

(2008) 10 BOM CK 0082

In the Bombay High Court

Case No : Writ Petition No. 867 of 1998, 1091 of 2001, 1469, 1530, 3478 of 2004, 1907, 2680 of 2005, 151 of 2006, 183, 395, 443, 1764, 1765 of 2007, 422 of 2008 and Appellate Side Writ Petition No"s. 3900 of 2003, 3901 of 2003 and 6148 of 2006

Peninsula Land Ltd. (Formerly known as Morarjee Realities Ltd. and prior thereto as Morarjee Goculdas and Weaving Company Limited) and Others

APPELLANT

Vs

Brihan Mumbai Mahanagarpalika, The Municipal Commissioner of Brihan Mumbai Mahanagarpalika, The Chief Judge Small Causes Court and The State of Maharashtra and Others

RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(5), 226, 246(1)
Mumbai Municipal Corporation Act, 1888 — Section 156, 157, 158, 159, 160

Citation : (2008) 6 ALLMR 519

Hon'ble Judges : Swatanter Kumar, C.J;D.Y. Chandrachud, J

Bench : Division Bench

Advocate : F.E.D/vitre and M.S. Doctor, instructed by Federal and Rashmikan, W.P. No. 183/2007, Kevic Setalvad, instructed by Hariani and Co. W.P. No. 443/2007, Tejas Vora and M Shah, instructed by Bharat Joshi, W.P. No. 6148/2006, Akshay Patil, Rita Rahimtoola and Sanaya Dadacharji, instructed by M.K. Ambalal and Co. for Standard Chartered Bank, for the Appellant; K.K. Singhvi, B.D"Souza and S. Ajithkumar for Bombay Municipal Corporation, N.P. Pandit, Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, C.J.—Section 217 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as "the Act") reads as under :

217. Appeals when and to whom to lie: (1) Subject to the provisions hereinafter contained, appeals against any rateable value or tax fixed or charged under this Act shall be heard and determined by the Chief Judge of the Small Causes Court.

(2) But no such appeal shall be entertained by the said Chief Judge, unless(

a) it is brought within fifteen days after the accrual of the cause of complaint;

(b) in the case of an appeal against a rateable value a complaint has previously been made to the Commissioner u/s 163 as such complaint has been disposed of;

(c) in the case of an appeal against a tax, or in the case of an appeal made against a rateable value the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, up to the date of filing of the appeal, has been deposited by the appellant with the Commissioner.

(3) In the case of any appeal entertained by the Chief Judge, but not heard by him, before the date of commencement of the Maharashtra Municipal Corporations (Amendment) Act, 1975, the Chief Judge shall not hear and decide such appeal, unless the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, as the case may be, upon the date of filing the appeal, has been deposited by the appellant with the Commissioner within thirty days from the date of publication of a general notice by the Commissioner in this behalf in the local newspapers. The Commissioner shall simultaneously serve on each such appellant a notice under Sections 484 and 485 and other relevant provisions of this Act, for intimating the amount to be deposited by the appellant with him.

(4) As far as possible, within fifteen days from the expiry of the period of thirty days prescribed under subsection (3), the Commissioner shall intimate to the Chief Judge the names and other particulars of the appellants who have deposited with him the required amount within the prescribed period and the names and other particulars of the appellants who have not deposited with him such amount within such period, on receipt of such intimation, the Chief Judge shall summarily dismiss the appeal of any appellant who has not deposited the the required amount with the Commissioner within the prescribed period.

(5) In the case of any appeal against any rateable value of property tax fixed or charged under this Act, which have been entertained by the Chief Judge before the commencement of the Act aforesaid or which may be entertained by him after the said date the Chief Judge shall not hear and decide such appeal unless the property tax, if any, payable on the basis of the original rateable value plus eighty per centum, of the property tax claimed from the appellant on the increased portion of the rateable value of the property out of the property tax claimed under each of the bills, which may have been issued, from time to time, since the filing of appeal, is also deposited with the Commissioner within the period prescribed under the Act. In case of default by the appellant, on getting an intimation to that effect from the Commissioner, at any time before the appeal is decided, the Chief Judge shall summarily dismiss the appeal;

Provided that, in case the appeal is decided in favour of the Corporation, interest

at 6.25 per centum per annum shall be payable by the applicant on the balance amount of the property tax from the date on which the amount of property tax is payable.

Provided further that, in case the appeal is decided in favour of the appellant and the amount of property tax deposited with the Corporation is more than the property tax payable by him, the Commissioner shall adjust the excess amount of the property tax with interest at 6.25 per centum per annum from the date on which the amount is deposited with the Corporation towards the property taxes payable thereafter.

2. The vires of Sub-section (5) of the above provisions is challenged by the Petitioners in the present Writ Petitions under Article 226 of the Constitution of India primarily on the following grounds :

(a) A Division Bench judgment of this Court in the case of Kohinoor Textiles v. Municipal Corporation of Greater Bombay, Appeal No. 274 of 1979 along with other connected matters dated 22nd to 29th July 1980, had declared the erstwhile provisions of Section 217(5) as ultra vires. The Corporation did not challenge the judgment of the Division Bench before the Supreme Court. The reasons for declaring the said provision ultra vires persist despite amendment of the said provision and thus for the same reasons even the present provision of Section 217(5) are ultra vires the constitutional mandate and are thus unenforceable.

(b) The provisions of Section 217(5) vest authorities with totally discriminatory and arbitrary powers which ex facie are unreasonable and thus are bad.

(c) The second proviso to Section 217(5) places an unreasonable restriction and permits the Corporation to withhold amounts even if they were not due to the Corporation and adjust the excess amount of property tax paid, for future demands with interest at the rate of 6.25% per annum which is violative of fundamental rights and in any case constitutional protection available to the Petitioners besides being unreasonable and impermissible.

Facts

3. The building known as Piramal Chambers was constructed in the year 1968. Ground to 6th floors were occupied by the Income Tax Department, while 7th to 9th floors were occupied by Central Excise Department. In the year 1975, provisions of Section 217 were amended and the relevant provision i.e. Section 217(5) was introduced which reads as under :

217(5) In the case of an Appeal, which may have been entertained by the Chief Judge before the date of Commission of the Act aforesaid or which may be entertained by him and after the said date the Chief Judge shall not hear and decide such Appeal, unless the amount of the tax claim by each of the bills which may have been issued since the entertainment of the Appeal is also deposited from time to time with the Commissioner in the first month of half year to which

the respective bill relates. In case of default of the Appellant before the Appeal is decided on acting the intimation to that effect from the Commissioner, the Chief Judge shall summarily dismiss the Appeal.

This provision was declared violative of Article 14 of the Constitution of India by a Division Bench of this Court in the case of Kohinoor Textiles (supra).

4. In April 2002, the said building was assessed for a rateable value of Rs. 8,81,500/which was sought to be revised by the Respondents in furtherance to their notices dated 24th March 2002 to Rs. 1,80,20,505/with effect from 1st April 2002. The Petitioners filed a complaint with the Respondents in regard to arbitrary revision of the rateable value. The complaint was also supported by written submissions. The Assistant Assessor and Collector of the Corporation issued a notice dated 17th February 2005 asking the Petitioners to appear for finalisation of rateable value of the property in question. On 24th February 2005, the said authority through its Investigating Officer at the reverse of the intimation of 17th February 2005 fixed the rateable value to be Rs. 90,10,250/ with effect from 1st April 2002. Against this order, the Petitioners preferred an appeal on 9th March 2005 before Respondent No. 3. In the appeal, the Appellate Authority vide order dated 21st April 2005, as already noticed, has dismissed the Appeal thus maintaining the rateable value fixed by the Investigating Officer. From the said order, the present Writ Petition has been filed challenging the said order. For the reasons to follow, we do not consider it necessary to go into the factual matrix of the case and/or to decide the controversy raised by any owner of the property on merits. Once a statutory appeal is provided which is equally efficacious remedy, then we see no reason for this Court to interfere in the exercise of its writ jurisdiction at this stage of the proceedings. The parties should pursue their remedies before the Chief Judge in accordance with the provisions of Section 217 of the Act.

5. As far as Writ Petition No. 395 of 2007 is concerned, the challenge was raised with regard to the second proviso to Section 217 referred to in point (c) formulated in the earlier part of this judgment. The challenge was, inter alia, on the ground that the conditions stated in the proviso are unreasonable, violative of the rights of the Petitioner which are duly protected under the Constitution of India.

6. At the initial hearing, the learned Counsel appearing for the Petitioner had questioned the constitutional validity as well as unreasonableness of this proviso with some vehemence. The proviso which compels a person to get excess amount of tax deposited with the Corporation and keep it lying with the Corporation without permission to withdraw and get the same adjusted in future with interest at the specified rate, to some extent, imposes an unreasonable condition and the submissions made on behalf of the Petitioner in this regard certainly have some merit. The constitutional validity and unreasonableness of this provision thus was correctly questioned before us in the Writ Petition. However, the parties filed Consent Minutes of Order (marked "X" for the purposes

of identification) duly signed by the parties and their Counsel, which were taken on record and vide our order dated 8th August 2007 Writ Petition No. 395 of 2007 was disposed of as per the consented minutes. Thus, because of these subsequent events it is not necessary for us to dwell upon the merits or otherwise of the contentions raised by the parties in this Petition in relation to second proviso to Section 217(5). Therefore, we do not consider it appropriate to deal with this contention any further.

7. Now we revert back to the other two main issues that have been raised before us in Writ Petition No. 183 of 2007.

8. Firstly, we will proceed to examine the merits of the contentions raised before us on ground 2(a) supra. The vires of the unamended Section 217 of the Act was challenged in the case of Kohinoor Textiles Printing Works v. Municipal Corporation of Greater Bombay and Ors. Appeal No. 274 of 1979 and other connected matters decided on 22nd July to 29th July 2008. Various grounds were taken up and the Division Bench of this Court declared the provisions as ultra vires primarily on the ground of arbitrariness and discrimination. In these circumstances, it becomes important for the Court to notice the exact ground of challenge, the questions formulated and the findings recorded by the Division Bench. The Division Bench noticed the points which were argued and they read as under :

(1) Proceedings u/s 217 of the Act are in the nature of an original proceeding analogous to a suit and not by way of an appeal, and such a remedy cannot, therefore, be restricted by the imposition of a condition that the assesses should deposit the amount in dispute as a condition precedent to the filing of the proceedings. The imposition of conditions with respect to the deposit of the amount of tax and the deposit of the amount of future taxes prevents a tax payer from having the basis of his chargeability to property tax, namely, the rateable value of the property, in question, being determined and adjudicated upon and, therefore, these conditions are unreasonable arbitrary and discriminatory.

(2) Assuming that the proceedings u/s 217 of the Act are not original proceedings but in the nature of an appeal, even then the right of appeal may be a creation of statute and the statute creating such right can impose restrictions on such ;right, the restrictions cannot be such as would violate any one of the fundamental rights. The impugned amendments are unreasonable, arbitrary and discriminatory, and prevent a tax payer from getting the rateable value of his property judicially determined in an appeal.

(3) There is no nexus between the requirement of deposit, before the entertainment of an appeal, of the amount of the tax chargeable on the basis of the disputed rateable value and the object of the appeal.

(4) In the case of pending appeals the condition of deposit of the amount of the tax chargeable on the basis of the disputed rateable value up to the date of the

filing of such appeals and providing for dismissal of the appeals in case of default deprives the appellants in pending appeals of their right of appeal.

(5) The requirement of deposit of the amounts of future taxes on paid of dismissal of appeals constitutes an unreasonable, arbitrary and discriminatory discretion on the right to prosecute the appeal, and has no nexus with the object of the appeal.

(6) The absence of any provision for the exercise of judicial discretion in determining the amount that should be deposited and the time within which the deposit should be made constitutes an unreasonable restriction on the right to hold and enjoy property and is also arbitrary and discriminatory.

(7) The absence of any power in the Chief Judge of the Small Cause Court to determine whether a default has taken place or not before dismissing the appeal on that ground constitutes an unreasonable, arbitrary and discriminatory factor both on the right to appeal and the right to prosecute an appeal.

(8) The condition of depositing future taxes contained in Sub-section (5) of Section 217 of the Act is incapable of being complied with and impossible of performance in many cases, resulting in the dismissal of a party's appeal through no fault of his own.

(9) The conditions contained in the amended Section 217 of the Act constitute unreasonable restrictions on the right to hold and enjoy property and the said section is therefore, void as being in violation of Article 19(1)(f) of the Constitution.

(10) The conditions imposed by the amendment Section 217 of the Act are arbitrary and discriminatory and violative of the guarantee of equality before the law and the equal protection of the laws to those resorting to the remedy u/s 217, and the said amended section is, therefore void as infringing Article 14 of the Constitution.

9. The Court which accepting the contention raised before it, held as under:

For the above reasons, we held Sub-section (5) of Section 217 of the Act which was inserted in that section by Section 5 of the Maharashtra Municipal Corporation (Amending) Act, 1975 to be void and unconstitutional as violating Article 14 of the Constitution. We further held all the other amendment made by the said Section 5 of the Amending Act to be valid. Under interim orders made in the petitions against the orders in which the above Appeals filed, which were continued in these Appeals, certain amounts in respect of taxes have been deposited by the Appellants from time to time with the Municipal Commissioner. We will give our directions with respect to the amounts so deposited which we come to pass final orders in these Appeals.

10. From the above conclusions of the Court, it is clear that provisions of Section 217 (5) of the Act were found to be unconstitutional. This judgment was not

taken up in appeal by the Corporation and the reason now stated before us is that in view of the judgment of the Supreme Court in the case of Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, , it was not necessary for the Corporation to assail that judgment. This judgment of the Supreme Court came to be pronounced on 3rd September 1992 and the Corporation introduced an amendment by Amending Act 10 of 1998 amending the provisions of Section 217(5) of the Act.

11. According to the learned Counsel appearing for the Corporation, in face of these subsequent events, the provisions of Section 217(5) do not suffer either from the vice of arbitrariness or discrimination and as such they cannot be declared as unconstitutional or ultra vires. On the contrary, the argument raised before us on behalf of the Petitioner is that even after the amendment, the provisions of Section 217(5) of the Act continue to suffer from the same legal defect or vice and the amendment brought in by the Respondent Corporation no way cures or rectifies the legal infirmity which had been stated.

12. The reasoning of the Division Bench in Kohinoor's case (supra) is primarily based on and is referable to certain expressions used in the unamended provisions of Section 217(5) of the Act. The Bench noticed that the doctrine of equality would come into play as the provision discriminates or enables the authority to discriminate between persons without just classification. The authority with the officials of the Municipal Corporation enables them to pick and choose arbitrarily those appellants whom they want to penalize and leave untouched others without any just and reasonable classifications. The class which is so picked up would have to face penal consequences and their appeals may be liable to be summarily dismissed while others would not meet the same fate. It also refers to the discretion of the officers to pick and choose for service of bills which were being raised during the pendency of the appeal. Such bill amounts were to be deposited within first month of the half year to which the bill relates. This also created discrimination as a defaulter, irrespective of whether the bill was served on the first date of first month or the last date of the first month or even after expiry of the first month, all will fall in same class and this vesting of discretion regarding preparation and payments of the bills with emphasis to the first month of half year weighed with the Bench to declare this provision unconstitutional and violative of Article 14 of the Constitution of India.

13. As already noticed by us, this provision was amended by the Maharashtra Act (Amendment Act No. 10 of 1998) and besides substituting certain words in the Section, the legislature deleted the expressions `entertainment', `amount of tax', `in the first month of half year to which the respective bill relates' and "at any time before the appeal is decided". By omission of these expressions, the impact of the original unamended provision of Section 217 is altered inasmuch as the relations between the first month of the half year and the bill which was treated to be main basis for accepting the plea of discrimination have been remedied to a large extent.

14. The present provision of Section 217(5) of the Act imposes a condition that the Chief Judge shall not hear and decide the appeal unless the property tax, if any, payable on the basis of the original ratable value plus eighty per centum, of the property tax claimed from the appellant on the increased portion of the rateable value of the property out of the property tax claimed under each of the bills, which may have been issued from time to time, since the filing of appeal, is also deposited with the Commissioner within the period prescribed under the Act. In case of default by the appellant on getting an intimation to that effect from the Commissioner, at any time before the appeal is decided, the Chief Judge shall summarily dismiss the appeal. The expression `bills which may have been issued from time to time' is quite different and distinct from the expression `first month of half year to which the respective bill relates', with distinct consequences and results. It is now not left in absolute discretion of the authorities to differentially treat the tax payers within the first month of half year as the bills are to be issued by them from time to time. Certain kind of leverage is given to the authorities to issue bill at different times and liabilities of the tax payers arise only after such a bill is received. Once the bill on the basis of the higher ratable value is assessed and the tax payers prefer an appeal, the remaining steps would be controlled by the Court as per the provision of the Act. The Court has to keep in mind the fact that it is practically not possible for the Corporation to issue lacs of bills simultaneously to all persons liable to pay such taxes. Some element of discretion has to be vested in the authorities and that is why the legislature has used the word `may' before issuance of a notice for enhancing the ratable value. The authority, obviously, is required to satisfy itself that the reasons for issuance of such a notice exists. It appears that the authority is neither to issue such large number of bills and recover taxes payable at the same point of time. Certain period has to be allowed to the authorities as well as to the tax payers for performing their respective obligations in accordance with the provisions of Section 217(5) of the Act.

15. We are unable to accept the contentions of the petitioners that even the amended provisions of Section 217 of the Act suffer from vice of discrimination or treating equals unequally. Normally, the issuance of bill is an annual exercise and the relevant date would be the date of issuance of the bill and tax payers may deposit tax before the Chief Judge can hear and decide such an appeal. In the event of an intimation being received from the Commissioner that there is a default in compliance of the provisions of the Act, the Chief Judge has been vested with the powers to dismiss the appeals summarily in which event compliance with the principles of natural justice would be essential. Even from that point of view safeguards as well as checks and balances have been provided in the provision itself which would dislodge the plea of discrimination raised by the Petitioners in the present writ petition.

16. Now we may examine the right of appeal that has been provided in terms of Section 217(5) of the Act. This provision enables a person aggrieved from the fixation of higher ratable value and consequent higher demand of tax to prefer

an appeal which would be maintainable before the Chief Judge of the Small Causes Court. The powers of the Chief Judge are regulated under the same very provision. Section 217 of the Act in its entirety deals with the appeals against valuation or taxes and provides how would an appeal lie and the same be heard and determined by the Chief Judge of Small Causes Court. Limitations which will control filing of such an appeal are spelt out in Section 217(2) of the Act. Section 217(4) of the Act places an obligation on Commissioner to submit required information to the Chief Judge. The appeals against fixation of ratable value or the property tax or charge under this Act are maintainable before the Chief Judge subject to and in accordance with the conditions postulated u/s 217(5) of the Act.

17. It is a settled principle of law that right of appeal is not a right available under the Constitutional law. It is a statutory right and thus, the legislature can control and limit the circumstances and manner in which such an appeal can be filed. Conditions can also be imposed with regard to the hearing and disposal of the appeal. Furthermore, conditions can also be imposed with regard to condition precedent to filing and entertainment of an appeal. This aspect of the matter is no more *res integra* and stands settled by series of judgments. It will be useful for us to refer to a decision of the Full Bench of this Court in the case of *Mohd. Riyazur Rehman Siddiqui v. Deputy Director of Health Services Letters Patent Appeal No. 35 of 2005*, delivered on 25th September 2008, where the Court, after discussing the law in greater detail, held as under:

According to Salmond, (Salmond on Jurisprudence, Twelfth Edition), the right in the strict sense is duty which is something owed by one to another. Correspondingly, the latter has a right against the former. The expression 'right' is capable of being used in wider sense. Thus the rights are concerned with interest, yet right and interest are not identical. Bentham introduced the concept of natural law and natural rights which, according to him, are two kinds of fictions or metaphors which play a greater part in books of legislation than they deserve to be examined by themselves. Of course, this concept has not found much acceptance so far in legislative or judicial analysis. A legal right is commonly accompanied by the power of instituting legal proceedings for enforcement of it. Legal rights are normally enforceable by process of law. There could be a situation where a legal right itself is imperfect and, therefore, becomes unenforceable in law. Every legal right has distinguishable characteristics, like it is vested in a person, it is available against a person and such right is enforceable in accordance with the provisions of law. A legal right could also be a vested right as it gives right to a person aggrieved to prefer an appeal in accordance with the principles of that statute. In simple language, a right to appeal is a statutory right, it is neither a natural nor a fundamental right.

An appeal is an application to a superior Court or Tribunal praying for reversal or varying or setting aside a judgment under appeal. A right which is conferred by statute or equivalent legislative authority is not a matter of practice or procedure

and neither the superior nor the inferior Court or Tribunal nor both combined can create or take away such a right. Even the Civil Division of the Court of Appeal in England is bound by its own decisions. No appeal lies from a decision of the Court of Appeal as to whether a judgment or order is, for any purpose connected with an appeal to that Court, final or interlocutory. Right to appeal thus should be created by vested specific jurisdiction. (Halsbury Law of England, Fourth Edition).

In the case of *Garikapati Veeraya* (supra), the Supreme Court in unambiguous terms stated the principle that right of appeal is a vested right which is created by a statute alone. This was reiterated by the Supreme Court in a more recent judgment and was followed with approval in *Kamal Kumar Dutta* (supra), where the Court held that right to prefer appeal is a statutory right and it could be exercised only in case of adverse decision and will be governed by the law prevailing at the time of commencement of the suit and comprise of successive rights of appeal from Court to Court which rarely constitute one proceeding. This legal right was also capable of being taken away either expressly or by necessary intendment by a subsequent Legislature.

In the case of *Maria Cristina De Souza Sodder and Others Vs. Amria Zurana Pereira Pinto and Others*, , the Supreme Court held as under :

It is no doubt well settled that the right of appeal is a substantive right and it gets vested in a litigant no sooner the lis is commenced and such right or remedy will not be affected by any repeal of the enactment conferring such right unless the repealing enactment either expressly or by necessary application takes away such right or remedy.

The principle of "appeal being a statutory right and no party has a right to file appeal except in accordance with the prescribed procedure" is followed in the case of *M. Ramnarain Private Limited and Another Vs. State Trading Corporation of India Limited*, , where the Supreme Court held as under:

16. The right to prefer an appeal is a right created by statute. No party can file an appeal against any judgment, decree or order as a matter of course in the absence of a suitable provision of some law conferring on the party concerned the right to file an appeal against any judgment, decree or order. The right of appeal so conferred on any party may be lost to the party in appropriate cases by the provisions of some law such as the law of limitation and also by the conduct of the party and in appropriate cases a party may be held to have become disentitled from enforcing the right of appeal which he may otherwise have.

This view was reiterated with approval by the Supreme Court in the case of *The Gujarat Agro Industries Co. Ltd. Vs. The Municipal Corporation of the City of Ahmedabad and Others Etc. Etc.*, , where the Court stated that even right of appeal can be made conditional or qualified and it is a creation of a statute alone. The Court held as under :

Right of appeal is the creature of a statute and it is for the legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. Right of appeal which is a statutory right can be conditional or qualified. It cannot be said that such a law would be violative of Article 14 of the Constitution. If the statute does not create any right of appeal, no appeal can be filed. There is a clear distinction between a suit and an appeal. While every person has an inherent right to bring a suit of a civil nature unless the suit is barred by statute, however, in regard to an appeal, the position is quite opposite. The right to appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. When such a law authorises filing of appeal, it can impose conditions as well. (Para 8)

Right of appeal is neither a natural nor inherent right vested in a party. It is substantive statutory right regulated by the statute creating it. *Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others*, , and *Kashmir Singh v. Harnam Singh and Anr.* 2008 AIR SCW 2417).

Thus, it is evident that the right to appeal is not a right which can be assumed by logical analysis much less by exercise of inherent jurisdiction. It essentially should be provided by the law in force. In absence of any specific provision creating a right in a party to file an appeal, such right can neither be assumed nor inferred in favour of the party.

18. It is also a settled cannon of law that presumption of constitutionality and correctness is in favour of the legislation and not against the law enacted. It is equally true that all the acts done by the authorities working under the statute are presumed to have been done in accordance with the law unless contrary is shown. Keeping these two principles in mind and the amended provision of Section 217(5) of the Act, it is difficult for us to draw a presumption of discriminatory and arbitrary exercise of powers by the officers of the Corporation in face of clear legislative mandate.

19. It will be useful to refer to a judgment of the Supreme Court in the case of *Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi*, , where the Supreme Court held that the Court should be reluctant to invalidate a statute. The step to invalidate a statute should be taken in very rare and exceptional circumstances. The Supreme Court held as under: "

37. Since, according to the above reasoning, the power in the courts to declare a statute unconstitutional has to be accepted, the question which then arises is how and when should such power be exercised.

38. This is a very important question because invalidating an Act of the legislature is a grave step and should never be lightly taken. As observed by the American Jurist Alexander Bickel "judicial review is a countermajoritarian force in our system, since when the Supreme Court declares unconstitutional a legislative Act or the Act of an elected executive, it thus thwarts the will of the representatives of the people; it exercises control, not on behalf of the prevailing

majority, but against it." (See A. Bickel's *The Least Dangerous Branch*.)

39. ...

40. The court must always remember that invalidating a statute is a grave step, and must therefore be taken in very rare and exceptional circumstances.

41. We have observed above that while the court has power to declare a statute to be unconstitutional, it should exercise great judicial restraint in this connection. This requires clarification, since, sometimes courts are perplexed as to whether they should declare a statute to be constitutional or unconstitutional.

42. ...

43. Thus, according to Prof. Thayer, a court can declare a statute to be unconstitutional not merely because it is possible to hold this view, but only when that is the only possible view not open to rational question. In other words, the court can declare a statute to be unconstitutional only when there can be no manner of doubt that it is flagrantly unconstitutional, and there is no way of avoiding such decision. The philosophy behind this view is that there is broad separation of powers under the Constitution, and the three organs of the State—the legislature, the executive and the judiciary, must respect each other and must not ordinarily encroach into each other's domain. Also the judiciary must realise that the legislature is a democratically elected body which expresses the will of the people, and in a democracy this will is not to be lightly frustrated or obstructed.

44. ...

45. ...

46. In our opinion, there is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. This violation can, of course, be in different ways e.g. if a State Legislature makes a law which only Parliament can make under List I to the Seventh Schedule, in which case it will violate Article 246(1) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But before declaring the statute to be unconstitutional, the court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope vide *Rt. Rev. Msgr. Mark Netto v. State of Kerala* 13 SCC para 6 : AIR para 6. Also, it is none of the concern of the court whether the legislation in its opinion is wise or unwise.

47. ...

48. The court certainly has the power to decide about the constitutional validity of a statute. However, as observed by Frankfurter, J. in *West Virginia v. Barnette*¹⁵, since this power prevents the full play of the democratic process it is vital that it should be exercised with rigorous self restraint.

49. ...

50. ...

51. In our opinion the legislature must be given freedom to do experimentations in exercising its powers, provided of course it does not clearly and flagrantly violate its constitutional limits.

52. ...

53. ...

54. ...

55. ...

56. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the judges' personal preferences. The court must not invalidate a statute lightly, for, as observed above, invalidation of a statute made by the legislature elected by the people is a grave step. As observed by this Court in *State of Bihar v. Kameshwar Singh*¹⁸: (AIR p. 274, para 52)

52. ... The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence....

57. In our opinion, the court should, therefore, ordinarily defer to the wisdom of the legislature unless it enacts a law about which there can be no manner of doubt about its unconstitutionality.

58. ...

59. In the light of the above observations, the impugned amendment is clearly constitutional. The amendment was obviously made to plug a loophole in the Stamp Act so as to prevent evasion of stamp duty, and for quick collection of the duty. There are other statutes e.g. the Income Tax Act in which there are provisions for deduction at source, advance tax, etc. which aim at quick collection of tax, and the constitutional validity of these provisions have always been upheld.

20. In light of above dictum, we are of the opinion that the provisions of Section 217 of the Act does not violate the Constitutional mandate.

21. We have already noticed that challenge to certain provision of Section 217(5) of the Act does not survive for consideration. To that extent, part of the ground has been rendered infructuous. However, we still have to examine whether the

provisions of Section 217(5) of the Act are per se arbitrary and place an unreasonable restriction upon the property tax payers" right to prefer an appeal.

22. We have discussed in great detail that right to appeal is not an absolute or a constitutional right but is a statutory right which can be regulated by the statute providing for the appeal. The Division Bench of this Court in the case of Kohinoor Textiles Printing Press (supra) had rejected all the other contentions challenging constitutionality of the provisions of Section 217(5) except to the limited extent afore indicated. In other words, the grounds agitated before us have already been rejected by the Division Bench judgment in Kohinoor's case (supra) and we find no reason to differ with the view expressed to that extent by the Court.

23. The object and reasons of Act 10 of 1998 by which the provisions of Section 217(5) were amended, do not indicate in any detail any elaborate object behind the amendment so as to be of any help to the Court while dealing with the arguments raised. In fact, it was primarily with the object to revise the taxes and to streamline the procedure for levying of taxes. It is an accepted principle relating to interpretation of fiscal statute that in the fiscal or tax measures greater latitude is given to such statutes than to other statutes. All decisions in the economic and social spheres are essentially ad hoc and experimental. Since economic matters are extremely complicated, this inevitably entails special treatment for special situations. The State must therefore be left with wide latitude in devising fiscal or regulatory measures, and the Court should not, unless compelled by the statute or by the Constitution, encroach into this field or invalidate such law. The Supreme Court in the case of Government of Andhra Pradesh and Ors. v. P. Laxmi Devi, (Supra) , held as under :

72. AS regards fiscal or tax measures greater latitude is given to such statutes than to other statutes. Thus in the Constitution Bench decision of this Court in R.K. Garg and Others Vs. Union of India (UOI) and Others, , this Court observed : (SCC pp. 69091, para 8)

8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey v Doud* (1 L.Ed 2d 1485) where Frankfurter, J. said in his inimitable style :

`In the utilities, tax and economic regulation cases, there are good reasons for

judicial selfrestraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events - selflimitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

The court must always remember that `legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; `that exact wisdom and nice adaptation of remedy are not always possible" and that `judgment is largely a prophecy based on meager and uninterrupted experience". Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in *Secy. of Agriculture v. Central Roig Refining Co.* 94 L Ed 381, be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.

73. All decisions in the economic and social spheres are essentially ad hoc and experimental. Since economic matters are extremely complicated, this inevitably entails special treatment for special situations. The State must therefore be left with wide latitude in devising ways and means of fiscal or regulatory measures, and the court should not, unless compelled by the statute or by the Constitution, encroach into this field, or invalidate such law.

24. In Justice G.P. Singh's *Principles of Statutory Interpretation*, 11th Edition 2008, reference is made at page 51 to the case of *Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal*, , where S.R. Das, J. observed :

Hardship or inconvenience cannot alter the meaning of the language employed

by the Legislature if such meaning is clear on the face of the statute.

In the treatise at page 52, reference is made to the following observations :

The rule applies to fiscal and penal statutes as well. Said Lord Cairns :

If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be". (Reference can be made to *Partington v. Attorney General* (1869) LR 4 HL, 100.

25. In light of this, we have to examine whether the condition attached for preferring appeals and the discretion contemplated u/s 217 are so unreasonable that the right of appeal itself would stand frustrated to such an extent that it will violate the constitutional mandate. The fact that a statute providing for an appeal imposes some kind of restriction for preferring of an appeal by itself cannot be termed as entirely arbitrary or unconstitutional restriction. The right to appeal is to be regulated by the statute and once it provides for the remedy to be preferred in a particular way, the Court can hardly interfere in such prescription of preconditions to the entertainment or hearing of the appeal.

26. Quite some time back, the provisions of Section 217(5) of the Act came up for consideration of a Single Bench of this Court in the case of *Ellora Construction Company v. Municipal Corporation of Greater Bombay and Ors.* AIR 1980 Bom. C.R. 380 and the learned Single Judge upheld the validity of the provision. This case, though was noticed by the Division Bench of this Court in the case of *Kohinoor Textiles Printing Works (supra)*, it took a different view. The Corporation did not prefer an appeal against *Kohinoor Textiles Printing Works (supra)*, in view of the judgment of the Supreme Court in the case of *Shyam Kishore (supra)*. It needs to be noticed that the Single Judge judgment of this Court in the case of *Ellora Construction Company (supra)* was approved with specific reference by the Supreme Court in *Shyam Kishore (supra)* and also in its recent judgment in the case of *P. Laxmi Devi (supra)*. The Single Judge of this Court in *Ellora's* case (*supra*) had referred to the amendment of Section 217 by an Ordinance and thereafter amended by the Amending Act of 1975. Its validity was challenged on the ground of being violative of Article 19(1)(f) of the Constitution of India as well as on the ground that imposition of precondition does not amount to reasonable restriction under Article 19(5) of the Constitution. The Court while taking the view that restriction imposed was in no way unreasonable and did not infringe any of these Articles clearly stated the principle that right of appeal is not inherent or fundamental right but is a creation of statute.

27. Argument is raised that provision regarding year to year demands being continued and in the event of default in deposit of 80% of the increase, the appeal shall not be heard is similar to the previous provision. As such the provision still be unconstitutional in terms of the Division Bench judgment in the case of *Kohinoor Textiles Printing Press (supra)* which would still stare the statute in face. It is a matter of common practice that tax on property is payable annually. It is also a known fact that property tax can increase and/or decrease

every year depending on the fiscal law framed by the State in that behalf. It will be expected of the Corporation to inform the person liable to pay the tax due by issuing notice. It rather furthers the cause than it violates any constitutional mandate. The condition is neither so harsh nor unpurposeful so as to defeat the remedy. The remedy is to be taken recourse to and tax so paid is also duly protected under the provisions of the Section. We, therefore, do not find substance in the argument that the judgment in Kohinoor's case (supra) still continue to render amended provision of Section 217(5) unconstitutional.

28. The Scheme in relation to liability and payment of property tax is to be traced in the provisions of Sections 156 to 165 of the Act which regulates the maintenance of assessment book and the manner in which it is to be completed, issuance of notice and time and manner in which the complaints could be filed. Section 167 of the Act imposes an obligation upon the Commissioner to amend the assessment book upon representation from any person concerned or upon any other information received during the year. This amendment could relate to insertion of the name, increase or reducing of amount of rateable value of the assessment and the property tax payable thereupon. Section 197 contemplates that each of the property tax shall be payable in advance in half yearly installments on each first day of April and each first day of October. Sections 200 and 201 of the Act require the service of bill upon the owner of the property as well as make it obligatory upon the Corporation to serve a notice of demand in terms of Section 202 of the Act. It is only after the prescribed procedure under these provisions have been complied with that the Corporation would ultimately prepare a bill, serve the same upon the owner of the property whose liability to pay become certain with the issuance of the notice of demand. Thus, the Scheme of the Act clearly provides a due process of law for imposition of property tax, its payment and ultimately the manner in which the appeals are to be filed and to be dealt with by the Court of Chief Judge. The Scheme thus is in complete consonance with the constitutional mandate and does not suffer from vice of arbitrariness, unreasonableness or unconstitutionality.

29. We may also clarify that the proceedings before the Chief Judge are proceedings not of the original nature but are of appellate jurisdiction. The original proceedings are passed by the Assessing Officer. Against those original proceedings, an appeal in terms of Section 217 of the Act has been provided to the Chief Judge. This being an appellate proceedings, parties are at liberty to raise the questions of fact and law both before the Chief Judge. The Supreme Court in the case of Municipal Corporation of Brihanmumbai and Another Vs. State Bank of India, , has specifically stated that nature of proceedings u/s 217(1) are appellate proceedings.

30. In view of the above discussion, all the Writ Petitions are thus dismissed with liberty to the Petitioners to pursue their remedy in accordance with the provisions of Section 217(5) of the Mumbai Municipal Corporation Act, 1888 and if they have not filed appeals, the Petitioner concerned would be at liberty to file

the appeal within two weeks from today. However, in the facts and circumstances of the cases, there shall be no order as to costs.