or basis for determining the annual value. This Act has, therefore, to be read along with Tenancy Act of 1956 and it is the fair rent determinate under Section 8 (1) (d) which alone can be the annual value for the purpose of property tax."

. The Supreme Court then in paragraph 20 refers to its judgment in the case of India Automobiles Ltd. v/s. Calcutta Municipal Corporation (2002 (3) SCC 388 and quotes following portion from paragraph 21 of that judgment.

> "A perusal of various judgments, relied upon by the learned counsel for the parties, clearly shows that this Court has taken a consistent view regarding the determination of annual value of land or building for the purposes of determination of taxes under the Municipal Acts. On the basis of various statutes relating to the determination of the annual value for the purposes of the Municipal Acts, this Court has devised two distinct groups. One such group deals with the municipal laws of some States which do not expressly exclude application of the Rent Restrictions Acts in the matter of determination of annual value of a building for the purposes of levying municipal taxes and the other group deals with the municipal laws which expressly

> exclude application of the rent Restriction Acts in the matter of determination of annual value of land or building on rental method. Whereas in the first category of cases the determination of annual value has to be made on the basis of fair or standard rent notwithstanding the actual rent, even if it exceeds the statutory limits. In the other group where the restriction in the rent Acts has been excluded, the determination of annual value of the building on rental method is referable to the method provided under the relevant Municipal Act. Whereas Padma Debi case, LIC case, Guntur Town Rate Payers case and Dewan Daulat Rai case deal with the first group of municipal laws, the cases in Ratnaprabha case, AGM, Central Bank of India case. East India Commercial Co. case, Balbir Singh case, Indian Oil Corpn. Case and Srikant case deal with the second group. As already noticed, this Court in LIC case dealt with the first category as in Section 168 of the Calcutta Municipal Corporation Act, there existed no non obstante clause. The observations of the Bench of this Court which dealt with the case on 10.10.2001 cannot be taken in isolation."

. Thereafter, the Supreme Court further quotes from paragraph 23 of that judgment,

> "As already noticed even without specific determination, the standard rent was held to have been statutorily determined under Section 2(10) (b) of the Rent Act. Upon analysis of the various municipal laws and the judgments of this Court it is held that in cases where the municipal laws exclude the applicability of the Rent Acts by incorporating non obstante clause in the taxing statute, the powers of the authorities under the Municipal Acts are not circumscribed by the limits indicated in Padma Debi case and followed in that group of cases. In cases where the fair rent payable by the tenant has been determined and there is no justification for refusing to accept that fair rent as rental

> value of the premises, the municipal authorities should generally accept the standard rent fixed, notwithstanding the non-applicability of the Rent Acts because such a view would be a reasonable guideline to determine the rate of rent at which such land or building might, at the time of assessment, be reasonably expected to let from year to year. The rent which the tenant is receiving from his subtenant is also an important statutory consideration for determining the rent at the time of assessment to which the property might reasonably be expected to be let from year to year. Such a consideration is also justified on the principles of reasonableness. We cannot agree that in all cases, notwithstanding the non obstante clause the annual rental value cannot be fixed beyond the standard rent determined or determinable under the rent statute. We also find it difficult to hold that in all cases the rent actually paid by the sub-tenant to the tenant be taken as a sole criterion for determining the annual value on the assumption that such land or building might, at the time of assessment, is reasonably expected to get the aforesaid amount of
> rent if let from year to year."

. Thus, the law as found by the Supreme Court in its judgment in Kamla Mills Ltd.'s case is that where the Municipal laws exclude the applicability of Rent Act by incorporating non obstante clause in the taxing statute the powers of the authorities under the Municipal Acts are not circumscribed by the limits which may be found in the Rent Act. However, where the Municipal law does not exclude the applicability of the Rent Act, then the standard rent either determined or determinable under the Rent Act is the standard for fixing the ratable value. So far as Mumbai is concerned, where the provisions of the Bombay Rent Act were applicable, the situation

has been considered in detail by the Supreme Court in its judgment in Kamla Mills Ltd.'s case (supra). In Kamla Mills (supra) the Supreme Court was considering two properties, one was completed building the other was vacant land. The Supreme Court after referring to various judgments of the Supreme Court, as we have indicated above, in paragraph 27 has observed thus:

> As already noticed by the judgments of this Court, barring the two exceptional cases of Municipal Legislation containing non-obstante clause or deeming clause with regard to the rateable value, it must necessarily be held to be limited by the standard rent determined or determinable under the applicable rent control legislation.

27. Thus, the law laid down by the Supreme Court as found in its judgment in Kamla Mills's case appears to be that if in an area Rent Act is applicable and the Municipal Law concerned does not contain a non-obstante clause, then for determination of ratable value of all buildings in that area , irrespective of whether the entire building or part of that building is exempted from the provisions of the Rent Act, the ratable value is limited by the standard rent determined or determinable under the Rent Control Legislation. This position becomes absolutely clear from the observations of the Supreme Court in its judgment in the case of

East India Commercial Co.(P) Ltd., which the Supreme Court quoted in its judgment in Kamla Mills's case, that the principle established by various judgments of the Supreme Court is that when the Municipal Act requires determination of annual value, that Act has to be read along with Rent Restriction Act, which provides for determination of fair rent or standard rent. The exception to this rule is that if the Municipal law itself provides for mode of determination of annual rent value and contains an non- obstante clause, which excludes application of the Rent Act, bearing this exception as a general rule the Municipal Act and the Rent Act are to be read together and the ratable value cannot be more than the standard rent. Thus, the fact that a particular unit or a particular building in the area is exempted from the provisions of the Rent Act, though the Rent Act applies to the area, is irrelevant while considering the question of fixation of ratable value under the Municipal law. So far as Mumbai is concerned, the Supreme Court has already held in its judgment in the case of Kamla Mills (supra) that the Corporation Act does not contain any non-obstante clause and that it also does not contain provisions providing the mode of determination of annual letting value. Therefore, the annual ratable value cannot be in excess of the standard rent either determined or determinable under the Rent Act.

28. From the observations of the Supreme Court in its judgment in “Kamla Mills Ltd.” case, it appears that what is crucial is ‘whether in the area where the building concerned or the unit concerned is situated, the Rent Act applies or not, and not whether to a particular building or a particular unit the provisions of Rent Act apply or not.’

. It was not disputed before us that when the Bombay Rent Act was in force, for determination of annual rent, standard rent was taken into consideration by the Corporation irrespective of the fact whether a particular unit or a building is exempted from the provisions of the Rent Act or not. Perusal of the relevant provisions of the Bombay Rent Act shows that Section 4 of the Bombay Rent Act contains the provision in relation to the exemption. Under that provision, apart from the premises owned by the Government and the local authorities and the premises let out to the Government and the local authorities in certain areas where the premises have been given on licence, the provisions of the Act in relation to the standard rent were inapplicable. There was also power given to the State Government to grant exemption in certain cases. Power of the Court to fix standard rent was contained in Section 11 of the

Bombay Rent Act. Prohibition on recovery of rent in excess of standard rent was contained in Section 7 of the Bombay Rent Act. As observed above, the Bombay Rent Act was repealed by the Maharashtra Rent Control Act and the repeal became effective with effect from 1.4.2000 and it is only from that date i.e. 1.4.2000 that the Corporation proposed to amend the Register so that it can take into consideration the actual rent received in relation to the premises which are exempted from the provisions of the Maharashtra Rent Control Act for the purpose of determination of annual letting value. The scheme of the Maharashtra Rent Control Act shows that it also contains the provision for exemption of certain premises from the provisions of the Rent Act. It is Section 3 of the Maharashtra Rent Control Act which is relevant, it reads as under:-

> "3. Exemption- (1) This Act shall not apply-
>
> (a) to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, licence or other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the

name of any officer subordinate to the Government authorised in this behalf; but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer;

(b) to any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more.

Explanation- For the purpose of this Clause the expression 'bank' means,-

(i) the State Bank of India constituted under the State Bank of India act, 1955(23 of 1955);

(ii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act,1959 (39 of 1959);

(iii) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act,1970 (5 of 1970) or under section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act,1980 (40 of 1980); or

(iv) any other bank, being a scheduled bank as defined in Clause (e) of section 2 of the Reserve Bank of India Act,1934 (2 of 1934).

(2) The State Government may direct that all or any of the provisions of this Act shall, subject to such conditions and terms as it may specify, not apply-

(i) to premises used for public purpose of a charitable nature or to any class of premises used for such purposes;

(ii) to premises held by a public trust for a religious or charitable purpose and let at a nominal or concessional rent;

(iii) to premises held by a public trust for a religious or charitable purpose and administered by a local authority; or

(iv) to premises belonging to or vested in an university established by any law for the time being in force.

Provided that, before issuing any direction under this sub-section, the State Government shall ensure that the tenancy rights of the existing tenants are not adversely affected.

(3) The expression ‘premises belonging to the Government or a local authority’ in sub-section

> (1) shall, notwithstanding anything contained in the said sub-section or in any judgement, decree or order of a Court, not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or grant, the building so erected may belong or continue to belong to the Government or the local authority, as the case may be, and such person shall be entitled to create a tenancy in respect of such building or a part thereof."

A comparison of the provisions of Section 4 of the Bombay Rent Act and Section 3 of the Maharashtra Rent Act shows that now the scope of exemption is enlarged. Otherwise the scheme of the Bombay Rent Act and the Maharashtra Rent Control Act in so far as grant of exemption is concerned, is the same. In the Maharashtra Rent Control Act also there is a provision of fixation of standard rent and there is prohibition contained on landlord recovering any rent in excess of standard rent. Thus, the scheme of the Maharashtra Rent Act and the Bombay Rent Act is the same, and therefore, it cannot be said that the mere fact that the Bombay Rent Act has been repealed by the Maharashtra Rent Control Act is enough for the Municipal Corporation to disregard the standard rent

in relation to the premises which are exempted from the provisions of the Maharashtra Rent Control Act.

29. It is to be seen that apart from the premises which are exempted from the provisions of the Rent Act to the premises which are occupied by the owner himself, the provisions of the Rent Act do not apply. Still, the Supreme Court in its judgment in the case of Diwan Daulat Rai Kappor and ors. v/s. New Delhi Municipal Corporation, 1980 (1) S.C.C. 685, has held that in case of a self-occupied building the annual letting value would be limited by the measure of standard rent determinable under the Rent Act. Therefore, if a building is situated in an area to which the Rent Act applies and even though the provisions of the Rent Act do not apply to that building actually, because that building is not let out to the tenant, still the annual letting value would be limited by the measure of standard rent determinable under the Rent Act. It is so held, though in all the Rent Acts there is provision for exemption to certain kind of leases from the provisions of the Rent Act and it is possible that in case the owner of the self-occupied premises decides to let out the premises he may let them out in such a way that the Rent Act does not apply to the lease, still while those premises are self-occupied the annual letting value is limited by the

measure of Standard Rent determined under the Rent Act. The only reason for doing this is that the area where such self-occupied premises are situated the Rent Act applies. If the case put up by the Corporation is accepted in so far self-occupied premises are concerned, while the premises are self-occupied though the Rent Act does not apply, the annual letting value is limited by the measure of Standard Rent. If those premises are let out in such a manner that the lease is exempted from the provision of Rent Act, the annual letting value will have to be determined taking into consideration the actual Rent, because the Rent Act does not apply. The premises would be the same, the Rent Act would not applicable in both situations still standard for fixing annual letting value would be different. This is illogical. In my opinion, therefore, the fact whether in the area where the building is situated Rent Act applies or not is the decisive factor. In my opinion, therefore, even where a part or portion of the building is exempted from the provisions of the Rent Act, still for the purpose of determination of the annual letting value standard rent determinable under the Rent Act would be the measure.

30. On behalf of the petitioners, reliance was placed on a judgment of the Division Bench of this Court in the case “Municipal

Commissioner of Greater Bombay Vs. Jeevan Jyot Office & Premises Co-operative Society Ltd., in F.A.393 of 1975 decided on 28.10.1980", wherein the dispute related to a building belonging to the Co-operative Society consisting of several flats. The flats were held by the members who were the shareholders and the members of the society. In fixing the rateable value, the Investigating Officer divided the flats in two categories viz. one category of flats which were occupied by the members themselves and the other category of flats which were allowed by the members to be occupied by the licensess against payment of compensation. It was held by the Division Bench that the compensation received by the members from their licensees can never be determinative of what ordinarily a building can fetch by way of rent. The occupants/licensees, the Division Bench held, are assumed to be temporary occupants who are required to pay more than the standard rent due to the expedience and immediate needs. It was also held that what members received from the occupants cannot be relevant for determining what the society can reasonably expect to receive by way of rent at the market rate. The Division Bench observed that the members of the society were neither owners of any part of the building nor can they claim ownership of the flat as such. That the society was the owner of the entire building and the conveyance

was executed in favour of the society and not in favour of the members was not in dispute. It was, thus, held that income of the society being relevant, what the society fetches in the market alone can be basis for determination of the rateable value of the property and that the Corporation has no right to take into account, for the purpose of fixation of the rateable value, the amount of compensation received by the members from the licensees when the tax was assessed on the society on the hypothesis that the society was the owner of the property.

. The Division Bench in its judgment in the case of Jeevan Jyot Office and Business Premises, referred to above, held "Income of the Society being relevant, what the Society fetches in the market alone can be basis for determination of the ratable value of the property." In the present case, according to the Corporation, though the property has been assessed to property tax from 1st April, 1977 in the name of the company. In the assessment book maintained by the Corporation under Section 156 of the Act, under the heading name of persons primarily liable for payment of property tax in respect of the said property is "Government of Maharashtra, lessee M/s.Dalamal & Sons Investment company." It is , thus, clear that individual flat owner or unit holder, even

according to the Corporation, are not primarily liable for payment of the property tax. Therefore, in terms of the law laid down by the Division Bench of this court in the case of Jeevan Jyot , referred to above, income of individual member who holds the unit cannot be taken into consideration and if the income of the company or the Petitioner co.operative society from the building is to be taken into consideration, then the position that the provisions of the Maharashtra Rent Act are applicable and that there is no non-obstante clause contained in the taxing provision under the Corporation Act will have to be taken into consideration and in view of the law laid down by the Supreme Court in its judgment in Kamla Mills's case for determination of the ratable value only the standard rent determined or determinable will have to be taken into consideration.

31. In this view of the matter, therefore, in my opinion, the learned single Judge was justified in holding that the Corporation was not justified in revising the ratable value. As I hold that the Corporation was not justified in revising the ratable value, the question whether the Corporation was justified in revising it with retrospective effect, which was the second question argued before us need not be considered.

32. In the result, therefore, the appeal fails and is dismissed.

(D.K.DESHMUKH,J.)

PER R.G.KETKAR, J.:

33. Heard Mr.K.K.Singhvi, learned Senior Counsel for the appellant – Corporation, Dr.Milind Sathe, learned Senior Counsel for the petitioner – Society.

34. In this appeal, following two questions are raised :-

(i) Whether for determination of the rateable value of the property being plot of land with building `Dalamal Tower', situate at Plot No.211, Backbay Reclamation, Municipal A Ward No. 1315(127), Nariman Point, Mumbai (for short "the said property"), the Corporation was justified in taking into account the rent/compensation received by the members (or estimate of rent contained in its circulars) from their tenants/licensees in respect of the units exempted from the applicability of the Maharashtra Rent Control Act, 1999 ?

(ii) Whether the assessment orders dated 24th March, 2004 cannot in law have effect from any date prior to 1st April, 2003 and, therefore, the assessment orders effective from 1st April, 2000 are illegal ?

35. For the sake of brevity, the Mumbai Municipal Corporation Act, 1888 shall hereinafter be referred as `the Act'; the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 as `the Bombay Rent Act'; and the Maharashtra Rent Control Act, 1999 as `the Maharashtra Rent Act'. The core issue involved in this Appeal is about fixation of the ratable value of the units that are exempted from the applicability of the Maharashtra Rent Act as they are occupied by the tenants/licensees covered by Section 3(1)(b) thereof.

36. I have perused the judgment proposed by my esteemed brother Hon'ble Mr. Justice D.K.Deshmukh. After considering the judgments of the Apex Court in the cases of (1) Municipal Corporation of Greater Mumbai Vs. Kamla Mills Ltd., (2003) 6 SCC 315; (2) East India Commercial Co. (P) Ltd. Vs. Corporation of Calcutta, (1998)4 SCC 368; (3) India Automobiles Limited Vs.

Municipal Corporation, (2002)3 SCC 388 and the Division Bench judgment of this Court in the case of the Municipal Commissioner for Greater Bombay and anr. Vs. Jeevan Jyot Office and Business Premises Co-operative Society Limited, Bombay in First Appeal No. 393 of 1975 decided on 28th October, 1980, my learned brother has held as under :-

i] That if in an area Rent Act is applicable and the Municipal Law concerned does not contain a non obstante clause, then for determination of rateable value of the buildings in that area irrespective of whether the entire building or part of that building is exempted from the provisions of the Rent Act, the rateable value is limited by the standard rent determined or determinable under the Rent Control Legislation. The fact whether in the area where the building is situate the Rent Act applies or not is a decisive factor. Even where a portion of the building is exempt from the provisions of the Rent Act, still for the purpose of determination of annual letting value standard rent determinable in the Rent Act would be a measure.

ii] The scheme of the Bombay Rent Act and the Maharashtra Rent Act in so far as the grant of exemption is concerned, is the

same. A comparison of the provisions of Section 4 of the Bombay Rent Act and Section 3 of the Maharashtra Rent Act shows that now the scope of exemption is enlarged. Mere fact that the Bombay Rent Act has been repealed by the Maharashtra Rent Act is not enough for the Corporation to disregard the standard rent in relation to the premises which are exempted from the provisions of the Maharashtra Rent Act.

iii] If the building is situate in an area to which the Rent Act applies and even though the provisions of the Rent Act do not apply to that building actually, because that the building is not let out to the tenants (occupied by owner himself), still the annual letting value would be limited by measure of standard rent determinable under the Rent Act.

iv] The income of the Society being relevant, what the Society fetches in the market alone can be the basis for determination of rateable value of the property and that the income of the individual member who holds the unit cannot be taken into account as held by the Division Bench of this Court in the case of the Municipal Commissioner for Greater Bombay and anr. Vs. Jeevan Jyot (supra).

37. My learned brother answered Question No.1 by holding that even in respect of the units which are exempt under the Maharashtra Rent Act, the Corporation has to determine the rateable value on the basis of standard rent determined or determinable under the Rent Act. In so far as the Question No.2 is concerned, my learned brother has held that since the Corporation was not justified in revising rateable value, the question whether the Corporation was justified in revising it with retrospective effect need not be considered. I deeply regret my inability to subscribe to the view expressed by my learned brother. Since the relevant and material facts have been set out in the judgment proposed by my learned brother, I refrain from repeating the facts unless the reference to the facts is inevitable. I proceed to consider the Questions that have been posed before this Court as under.

Re : Question (i)

38. Whether for determination of the rateable value of the said property (Dalamal Tower), the Corporation was justified in taking into account the rent/compensation received by the members (or estimate of rent contained in its circulars) from their

tenants/licensees in respect of the units exempted from the applicability of the Maharashtra Rent Control Act, 1999 ?

39. The Apex Court, by its order dated 8th March, 2011 in Civil Appeal No.100 of 2007 remitted the case to this Court. On behalf of the appellants before the Apex Court – the respondents no.1 and 2 herein, it was contended that the decision of the Apex Court in Municipal Corporation of Greater Mumbai Vs. Kamla Mills Ltd., (2003) 6 SCC 315 was not properly appreciated by the High Court in the impugned judgment and order dated 3/27-3-2006, since then reported in 2006(3)Bom.C.R.557. On behalf of the respondent nos. 1 to 4 before the Apex Court and the appellants herein, it was submitted that the said decision is not applicable in view of the new law i.e. the Maharashtra Rent Act in the State of Maharashtra. The Apex Court did not decide the controversy one way or other, but remitted the case to this Court for reconsideration after taking into consideration the decision of the Apex Court in the case of Kamla Mills Ltd. (supra). It was made clear that it will be open to the respondents therein (Corporation) to submit before this Court that the decision of the Apex Court in Kamla Mills Ltd. (supra) does not apply to the facts of the present case.

40. In paragraph 16 of the report, the Apex Court noted that the counsel for Kamla Mills Ltd. relied upon the following judgments in support of proposition that the rateable value of premises is limited by standard rent determined or determinable under the provisions of the rent restriction Legislation:

(i) *Govt. Servant Coop. House Building Society Ltd. Vs. Union of India, (1998) 6 SCC 381;*

(ii) *East India Commercial Co. (P) Ltd. Vs. Corporation of Calcutta, (1998)4 SCC 368;*

(iii) *Asstt. G.M., Central Bank of India Vs. Commissioner, Municipal Corporation for the City of Ahmedabad, (1995) 4 SCC 696;*

(iv) *Indian Oil Corporation Ltd. Vs. Municipal Corporation, (1995) 4 SCC 96;*

(v) *Srikant Kashinath Jituri Vs. Corporation of the City of Belgaum, (1994)6 SCC 572;*

(vi) *Balbir Singh (Dr) Vs. M.C.D., (1985)1 SCC 167;*

(vii) *Dewan Daulat Rai Kapoor Vs. New Delhi Municipal Committee, (1980)1 SCC 685;*

(viii) *Municipal Corporation, Indore Vs.Ratnaprabha, (1976)4 SCC 622;*

(ix) *Guntur Municipal Council Vs. Guntur Town Rate Payers Association, (1970)2 SCC 803;*

(x) *Corporation of Calcutta Vs. LIC of India, (1970) 2 SCC 44;*

(xi) *Corporation of Calcutta Vs. Padma Debi, AIR 1962 SC 151;*

41. The Apex Court, thereafter, considered the judgments in the cases of East India Commercial Company Pvt. Ltd. Vs. Corporation of Calcutta, (1998)4 SCC 368 and India Automobiles Limited Vs. Municipal Corporation, (2002)3 SCC 388.

42. Before considering the merits of the case and the judgments relied upon by the learned Counsel appearing for the parties, it would be advantageous to note the relevant provisions of -

(i) The Act;

(ii) The Bombay Rent Act;

(iii) The Maharashtra Rent Act.

THE ACT :

43. Sections 3(m), and (gg) of the the Act define expressions “owner” and “premises”, respectively, as under :-

> **3.Definitions of terms:-** In this Act, unless there be something repugnant in the subject or context,
>
> (m) **“owner”** when used in reference to any premises, means the person who receives the rent of the said premises, or who would be entitled to receive the rent thereof if the premises were let, and includes -
>
> (i) an agent or trustee who receives such rent on account of the owner; and
>
> (ii) an agent or trustee who receives the rent of , or is entrusted with, or concerned for, any premises devoted to religious or charitable purposes; and
>
> (iii) a receiver, sequestrator or manager, appointed by any court of competent jurisdiction to have the charge of, or to exercise the rights of an owner of the said premises.
>
> (gg)**“premises” includes** messuages, **buildings** and lands of any tenure, whether open or encloses,

whether built on or not and whether public or private;

44. Section 140(1) of the the Act enumerates the taxes that shall be called as property taxes to be levied on the buildings and lands. The property tax shall comprise of (i) water tax; (ii) additional water tax; (iii) sewerage tax; (iv) an additional sewerage tax; (v) general tax, (vi) education cess. Section 140(1) along with explanation reads as under :-

> "**140.Property taxes of what to consist and at what rate leviable**:- [1] The following taxes shall be levied on **buildings** and lands in [Brihan Mumbai] and shall be called " property taxes", namely:--
>
> [(a) (i) the water tax .....;
>
> (ii) an additional water tax which shall be called `the water benefit tax' .....;
>
> (b) (i) the sewerage tax .....;
>
> (ii) an additional sewerage tax which shall be

called the “sewerage benefit tax” .....;

General Tax -

(c) a general tax .....;

Education cess.

[(ca) the education cess leviable under Section 195E;]

[(cb) the street tax leviable under Section 195 G.]

[(d)] betterment charges leviable under Chapter XII-A]

[Explanation.- for the purposes of this sub-section, the expression “**building**” includes a **flat**, a **gala**, a **unit** or **any portion of the building**]

45. Section 154(1) of the the Act reads as under :-

(1) In order to fix the rateable value of any **building** or land assessable to a property-tax, there shall be deducted from the amount of the annual rent for which such land or **building** might reasonably be expected to

let from year to year a sum equal to ten per centum of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever.

THE BOMBAY RENT ACT :

46. Section 2(1) of the Bombay Rent Act provides that Part I (Sections 1 to 5) and Part IV (Sections 47 to 51) shall extend to the Bombay area of the State of Maharashtra. Section 2(2) provides that Part II (Sections 6 to 31) and Part II A (Sections 31A to 31J) shall extend to the areas specified in Schedule I and Part III (Sections 32 to 46E) shall extend to the areas specified in Schedule II and shall continue to extend to any such area notwithstanding that the area ceases to be of the description specified therein. Section 3(2) thereof provides that the Bombay Rent Act shall come in force upto and inclusive of the 31st day of March, 2000 and shall then expire. Section 4 thereof provides that the Bombay Rent Act shall not apply to any premises belonging to the Government and local Authority.

47. Section 6(1) thereof provides that in area specified in Schedule I Part II shall apply to premises let [or given on licence] for residence, education, business, trade or storage. Section 7 thereof lays down that it shall not be lawful for landlord to claim or receive on account of rent for any premises any increase, above the standard rent. Section 11 thereof provides for fixation of standard rent or permitted increases in certain cases by the Court.

THE MAHARASHTRA RENT ACT :

48. Section 1(2) of the Maharashtra Rent Act lays down that it shall extend to the whole of the State of Maharashtra and sub-section 3 thereof further provides that Maharashtra Rent Act shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint. The Maharashtra Rent Act has been brought into force on 31st March, 2000. Section 2(1) thereof provides that the Maharashtra Rent Act shall, in the first instance, apply to the premises let for the purposes of residence, education, business, trade or storage in the area specified in Schedule I and Schedule II. The area of Brihan Mumbai Municipal Corporation where the said property is situate falls in Schedule I.

Section 3(1) (b) thereof reads as under :

> *This Act shall not apply;*
>
> *(b) to any premises let or sub-let banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of more than rupee one crore or more.*

Explanation.- For the purpose of this clause the expression “bank” means,-

(i) the State Bank of India constituted under the State Bank of India Act, 1955).

(ii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959.

(iii) a corresponding new bank constituted under section 3

of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertaking Act, 1980; (2 of 1934).

49. Section 6 thereof lays down the provisions with regard to the standard rent shall not apply to certain premises. Section 7(9) defines expression “premises” and it reads thus :

> 7. *In this Act, unless there is anything repugnant to the subject or context,-*
>
> ***(9)*** *“premises” means any* ***building*** *or* ***part of a building let or given on licence separately*** *(other than a farm building) including, -*
>
> *(i) the gardens, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,*
>
> *(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof,*

but does not include a room or other accommodation in a hotel or lodging house;

50. Dr.Sathe contended that the Society is the owner of building and is the assessee for the purpose of the property taxes. The members of the Society are neither owners of any part of the building nor can they claim ownership of any individual unit as such. The members are allottees and have only right or interest in the occupation of the units and not ownership therein. They are holding shares. Consequently, what such members can receive from their licensees cannot be relevant for determining the rateable value of the entire building. What is relevant is what the owner i.e.Society can reasonably expect to receive by way of rent if the building is let out from year to year basis. In support of this submission, he relied upon the Division Bench judgment of this Court in the case of the Municipal Commissioner for Greater Bombay and anr. Vs. Jeevan Jyot Office and Business Premises Co-operative Society Limited, Bombay in First Appeal No.393 of 1975 decided on 28th October, 1980.

51. He further submitted that there was no radical change on account of repeal of the then Bombay Rent Act and coming into

force of the Maharashtra Rent Act. Under Section 4 of the Bombay Rent Act, exemption was granted to any premises belonging to the Government or any local authority. Under Section 3 of the Maharashtra Rent Act, in addition to granting exemption to any premises belonging the Government or local authority, exemption is granted to any premises let or sub-let to any banks or any public sector undertakings specified therein. Thus, it is not as if that the concept of exemption was introduced for the first time in the Maharashtra Rent Act and prior thereto there was no exemption granted to any premises. The only change made under the Maharashtra Rent Act is that the scope of the exemption is enlarged. Thus, there is no radical change after repeal of the Bombay Rent Act and introduction of the Maharashtra Rent Act which authorised the Corporation to revise the rateable value. Repeal of the then Bombay Rent Act and applicability of Maharashtra Rent Act to the said building does not change the situation so as to enable the Corporation to assess self occupied units separately from the units which are in occupation of the third parties on tenancy and leave and license basis. He placed reliance upon the judgment of the Apex Court in the case of Kamla Mills Ltd. (supra). In paragraph 16 of Kamla Mills Ltd. case, the Apex Court noted that the learned counsel for Kamla Mills Ltd. relied upon as

many as 11 judgments referred to earlier in support of the proposition that the rateable value of the premises is limited by standard rent determined or determinable under the provisions of rent restriction legislation. In view of this, it has become imperative to consider in detail these judgments.

52. First in the series of these judgments is the decision in the case of Corporation of Calcutta Vs. Padma Debi, AIR 1962 SC 151. In that case, the Apex Court considered the provisions of the Calcutta Municipal Council Act, 1923 and the West Bengal Premises Rent Control (temporary provisions) Act, 1950. Section 127(a) of Calcutta Municipal Council Act, 1923 provided that the annual value of land and annual value of any building erected for letting purposes or ordinarily let shall be deemed to be gross annual rent on which land or building might at the time of assessment **reasonably** be expected to let from year to year. Section 127(a) did not contain a non obstante clause. The Apex Court noted that under the West Bengal Premises Rent Control (temporary provisions) Act, 1950, the receipt of any rent higher than the standard rent fixed under the Act was made penal for the landlord. It was held that on a fair reading of express of provisions of Section 127(a) of the Act, the rental value cannot be fixed higher than the

standard rent under the Rent Control Act.

53. Next in the line is the decision in the case of Corporation of Calcutta Vs. LIC of India, (1970) 2 SCC 44. In that case, the Apex Court considered the provisions of the Calcutta Municipal Corporation Act, 1951 and the West Bengal Premises Rent Control (temporary provisions) Act, 1950. Section 168(1) of the Calcutta Municipal Corporation Act, 1951 provided that for the purpose of assessment to the consolidated rate, the annual value of any land or building shall be deemed to be the gross annual rent at which the land or building might at the time of assessment be **reasonably** expected to let from year to year. The Apex Court on comparison of Section 127(a) of the Calcutta Municipal Council Act, 1923 with Section 168 (1) of the Calcutta Municipal Corporation Act, 1951 held that the addition of the proviso to Section 168(1) did not alter the meaning of the expression “gross rent at which the land or building might reasonably be expected to let”. The Apex Court applied the principle of the decision in Padmadevi’s case and held that the landlord could not reasonably be expected to receive any rent higher than the standard rent from a hypothetical tenant and annual value of the building could not, therefore, be fixed at the figure higher than the standard rent.

54. Next is the judgment of the Apex Court in the case of the Guntur Municipal Council Vs. the Guntur Town Rate Payers' Association etc., 1970(2)SCC 803. The Apex Court considered the provisions of Madras District Municipalities Act, 1920 and Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. It was held that in view of section 82(2) of the Rent Act in regard to the fair rent, the landlord could not **reasonably** be expected to receive from a hypothetical tenant anything more than fair rent payable in accordance with the principles laid down in the Rent Act and the annual value was liable to be determined on the basis of fair rent as determinable under the Rent Act. Section 82(2) did not contain a non obstante clause.

55. Next is the decision of the Apex Court in the case of Municipal Corporation, Indore and ors. Vs. Ratnaprabha and ors, (1976) 4 SCC 622. In that case, the Apex Court considered the provisions of the M.P. Municipal Corporation Act, 1956 and the M.P. Accommodation Control Act, 1961. In this case, the building in question namely Viram Lodge run by the respondents (owners) was never let on rent and was run as a hotel so that the question of fixing its standard rent under Section 7 of the Rent Act did not arise.

Section 138(b) of the M.P. Municipal Corporation Act, 1956 provided that “the annual value of any building shall **notwithstanding anything contained in any other law for the time being in force** be deemed to be the gross annual rent at which such building, together with its appurtenances and any furniture that may be let for use or enjoyment therewith might reasonably at the time of assessment be expected to be let from year to year..... “

On behalf of assessee it was contended that even though no standard rent in respect of the building was fixed by the Controller, the reasonable rent contemplated by Section 138(b) could not exceed the standard rent determinable under the Rent Control Act and it was incumbent on the Municipal Commissioner to determine the annual value of the building on the same basis on which its standard rent was required to be fixed under the Act. In view of the wording of Section 138(b) namely “notwithstanding anything contained in any other law for the time being in force”, the Apex Court pointed out that “while the requirement of the law is that the reasonable letting value should determine the annual value of the building, it has also been specifically provided that this would be so “notwithstanding anything contained in any other law for the time being in force” and observed that it would be a proper interpretation

of these words to hold that in case where the standard rent of a building has been fixed under Section 7 of the Rent Act, and there is nothing to show that there has been fraud or collusion that would be a reasonable letting value, but where this is not so, and the building has never been let out and is being used in a manner where the question of fixing its standard rent does not arise, it would be permissible to fix the rateable value which is reasonable without regard to the provisions of the Rent Control Act.

56. The next is decision of the Apex Court in the case of Dewan Daulat Rai Kapoor and ors Vs. New Delhi Municipal Committee and ors, (1980)1 SCC 685. In this case, the Apex Court considered the provisions of the Punjab Municipal Act, 1911, the Delhi Municipal Corporation Act, 1957 and the Delhi Rent Control Act, 1958. The question that arose for determination was as to how the rateable value of a building should be determined for levying of property tax where the building is governed by the provisions of Delhi Rent Control Act, 1958, but the standard rent has not yet been fixed. The controversy between the parties centred round the question as to what is the true meaning of the expression “the gross annual rent at which such land or building might reasonably be expected to let from year to year” occurring in the definition in both statutes. The

argument put forward by the Municipal Authorities was that since the standard rent of the building was not fixed by the Controller under Section 9 of the Rent Act in any of the cases before the Court and in each of the cases the period of limitation prescribed by Section 12 of the Rent Act for making an application for fixation of the standard rent had expired, the landlord was entitled to continue to receive the actual rent from the tenant without any legal impediment and hence the rateable value of the building was not limited to the standard rent determinable in accordance with the principles laid down in the Rent Act but was liable to be assessed by reference to the contractual rent recoverable by the landlord from the tenant. The Municipal Authorities urged that if it was not penal for the landlord to receive the contractual rent from the tenant, even if it be higher than the standard rent determinable under the provisions of the Rent Act, it would not be incorrect to say that the landlord could reasonably expect to let the building at the contractual rent and the contractual rent could, therefore, be regarded as providing a correct measure for determination of the rateable value of the building. This argument was, however, rejected by the Court and it was held that even if the standard rent of a building has not been fixed by the Controller under Section 9 of the Rent Act, the landlord cannot reasonably expect to receive from

a hypothetical tenant anything more than the standard rent determinable under the provisions of the Rent Act and this would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of the rent by reason of aspiration of the period of limitation prescribed by Section 12 of the Rent Act or the building is self occupied by the owner. Therefore, the Court held that in either case, according to the definition of "rateable value" given in both statutes, the standard rent determinable under the provisions of the Rent Act and not the actual rent received by the landlord from the tenant, would constitute the correct measure of the rateable value of the building. The Apex Court considered the earlier decisions and held that the annual value of a building whether tenanted or self occupied must be limited by the measure of the standard rent determinable on the principles laid down in the Delhi Rent Control Act, 1958 and it cannot exceed such measure of standard rent.

57. In the case of Balbirsingh and ors. Vs. M/s.M.C.D. and ors, AIR 1985 SC 339, the Apex Court considered the provisions of the Punjab Municipal Act, 1911, the Delhi Municipal Corporation Act, 1957 and Delhi Rent Control Act, 1958. The Apex Court considered the question of determination of rateable value in

respect of four categories namely, (i) where the properties are self occupied i.e.occupied by the owners; (ii) where the properties are partly self occupied and partly tenanted; (iii) where the land on which the property is constructed is leasehold land with a restriction that the leasehold interest shall not be transferable without the approval of the lessor; and (iv) where the property has been constructed in stages. As regards the second category of the building consisting of distinct and separate units of occupation, the Apex Court pointed out that it is the premises as a whole which are liable to be assessed to property tax and not different parts of the premises as distinct and separate units. But while assessing the rateable value of the premises on the basis of the rent which the owner may reasonably expect to get if the premises are let out it cannot be overlooked that where the premises consist of different parts which are intended to be occupied as distinct and separate units, the hypothetical tenancy which would have to be considered would be the hypothetical tenancy of each part as a distinct and separate unit of occupation and the sum total of the rent reasonably expected from a hypothetical tenant in respect of each distinct and separate unit would represent the rateable value of the premises. It was further held that the standard rent of each unit would have to be determined on the principles set out for fixation of standard rent

within the upper limit fixed by standard rent and the assessing Authority would have to determine the rent which the owner may reasonably expected to get if such units were let out to the hypothetical tenants.

58. In the case of Shrikant Kashinath Jituri and ors.Vs. Corporation of the City of Belgaum, (1994) 6 SCC 572. The only question that arose was whether the suit instituted by the appellants in the Civil Court questioning the revision of property is not barred by virtue of Rule 25 contained in Part I of Schedule III of the Karnataka Municipal Corporation Act, 1976. The Apex Court held that the assessment made under the Karnataka Act cannot be challenged in the Civil Court and the suit was not maintainable in Civil Court.

59. In the case of Indian Oil Corporation Ltd. Vs. Municipal Corporation and another, (1995) 4 SCC 96, the Apex Court considered the provisions of the M.P. Municipal Corporation Act, 1956 and the M.P. Accommodation Control Act, 1961. The Apex Court reiterated the decision in Ratnaprabha's case.

60. In the case of Asstt. General Manager, Central Bank of India

and ors. Vs. Commissioner, Municipal Corporation for the City of Ahmedabad and ors, (1995) 4 SCC 696, two questions that fell for consideration were (i) whether a tenant of a building is entitled to file Appeal against the order of assessing property tax under the provisions of Bombay provincial Municipal Corporations Act, 1949 as applicable in the State of Gujarat and (ii) whether the proviso (aa) to sub clause (ii) of the clause (1-A) of Section 2 of the said Act is valid and effective. **The said proviso lays down that where in respect of any building or land or premises, standard rent is not fixed under Section 11 of the Bombay Rent Act, 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. In so far as the second question is concerned, the Apex Court after considering earlier decisions, held in paragraph 25 that in view of the express provision in proviso (aa), it must be held that for the purpose of the Municipal Corporation Act, the actual rent received is the annual rent for the purposes of determining the annual rateable value. The argument on behalf of the appellants that one State enactment cannot be read so as to defeat and nullify the provisions

of another State enactment and both must be read harmoniously, was dealt with by holding that the said contention would have been perfectly justified if the non obstante clause were not there in proviso (aa). The Apex Court held that non obstante clause prevents the application of Bombay Rent Act to the cases falling under proviso (aa) for determining the rent at which property might reasonably be expected to be let.

61. In the case of East India Commercial Co. Pvt. Ltd. Vs. Corporation of Calcutta, (1998) 4 SCC 368, the Apex Court considered the provisions of the Calcutta Municipal Corporation Act, 1951 and the West Bengal Premises Tenancy Act, 1956. After considering the earlier judgments, the Apex Court observed in paragraph 17 as under :-

> *"17. From the aforesaid decisions, the principle which is deducible is that when the Municipal Act requires the determination of the annual value, that Act has to be read along with Rent Restriction Act which provides for the determination of fair rent or standard rent. Reading the two Acts together the rateable value cannot be more than*

the fair or standard rent which can be fixed under the Rent Control Act. The exception to this rule is that whenever any Municipal Act itself provides the mode of determination of the annual letting value like the Central Bank of India case relating to Ahmedabad or determination of the annual letting value has to be according to the terms of the Municipal Act. In the preset case, Section 168 of the Municipal Act does not contain any non obstante clause so as to make the Tenancy Act inapplicable and nor does that Act itself provide the method or basis for determining the annual value. This Act has, therefore, to be read along with Tenancy Act, 1956 and it is the fair rent determinable under Section 8(1)(d) which along can be the annual value for the purpose of property tax."

62. In the case of Government Servant Co-op. House Building Society Ltd. Vs. Union of India, (1998) 6 SCC 381, the Apex Court considered the provisions of the Delhi Municipal Corporation Act,

1957 and Delhi Rent Control (Amendment) Act, 1988. By the Delhi Rent Control (Amendment) Act, 1988, sub-sections 3(c) and (d) were added in Section 3 of the Delhi Rent Control Act, 1956. This provided that nothing in the said Act shall apply (c) to any premises whether residential or not whose monthly rent exceeds Rs.3500/- or (d) to any premises constructed on or after the commencement of the Delhi Rent Control (Amendment) Act, 1958 for a period of ten years from the completion of such construction. In paragraph 8 of that judgment it was held as under :-

> *"8. Therefore, the annual rent actually received by the landlord in the absence of any special circumstances, would be a good guide to decide the rent which the landlord might reasonably expect to receive from a hypothetical tenant. Since the premises in the present case are not controlled by any rent control legislation, the annual rent received by the landlord is what a willing lessee, uninfluenced by other circumstances, would pay to a willing lessor. Hence, actual annual rent, in these circumstances, can be taken as the annual*

rateable value for the property for the assessment of property. The Municipal Corporation is, therefore, entitled to revise the rateable value of the properties, which have been freed from rent control on the basis of annual rent actually received unless the owner satisfies the Municipal Corporation that there are other considerations which have affected the quantum of rent.

63. In the present case the building consists of distinct and separate units of occupation by owners i.e. self occupied and given on tenancy/leave and license basis. There are total 116 open car parks, 2 enclosed garages in the basement and 274 units in the buildings. According to the petitioner, out of 274 units, 199 units are self occupied by its members and 75 units are given on leave and license to third parties by the members. Some of those units which have been given on leave and license / tenancy basis to the third parties are banks or financial undertakings or companies having paid up share capital of Rs.One crore or more and exempted by Section 3(1)(b) of the Maharashtra Rent Act. Thus, the units can

conveniently be divided into the following three categories:

(i) Units that are self occupied i.e.occupied by the owners;

(ii) Units governed by the Maharashtra Rent Act and occupied by the licensees / tenants;

(iii) Units which are exempted from the applicability of the Maharashtra Rent Act on account of licensees / tenants covered by Section 3(1)(b) thereof.

64. In the case of East India Commercial Company Private Limited (supra), the Apex Court laid down the following principles :

(i) When the Municipal Act requires the determination of the annual value, that Act has to be read along with Rent Restriction Act which provides for the determination of the fair rent or standard rent. Reading the two Acts together, the rateable value cannot be more than the fair or standard rent which can be fixed under the

Rent Control Act.

(ii) The exception to (i) above is that whenever any Municipal Act itself provides mode of determination of the annual letting value or contains a non obstante clause then the determination of the annual letting value has to be according to the terms of the Municipal Act.

65. In the case of India Automobiles (supra) and, in particular, paragraph 21 thereof the Apex Court devised two groups. One such group that deals with municipal laws of some States which do not expressly exclude application of Rent Restriction Acts in the matter of determination of annual value of the building for the purpose of levying municipal taxes. The other group that deals with municipal laws which expressly exclude application of Rent Restriction Acts in the matter of determination of annual value of the building on the rental method.

66. In so far as the the Act is concerned, there is neither a non obstante clause in the taxing provisions excluding applicability of

the Rent Control Act nor contains a statutory definition of “rateable value”. The determination of the annual letting value is under Section 154(1) of the the Act. The rateable value is to be fixed on the basis of annual rent for which such land or building might reasonably be expected to let from year to year. Now, in so far as the first 2 categories mentioned earlier namely, units occupied by the owners and the units governed by the Maharashtra Rent Act though occupied by the licensees / tenants are concerned, there is no difficulty in as much as the rateable value has to be fixed on the basis of the standard rent and the upper limit would be the standard rent. In so far as the last category namely units exempted from the applicability of Maharashtra Rent Act on account of the licensees / tenants covered by Section 3(1)(b) is concerned, the question is whether the standard rent still would be the upper limit while determining the rateable value. In my opinion, whether the Municipal Act expressly excludes application of the Rent Act [one of the groups devised by the Apex Court in India Automobiles (supra)] or whether the Rent Act itself declaring its non applicability qua certain premises will make no difference while determining the rateable value. The effect is one and the same qua the exempted premises.

67. In the present case, the question is about determination of rateable value of the exempted units as the same are given on leave and license basis to the third parties who are covered by Section 3(1)(b) of the Maharashtra Rent Act. The learned counsel appearing for both the sides have relied upon several judgments. However, all these judgments deal with the cases where the units are occupied either by owners i.e.self occupied or given on leave and license basis. In so far as the units given either on tenancy or leave and license basis are concerned, the said units nonetheless are governed by the rent control legislation. In the present case, however, we are concerned with those units which are exempt from the application of the Maharashtra Rent Act as they are occupied by the licensees which are covered by Section 3(1)(b) of the Maharashtra Rent Act. The question is whether the rateable value in respect of these units are required to be determined on the basis of standard rent or actual rent.

68. Section 2(1) of the Maharashtra Rent Act provides that Maharashtra Rent Act shall **apply to premises let** for the purpose of residence and education in the **areas** specified in Schedule I and Schedule II. Schedule I includes Brihan Mumbai Municipal Corporation area where the building of the petitioner is situate.

Section 3(1)(b) thereof lays down that the Maharashtra Rent Act shall not apply to **any premises let or sub-let to banks,** or any public sector undertakings or any Corporation established by or under any Central or State Act, or foreign mission, international agencies, multinational companies, and private limited companies and public limited companies having paid up share capital of more than Rupees One Crore or more. As noted earlier, Section 7(9) of the Maharashtra Rent Act lays down that in this Act, unless there is anything repugnant to the subject or context “premises” means any **building** or a **part of a building let or given on license separately.**

69. The conjoint reading of Sections 2(1), 3(1)(b) and Section 7(9) of the Maharashtra Rent Act would lead to an irresistible conclusion that even though the Maharashtra Rent Act is applicable to Brihan Mumbai Municipal Corporation area, having regard to Section 7(9) which defines the expression “premises” and Section 3(1)(b), the Maharashtra Rent Act shall not apply to the units which are let or sub-let to the banks having paid up share capital of more than Rs.One Crore or more. Once the premises are exempted from application of the Maharashtra Rent Act, it would not be unlawful to the landlord to claim or receive on account of rent for any premises

any increases above the standard rent and permitted increases and the landlord is entitled to recover such increases. The provisions of the Maharashtra Rent Act and in particular, Sections 2 and 3 will have to be read harmoniously so as to give effect to both the provisions.

70. Dr.Sathe contended that if the building is situate in an area to which Rent Act applies and even though the provisions of the Rent Act do not apply to that building actually because that building is not let out to the tenants (occupied by the owners himself), still the annual letting value is limited by measure of the standard rent, equally in respect of the exempted units, the standard rent would be the upper limit for fixing the rateable value. I do not find any force in this submission. If the building is situate in an area where the Rent Act applies and even if the building is not let out and is occupied by the owner himself, that does not mean that the said building is exempt from the Rent Act. The only consequence that flows therefrom is there is no occasion to invoke the provisions of the Rent Act. The building continues to be governed by the Rent Act. In view of this position, if the contention of the petitioner that despite the units being exempted from the provisions of the Maharashtra Rent Act on account of being occupied by the licensees/tenants

covered by Section 3(1)(b), the Authorities of the Corporation are obliged to fix the rateable value on the basis of standard rent being upper limit, is accepted, it will nullify Section 3(1)(b) of the Maharashtra Rent Act. Such construction will have to be avoided.

71. All the judgments hitherto considered basically two categories namely (i) the building occupied by the owner i.e. self occupied and (ii) building partly occupied by the owner and partly occupied by the tenants/licensees. Even the partly occupied portion of the building was governed by the rent control legislation, though in possession of licensees/tenants. However, further category namely units which are exempted from the rent control legislation hitherto did not fall for consideration. No judgment was cited before us laying down the proposition that even in respect of the premises exempted from application of the Rent Control Act, the Authorities of the Corporation are obliged to determine rateable value on the basis of the standard rent and not the actual rent. The judgments proceeded on the footing that wherever Rent Act is applicable, it is unlawful for the landlord to recover rent in excess of fair rent or standard rent and the same was also made penal. The criterion for determining the rateable value of a building is the annual rent at which such building might reasonably be expected to be let from

year from year.

72. The word "**reasonably**" occurring in Section 154(1) of the Act is very important. Ordinarily, a bargain between a willing lessor and a willing lessee uninfluenced by any extraneous circumstances may afford a guiding test of reasonableness and in normal circumstances, the actual rent payable by a tenant to the landlord would afford reliable evidence of what the landlord may reasonably expect to get from the hypothetical tenant, unless the rent is inflated or depressed by reason of extraneous considerations such as relationship, expectation of some other benefit etc. There would ordinarily be close approximation between the actual rent received by the landlord and the rent which he might reasonably expect to receive from a hypothetical tenant. The philosophy behind fixing rateable value on the basis of fair or standard rent is that in case of a building subject to rent control legislation, this approximation may and often does get displaced, because under rent control legislation the landlord cannot claim to recover from the tenant anything more than the standard rent and his reasonable expectation must, therefore, be limited by the measure of the standard rent lawfully recoverable by him. However, in the instant case, on account of exemption granted to the banks and other financial institutions

under Section 3(1)(b), the landlord is now entitled to recover any increases above the standard rent and permitted increases. This is more so having regard to the judgment of the Apex Court in the case of Malpe Vishwanath Acharya Vs. State of Maharashtra, (1998) 2 SCC 1 to which I will presently make a reference, the authorities of the Corporation would be justified in fixing the ratable value of the units exempted from the applicability of the Maharashtra Rent Act by taking into account actual rent coupled with all the relevant circumstances.

73. In so far as the judgment of the Apex Court in the case of Kamla Mills Ltd. (supra) is concerned, no contention was advanced about the effect of exemption of the Bombay Rent Act and consequently, there was no occasion to deal with and decide the same. In paragraph 28 of the report, the Apex Court recorded the submission made on behalf of the Corporation that Section 5(10)(b) and Section 11 of the Bombay Rent Act have been declared to be ultra vires Article 14 of the Constitution by the Apex Court in the case of Malpe Vishwanath Acharya (supra). It was thereafter observed that the Court in that case held the aforesaid provisions of the Bombay Rent Act to be unreasonable and liable to be struck down as unreasonable and arbitrary. However, the Court refrained

from striking down the same in view of the fact that the existing Act namely, Bombay Rent Act, was to lapse on 31st March, 1998. In paragraph 29, it was observed that the Court was concerned with the period prior to 31st March, 1998 at which time, the Sections concerned were not held to be bad despite noticing the infirmity in the sections. In the present case, the action of the Corporation proposing to increase the rateable value with effect from 1st April, 2000 is under challenge.

74. It would, therefore, be worthwhile to make a reference to the judgment of the Apex Court in the case of Malpe Vishwanath Acharya (supra). In this case, the landlords challenged the constitutional validity of Section 5(10)(b), Section 11(1) and Section 12(3) of Bombay Rent Act, inter alia, on the ground that the said provisions pertaining to standard rent were ultra vires Articles 14, 19 and 21 of the Constitution and consequently void. The main challenge to the provisions was on the ground that the restriction on the right of the landlords to increase rents, which had been frozen as on 1st September, 1940 or at the time of the first letting, was no longer a reasonable restriction and the said provisions had, with the passage of time, become arbitrary, discriminatory, unreasonable and consequently, ultra vires Article 14 of the Constitution. It was

held that taking all the facts and circumstances into consideration, the existing provisions of the Bombay Rent Act relating to determination and compensation of standard rent can no longer to be considered reasonable. Paragraphs 31 and 32 of the said judgment read thus :-

> ***"31.*** *Taking all the facts and circumstances into consideration we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable. The said provisions would have been struck down as having now become unreasonable and arbitrary but we think it is not necessary to strike down the same in view of the fact that the present extended period of the Bombay Rent Act comes to an end on 31st March, 1998. The Government's thinking reflected in various documents itself shows that the existing provisions have now become unreasonable and, therefore, require reconsideration. The new bill is under consideration and we leave it to the legislature to frame a just and fair law keeping in view the interests of all concerned and in particular the resolution of the State Ministers*

for Housing of 1992 and the National Model Law which has been circulated by the Central Government in 1992. We are not expressing any opinion on the provisions of the said Model Law but as the same has been drafted and circulated amongst all the States after due deliberation and thought, there will, perhaps, have to be very good and compelling reasons in departing from the said Model Law. Mr.Nargolkar assured us that this Model Law will be taken into consideration in the framing of the proposed new Rent Control Act.

32. We, accordingly, dispose of these appeals without granting any immediate relief but we hold that the decision of the High Court upholding the validity of the impugned provisions relating to standard rent was not correct. We however refrain from striking down the said provisions as the existing Act elapses on 31-3-1998 and we hope that a new Rent Control Act will be enacted with effect from 1-4-1998 keeping in view the observations made in this judgment insofar as fixation of standard rent is concerned. It is, however, made clear that any further extension of the existing

provisions without bringing them in line with the views expressed in this judgment, would be invalid as being arbitrary and violative of Article 14 of the Constitution and therefore of no consequence.

75. The learned counsel for the petitioner strenuously submitted that in view of the Division Bench judgment of this Court in the case of Jeevan Jyot Society decided on 28th October, 1980, Society is the owner of the building in question and members of Society are neither owners of any part of the building nor can they claim ownership of the individual units as such. The Society is assessee to the Corporation. There is no merit in this submission. Firstly, the explanation to Section 140(1) of the Act was added by Maharashtra 10, 1998 with effect from 19th April, 1998. Secondly, Section 154(1) of the the Act provides that the rateable value of any building or land assessable to property tax is to be fixed on the basis of annual rent for which such land or **building** might reasonably be accepted to let from year to year. Having regard to explanation to Section 140(1) of the the Act, even individual units which are distinct and separate units of occupation would be “building” and can be assessed separately.

76. Thirdly, in the subsequent decision in the case of Balbirsingh (supra), the Apex Court while dealing with the second category namely, premises which are partly self occupied and partly tenanted, held that it is the premises as a whole which are liable to be assessed to property tax and not different parts of premises as distinct and separate units. While assessing the rateable value of the premises on the basis of rent which the owner may reasonably expect to get if the premises are let out, it cannot be overlooked that where the premises consist of different parts which are intended to be occupied as distinct and separate units, the hypothetical tenancy which would have to be considered would be hypothetical tenancy of each part as a distinct and separate unit of occupation and sum total of the rent reasonably expected from a hypothetical tenant in respect of each distinct and separate unit would represent rateable value of the premises. It has also to be appreciated that in a given case a building may consist of several units or flats and some of the units or flats may be of bigger size as compared to rest of the units or flats. It is also possible that a building may have pent house, duplex flats and terrace flats. The standard rent would depend upon the area of the units/flats as also the nature of units/flats having the amenities. Thus, as laid down by the Apex Court in the

case of Balbirsingh, though the building as a whole is liable to be assessed to property tax and not different parts of building as distinct and separate units, but while rateable value of the building consisting of distinct and separate units of occupation is to be assessed, the standard rent of each unit would have to be determined on the basis of standard rent as upper limit fixed by standard rent.

77. Fourthly, the decision in the case of Jeevan Jyot did not relate to the case where some members of the Society had let out their respective units to the tenants exempted from the Rent Control Act. The situation that is obtained in the present case did not occur in the case of Jeevan Jyot. In my view, the decision in the case of Jeevan Jyot does not advance the case of the petitioner.

78. In view thereof, the conclusion is that in so far as the first category namely units occupied by the owners and the second category namely, units governed by the Maharashtra Rent Act and given on leave and license / tenancy basis are concerned, the Authorities of the Corporation will have to fix the rateable value on the basis of standard rent being the upper limit. However, in so far as the third category namely units which are exempted on account

of licensees / tenants covered by Section 3(1)(b) of the Maharashtra Rent Act, the Corporation will have to fix the rateable value on the basis of actual rent by taking into account the relevant factors indicated in the judgment of the Apex Court in the case of India Automobiles (supra). It is further necessary to clarify that as and when the units exempted from the applicability of Maharashtra Rent Act are vacated by the licensees / tenants covered by Section 3 thereof and the same are occupied by the owners or in the event of the owners inducting the licensees / tenants governed by the Rent Act, again the Authorities of the Corporation will have to fix the rateable value on the basis of standard rent being the upper limit. In short, the moment the units exempted from the provisions of Maharashtra Rent Act are vacated by the licensees/tenants covered by Section 3 of the Maharashtra Rent Act, the Authorities of the Corporation will have to fix the rateable value on the basis of the standard rent amount being upper limit. In my opinion, Section 3 is in the nature of exception to Sections 1 and 2 of the Maharashtra Rent Act.

79. The provisions of the the Act and Maharashtra Rent Act are required to be construed harmoniously. In my opinion, having regard to Sections 1, 2, 3(1) and 7(9) of the Maharashtra Rent Act

read with Section 140(1) along with explanation thereto of the the Act, the rateable value of the units exempted from the Maharashtra Rent Act will have to be determined on the basis of actual rent by taking into account the relevant factors set out in the judgment of the Apex Court in the case of India Automobiles Limited (supra). If the rateable value is to be fixed on the basis of the standard rent even in respect of the units exempted from Rent Act, in that event, the provisions of Section 3 would be rendered otiose. In my opinion, the observations in paragraph 15 of Kamla Mills Ltd. case (supra) made by the Apex Court to the effect “depending upon whether the area in question is subject to rent restriction legislation or not, the Courts have answered the question differently” will have to be understood in the light of the principles laid down by the Apex Court in the cases of (i) East India Commercial Co. (P) Ltd. (supra) and (ii) India Automobiles Limited (supra).

80. In Kamla Mills Ltd. case (supra), the question of fixation of rateable value to the premises which are exempt from the applicability of the Bombay Rent Act did not fall for consideration and consequently, was not decided. In my opinion, the facts and circumstances obtaining in the present case are different from the facts and circumstances in Kamla Mills Ltd. case. The judgment of

the Apex Court in Kamla Mills Ltd. case has no application in so far as the units which are exempt from the applicability of the Maharashtra Rent Act. Undoubtedly, the petitioners' building is situate in the area to which the Maharashtra Rent Act applies. At the same time, some of the units are exempted from the Maharashtra Rent Act as they are occupied by the licensees covered by Section 3(1) (b) of the Maharashtra Rent Act. I am, therefore, of the opinion that in respect of these units, the Authorities of the Corporation will have to fix the rateable value on the basis of actual rent after taking into account the relevant factors mentioned in the case of India Automobiles Limited namely the rateable value must be determined after application of mind by the Municipal Authorities on the basis of reasonableness. All relevant circumstances including actual rent received by the owner, hypothetical standard rent, rent being paid by sub-tenant, if any, to the main tenant, the prevalent rate of rent of lands or building in the vicinity of the property assessment must be taken into account. The Apex Court clarified that the rent paid by sub tenant cannot be taken as sole criterion for determining annual value and that the rent actually received by the owner need not always deemed to be the reasonable rent. I answer question No.(i) accordingly.

Re : Question (ii)

81. Whether the assessment orders dated 24th March, 2004 cannot in law have effect from any date prior to 1st April, 2003 and, therefore, the assessment orders effective from 1st April, 2000 are illegal ?

82. Dr.Sathe contended that initially in the year 1982, the Corporation had fixed rateable value in respect of the said buildings at Rs.22,77,885/- by taking an estimated rent of Rs.125 per 10 squre metres for the basement and Rs.250 per 10 square metres for ground floor and upper floors of the building. The Corporation increased rateable value of the said property from time to time and prior to 31st March, 2001, the rateable value of the said property was fixed at Rs.41,32,735/- N.P.A. on the basis of a more or less uniform letting value of Rs.125 per 10 square metres for the basement and Rs.250 per 10 square metres for the ground and upper floors.

83. Pursuant to the circular dated 8th December, 2000 and circular dated 6th January, 2001 which was issued in supersession of circular dated 8th December, 2000, the Corporation issued special

notice no.312 of 2000-2001 under Section 167 of the the Act whereunder the rateable value was proposed to be increased to Rs. 1,74,59,615/- N.P.A. with effect from 1st April, 2000. The note appended to that notice stated that the complaints must be made by the property owners themselves or by person duly authorized by the Act for them within 15 days from the date of receipt thereof. The complaint shall be made in writing and as required by Section 163(2) and shall set forth briefly but fully the grounds on which the complaint against the valuation is based. The Corporation also issued special notice 312A of 2000-2001 informing that the rateable value of the said premises has been increased to Rs.1,74,59,615/- N.P.A. for the year 2001-2002. The said special notice was issued under Section 162(2) of the Act. The petitioner filed complaint in April, 2001 which was registered as ACR/310/2000-2001. After investigating the complaint, by order dated 27th May, 2002, the Corporation fixed the rateable value at Rs.53,27,085/- with effect from 1st April, 2000.

84. On 22nd March, 2002, the Corporation issued special notice no.164 of 2001-2002 in respect of the official year 2001-2002 (1st April, 2001 to 31st March, 2002) under Section 167 setting out therein that the assessment book has been amended for that official

year increasing rateable value of the said property to Rs. 5,07,38,165/-. On the same day namely, 22nd March, 2002, another special notice no.164-A of 2001-2002 was issued by the Corporation under Section 162(2) for the official year 2002-2003 (1st April, 2002 to 31st March, 2003) setting out therein that the rateable value of the said property has been fixed at Rs.5,07,38,165/-. In so far as the special notice no.164-A dated 22nd March, 2002 for the official year 2001-2002 is concerned, the petitioner filed complaint which was registered as complaint no.ACR/257/2001-2002.

85. In the meantime, it appears that the Circulars dated 8th December, 2000, 6th January, 2001, 25th September, 2001, 16th March, 2002 and 3rd April, 2002 issued by the Corporation in relation to fixation of rateable value of various properties in Nariman Point area including the said property, were challenged in several Writ Petitions including Writ Petition no.1116 of 2002 and Writ Petition no.1721 of 2002. They were disposed of by the Division Bench of this Court on 23rd October, 2002. The Division Bench recorded the statement made on behalf of the Corporation that the impugned circulars were being withdrawn and in view thereof, the action taken or reassessment done pursuant to the said circulars cannot stand. The Division Bench directed the Corporation to

reassess the properties for the purpose of property tax in accordance with law. As noted earlier, pursuant to the special notice no.164-A of 2001-2002 dated 22nd March, 2002 for the official year 2001-2002, the petitioners had filed complaint No.ACR/257/2001-2002 which was pending when Writ Petitions were disposed of by the Division Bench of this Court on 23rd October, 2002. In view of the order dated 23rd October, 2002, by communication dated 20th January, 2003 the Corporation recorded that the assessment for the year 2000-2001 has been ineffective and that it was proposed to reassess the rateable value of the said property at Rs.1,74,59,615. The petitioner submitted objections on 21st January, 2003 and supplemented the said objections by submitting detailed objections on 8th January, 2004 and 27th January, 2004.

86. The Corporation sent notice dated 11th December, 2003 informing the petitioner that the complaint regarding the official year 2000-2001 in respect of ACR/310/2000-2001 regarding the special notice dated 29th March,2001 issued under Section 167 of the the Act would be investigated and disposed of on 29th December, 2003. By another notice dated 12th December, 2003, it was informed to the petitioner that the complaint regarding official year 2001-2002

i.e.ACR/257/2001-2002 regarding special notice dated 22nd March, 2002 issued under Section 167 of the the Act would be investigated and disposed of on 29th December, 2003.

87. The petitioner filed its objection on 29th December, 2003 and also submitted a tabulated statement showing details of the owners occupying the premises and other details as required by the Corporation in respect of the said property on 21st January, 2004. The complaint No.ACR/310/2000-2001 regarding special notice no. 312 issued under Section 167 of the the Act was decided on 24th March, 2004 and the rateable value was fixed at Rs.90,44,455/- with effect from 1st April, 2000. On the same day, the complaint no.ACR/257/2001-2002 regarding special notice no.164/2001-2002 issued under Section 167 was disposed of and rateable value was fixed at Rs.1,56,53,350/- to Rs.1,57,33,070/- for 2001-2002 and different rates ranging from Rs.1,43,65,495/- to Rs.1,55,72,620/- from 1st April, 2003 to 31st March, 2004. The orders dated 24th March, 2004 fixing the rateable value of the said property were passed by taking letting rate of Rs.3250/- per 10 square metres for units on the ground floor of the building and letting rate of Rs.1950/- per square metre for the units on the upper floors of the building, which units have been given by the petitioner to the third parties on

leave and license basis. The tabulated statement giving calculations of rateable value of each individual unit in the said property was also given to the petitioner. The petitioner filed two appeals (848 of 2004 and 849 of 2004) under Section 217 of the the Act before the Court of Small Causes challenging the orders dated 24th March, 2004. The said appeals were filed on 2nd April, 2004. On 26th April, 2004 the petitioner received bill dated 1st April, 2004 for payment of property tax for the period from 1st April, 2004 to 31st September, 2004. On 29th May, 2004, the petitioner was served with 8 supplement bills dated 31st March, 2004 for payment of property tax for the period from 1st April, 2000 to 31st March, 2004 on the reassessment of rateable value for amount aggregating to Rs.4,28,51,911/- only. The petitioner instituted Writ Petition No. 2120 of 2004 on the original side of this Court challenging orders dated 24th March, 2004 and the bills/demand dated 31st March, 2004 and 1st April, 2004. The following reliefs were claimed in that petition.

> *(a) that this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari, or any other appropriate writ, order or direction under Article 226 of the Constitution of India, calling*

for the papers and proceedings relating to the orders dated 24th March, 2004 (being Exhibits `O-1', `O-2' and `P' hereto) and the demands for payment made by the respondents pursuant thereto by Bills (being Exhibits R, S-1 to S-9) hereto), and after ascertaining the legality thereof to quash and/or set aside the same is so far as they seek to reassess the rateable value of the petitioner's property and to impose the same with retrospective effect from 1st April, 2000.

(b) that this Hon'ble Court be pleased to issue a writ of Prohibition or a writ in the nature of Prohibition, or any other writ, order or direction under Article 226 of the Constitution of India against the respondents restraining them, their servants, officers and agents from imposing there-assessed rateable value on the petitioner or from taking any steps to recover amount from taking any steps to recover amount from the petitioner on the basis of the said revision made by the impugned orders dated 24th March, 2004 (being Exhibits `O-1', `O-2'

and `P' hereto) and the demands for payment made by the respondents pursuant thereto by bills (being Exhibits `R', `S-1' to `S-8' hereto).

Before the learned single Judge, the petitioner raised following contentions :

(i) That the impugned order and the bills/demands issued are bad in law being in violation of law laid down by this Court in the matter of Municipal Corporation of Greater Mumbai V. Jeevan Jyot Office & Business Premises Co-operative Society Limited.

(ii) That the assessee for the purpose of property taxes is the society in relation to the said building and not the occupants of the units in the building independently. The repeal of the then existing Bombay Rent Control Act and the applicability of the Maharashtra Rent Control Act, 1999 to the said

building does not change the situation so as to enable the Corporation to assess the self-occupied units separately from the units which are in occupation of the third parties on tenancy/leave and licence basis.

(iii) That the Corporation has no authority to impose revised rateable value retrospectively for a period prior to the commencement of the current official year. The Corporation acted contrary to the statutory mandate of section 167 and several binding judgments of this Court as well as the Apex Court.

88. By the impugned judgment and order dated 14th October, 2004, the learned single Judge made Rule absolute in terms of prayer clauses (a) and (b). The judgment of the learned single Judge, since then, is reported in the case of Dalamal Tower Premises Vs. Municipal Corporation, 2004(6) Bom.C.R. 497. The Appeal preferred by the Corporation was allowed by this Court on 3/27-3-2006 and the said judgment is also reported in the case of

Municipal Corporation Vs. Dalamal Tower, 2006(3) Bom.C.R. 557. By order dated 8th March, 2011 in Civil Appeal No.100 of 2007 the Apex Court remitted the matter to this Court.

89. Dr.Sathe submitted that the Corporation committed serious error in misconstruing the order dated 23rd October, 2002 passed by the Division Bench of this Court disposing of Writ Petition No.1116 of 2002 and other companion writ petitions. The orders dated 24th March, 2004 disposing of the complaints created liability retrospectively which was clearly illegal and ultra virus. The said orders were also passed in gross violation of the principles of natural justice.

90. On the other hand, Mr.Singhvi relied upon Section 3(bb) that defines the expression “official year” and Sections 139, 140, 146 to 149, 154, 156, 160 to 168, 217 of the the Act. He contended that the Corporation is entitled to amend assessment book by increasing amount of the rateable value and said amendment shall be deemed to have been made for the purpose of determining liability of the person concerned in accordance with the altered entry from the earliest day in the current official year when the circumstances justifying amendment existed. Since the circulars that were

impugned in the petitions were withdrawn, the assessment dated 27th May, 2002 made pursuant to the special notice no.312 dated 29th March, 2001 issued under Section 167 of the Act became ineffective. While disposing of the writ petition on 23rd October, 2002, this Court left it open to the Corporation to reassess the properties in accordance with law.

91. Pursuant to the liberty granted by this Court, the Corporation issued notice dated 20th January, 2003 for reassessment. Before issuing special notice dated 29th March, 2001, the Corporation had carried out amendment and as per provisions of Section 167, the taxes were levied from the first day of that current official year i.e.1st April, 2000 (1st April, 2000 to 31st March, 2001). The special notice was issued on 29th March, 2001 as on account of coming into force of the Maharashtra Rent Act, the circumstances justifying amendment existed. The notice issued was obviously during the official year namely 1st April, 2000 to 31st March, 2001 and the reassessment made on 24th March, 2004 pursuant to the liberty granted by this Court cannot be construed having retrospective effect.

92. On the other hand, Dr.Sathe strenuously contended that the

orders dated 24th March, 2004 made in ACR/310/2000-2001 and ACR/257/2001-2002 are illegal and ultra virus as they created liability retrospectively for the period from 1st April, 2002 to 31st March, 2003. It was further submitted that the amendment, if any, made pursuant to Section 167 also requires to be authenticated as required by Section 166(2) and then only amended entry becomes conclusive. In support of this contention, he relied upon the Full Bench judgment of this Court in the case of Sholapur Municipal Corporation Vs. Ramchandra Ramappa Madgundi, 1972(74)Bom.L.R. 469.

93. Thus, on one hand on behalf of the Corporation it is contended that the amendment in the assessment book under Section 167 becomes operative as soon as made and, on the other hand, on behalf of the petitioner it is contended that such amendment in the assessment book has to undergo the procedure provided under Sections 162 to 165 and then authentication under Section 166(2) before it becomes operative.

94. In order to consider these submissions, it is necessary to note the relevant provisions of the Act. Section 156 (a) to (e) reads as under :-

156. ***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 buildings and lands in [Brihan Mumbai] distinguishing each either by name or number, as he shall think fit;

(b) the rateable value of each such building and land determined in accordance with the foregoing provisions of this Act;

(c) the name of the person primarily liable for the payment of the property taxes, if any, leviable on each such building or land'

(d) if any such building or land is not liable to be assessed to the general tax, the reason 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 and the period fixed by public notice, as hereinafter provided, for the receipt of complaints against the amount of rateable value entered in any portion of the assessment book, has expired, and in the case of any such entry which is complained against, when such complaint has been disposed of in accordance with the provisions hereinafter contained, the amount at which each building or land entered in such portion of the assessment book is assessed to each of the property taxes, if any, leviable thereon;*

Perusal of Section 156(e) would indicate that in the assessment book, entry is to be made in respect of the amount at which each building or land entered in such portion of the assessment book is assessed to each of the property taxes, if any, leviable thereon after fixation of the rates of the property taxes to be levied for the year have been duly done by the Corporation and the period fixed by the public notice for the receipt of complaints against the amount of rateable value entered in any portion of the assessment book has

expired and, in the case of any such entry which is complained against, when such complaint has been disposed of in accordance with provisions that follow subsequently.

95. Section 160 provides that when the entries required by clause (a) to (d) of Section 156 have been completed, as far as practicable, in any ward assessment book the Commissioner shall give public notice thereof of the place where the ward assessment book or copy of it may be inspected. Section 161 lays down that each person who reasonably claims to be the owner or occupier of the some premises entered in the assessment book or the agent of any such owner or occupier shall be permitted free of cost to inspect and to take extracts from any portion of the said books which relates to said premises. Section 162(1) provides for time for filing complaints against valuations to be publicly announced by the Commissioner. Section 162(2) further provides that in every case in which any premises for the first time have been entered in assessment book as liable to the payment of property tax 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 public notice under Sub-Section (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.

96. Section 165 provides for investigation and disposal of the complaint. Section 166(1) provides that when all such complaints, if any, have been disposed of and the entries required by clause (e) of section 156 have been completed in the ward assessment book, the said book shall be authenticated by the Commissioner, who shall certify under his signature, that except in the cases, if any, in which amendments have been made as shown therein, no valid objection has been made to the rateable values entered in the said book. Section 166(2) provides that thereupon the said ward assessment book subject to such alterations as may thereafter be made therein, under the provisions of Section 167, shall be accepted as conclusive evidence of the amount of each property tax leviable on each building and land in the official year to which the book relates.

97. Section 167(1) provides that the Commissioner may, upon the representation of any person concerned, or upon any other information, at any time during the official year to which an

assessment book relates amend the same by increasing or reducing the amount of any rateable value and of the assessment based thereupon. Section 167(2) lays down that every such amendment shall be deemed to have been made, for the purpose of determining liability or exemption of the person concerned in accordance with the altered entry from the earliest day in the current official year when the circumstances justifying the amendment existed. Thus, the authentication made under Section 166 is subject to the power to amend under Section 167. Perusal of Section 167 would indicate that no notice to be given to the assessee is contemplated before making amendment in the assessment book by the Commissioner. Special notice that is to be given to the assessee is after amendment is made in the assessment book and the liability to pay the property tax as per the amended entry is accrued in the official year in which it is made.

98. Dr.Sathe heavily relied upon the full Bench decision of this Court in the case of Sholapur Municipal Corporation (supra). In that case, the Full Bench of this Court considered the provisions of the Bombay Municipal Boroughs Act, 1925. Section 81(6) and Section 82(1) and (3) thereof read as under :-

81.(6) *Subject to such alterations as may be made therein under the provisions of section 82 and to the result of any appeal or revision made under section 110, the entries in the assessment list so authenticated and deposited and the entries, if any, inserted in the said list under the provisions of section 82 shall be accepted as conclusive evidence-*

(i) for the purpose of all municipal taxes, of the valuation, or annual letting value on the basis prescribed in the rules regulating the rate, of buildings lands and both the buildings and lands to which such entries respectively refer, and

(ii) for the purposes of the rate for which such assessment list has been prepared, of the amount of the rate liable on such buildings or lands or both buildings and lands in any official year in which such list is in force.

82.(1)- *The standing committee may at any time alter the assessment list by inserting or altering an entry in respect any property, such entry having been omitted from or erroneously made in the assessment list through fraud, accident or mistake or in respect of any building constructed, altered, added to or reconstructed in whole or in part, where such construction, alteration addition or reconstruction has been completed after the preparation of the assessment list after giving notice to any person interested in the alteration of the list of a date, not less than one month from the date of service of such notice, before which any objection to the alteration should be made.*

(3)- *An entry or alteration made under this section shall subject to the provisions of section 110, have the same effect as if it had been made in the case of a building*

constructed, altered, added to or reconstructed on the day on which such construction, alteration, addition or reconstruction was completed or on the day on which the new construction, alteration, addition or reconstruction was first occupied, whichever first occurs, or in other cases, on the earliest day in the current official year on which the circumstances justifying the entry or alteration existed; and the tax or the enhanced tax as the case may be shall be levied in such year in the proportion which the remainder of the year after such day bears to the whole year.

Perusal of Section 82(3) would indicate that before any alteration is made by the Standing Committee, the conditions set out in sub-Section (1) namely of giving notice to any person interested in the alteration of the list of a date and consideration of objections raised pursuant to that notice are required to be fulfilled. As against this, under Section 167 of the the Act, notice to be given to the aggrieved

person and consideration of the objections before alteration is made is not contemplated. After the amendment is made, notice is given to the aggrieved person calling upon him to submit objection. In my opinion, as per Section 167 (2), every such amendment is deemed to have been made for the purpose of determining the liability or exemption of person concerned in accordance with altered entry from the earliest date in the current official year when the circumstances justifying amendment is existed. In my opinion, though after the amendment is carried out, the aggrieved person is given notice to submit objection to the altered entry, that does not mean that the alteration made in the assessment book has to be authenticated again under Section 166 after following the procedure under Section 162 to Section 165.

99. Lastly, on behalf of the petitioner, it was contended that the orders dated 24th March, 2004 were passed in gross violation of the principles of natural justice. The said submission found favour with the learned single Judge and in paragraph 25 of the impugned order, the learned single Judge recorded that the said orders are not speaking orders and that they do not disclose the basis on which the assessment was made. On the other hand, on behalf of the Corporation it was submitted that the unitwise calculation made

by the Investigation Officer for reaching rateable value of the said property was given by the Corporation. I do not find any substance in the submission made on behalf of the petitioner. The unitwise calculation made by the Investigation Officer for reaching rateable value of the said building was furnished to the petitioner. After perusal of the orders dated 24th March, 2004, it cannot be said that the said orders are not speaking orders. I, therefore, do not find that the orders dated 24th March, 2004 were passed in violation of the principles of natural justice. I answer question No.(ii) accordingly.

100. In view thereof, in my opinion, the order impugned dated 14th October, 2004 passed by the learned single Judge cannot be sustained. Appeal, therefore, deserves to be allowed and is accordingly allowed. The impugned judgment and order dated 14th October, 2004 passed by the learned single Judge is quashed and set aside. Writ Petition No.2120 of 2004 stands dismissed. In the circumstances of the case, however, there shall be no order as to costs.

[R.G.KETKAR, J.]

In view of difference of opinions and in terms of the provisions of Section 98 of the Civil Procedure Code following point of law is framed for reference to the third Learned Judge by the Hon'ble the Chief Justice:

(i) In view of the repeal of the Bombay Rent Act and Enactment of the Maharashtra Rent Control Act, whether the Bombay Municipal Corporation is justified in taking into consideration the actual amount of rent received or receivable by the landlord in relation to the units which are let out, but the lease is exempted from the provisions of the Rent Act for determination of annual letting value with effect from 1st April, 2000?

(R.G.KETKAR, J.) (D.K.DESHMUKH,J.)