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FINAL VERDICT BY SUPREME COURT ON COMPUTATION OF PROPERTY TAX IN MUMBAI

17 May 2023 [Introduction](#)

The Hon'ble Supreme Court (SC) has, by a recent order, settled a long standing dispute between property owners and developers in Mumbai and Municipal Corporation of Greater Mumbai (MCGM), in relation to the power and entitlement of MCGM to levy property tax based on capital value (CV) system as against the prevalent rateable value (RV) system.

[What is Property Tax](#)

In Greater Mumbai, MCGM levies municipal taxes including property tax on lands and buildings under the provisions of Mumbai Municipal Corporation Act, 1882 (Act). Property tax essentially includes water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess, street tax and betterment charges.

[Earlier Method - RV Based Taxation System](#)

Prior to April 2010, property tax was levied basis RV of property which was computed based on the gross annual rent at which the property is actually let out, or if not let out, the ground rent at which it may reasonably be expected to let from year to year, less a statutory allowance towards repairs and maintenance, in case of a building only.

[Present Method - CV Based Taxation System](#)

Under CV based taxation system, property tax is computed based on the market value / ready reckoner (RR) value and various other factors associated with the property as against the rental value, as was computed and levied by MCGM prior to April 2010.

On 13 April 2009, Government of Maharashtra (GoM) proposed to amend the Act with effect from 1 April 2010 by introducing Section 154(1A) and Section 154(1B) and Section 154A thereby, empowering the Municipal Commissioner of MCGM to fix CV of land and building and levy property tax from 1 April 2010 based on CV of property instead of RV of the property by considering the following factors:

- market value/RR of the property,
- nature and type of property,
- area of the property,
- user category i.e., residential, commercial, offices, etc.,

- age and floors of the building, and
- other facts as may be specified by MCGM by the rules to be framed by MCGM.

In order to derive a uniform formulae for computation of CV, MCGM framed rules, known as 'Factors and Categories of Users of Buildings or Lands (Assignment of Weightage by Multiplication) Fixation of Capital Value Rules, 2010' (CV Rules of 2010) which were brought into force with effect from 20 March 2012 and thereafter, framed another rules being 'Factors and Categories of Users of Buildings or Lands (Assignment of Weightages by Multiplication) Fixation of Capital Value Rules, 2015' (CV Rules of 2015) which were brought into force with effect from 1 April 2015.

Section 154A of the Act further allowed MCGM to provisionally fix CV for the official year 2009-2010, and such provisional CV shall be deemed to be the CV in respect of the official years 2010-2011, 2011-2012 and 2012-2013, pending fixing the CV, and to issue bills for property taxes accordingly.

Challenges raised by Property Owners' Associations

Until the formulae prescribed under CV Rules of 2010 was in the process of being implemented, MCGM was empowered to continue to levy property tax based on RV and thus continued to issue provisional property tax bills computed on the basis of RV. Pursuant to new regime coming into force on 20 March 2012, final bills based on final assessment and special assessment (Impugned Bills) as per CV were issued by MCGM for the total tax leviable and the difference between the property tax based on RV system on and from 1 April 2010 till March 2012 were to be settled /accounted in the subsequent property tax bills.

Several petitions were filed and tagged together with the petition filed by Property Owner's Associations before the Hon'ble High Court of Judicature at Bombay (HC) challenging *inter alia* (i) the validity of computation and levy of property tax based on CV system, (ii) vires of CV Rules of 2010 and CV Rules of 2015, (iii) amendment effected to the Act, (iv) retrospective applicability of CV Rules of 2010, and (v) exploitation of future potential / floor space index (FSI) while determining CV of any land.

Bombay High Court Decision

The Division Bench of HC, vide an order dated 24 April 2019 (HC Order), although upheld the constitutional validity of the amendments made to the Act along with the validity of computation and levy of property tax based on CV system, it, however, held that CV Rules of 2010 shall apply prospectively from 20 March 2012 and not from 1 April 2010.

HC also held the following rules as ultra vires the provisions of Section 154 (1A) and Section 154(1B) of the Act -

- Rule 20 which dealt with valuation of open land capable of utilizing more than 1.0 FSI or transfer of development right taking into consideration the potential of construction on the vacant land for valuation (Rule 20),
- Rule 21 which laid down the formula for calculation of CV of open land or building or part thereof and provided for multiplication to the base value on the basis of the carpet area of the land by permissible or approved FSI (Rule 21), and
- Rule 22 which gave an overriding effect to CV rules over stamp duty ready reckoner (SDRR) (Rule 22).

Subsequently, HC directed that the Impugned Bills issued by MCGM be struck down and, consequently, fresh special assessment notices be issued after fixing CV afresh in accordance with Section 154 (1A) of the Act.

Matter reaches SC

Being aggrieved by decision of Division Bench of HC, MCGM approached the SC by filing a Special Leave Petition.

SC, by its Order dated 7 November 2022 (SC Order), upheld the HC Order and held that Rules 20, 21 and 22 of CV Rules of 2010 and 2015 are *ultra vires*. SC further observed that while determining CV of any property, only the present physical attributes and status of land and building can be considered and not future prospects or FSI of the land.

On retrospective applicability of CV Rules of 2010, SC observed that the rule making powers, in any view of the matter, could not have created a liability pertaining to the period prior to the Rules coming into effect i.e., before 20 March 2012. Further, as the statutory provisions under the Act do not contemplate any likelihood of exploitation of capacity in future, CV of the land and building must be based on the situation "*in praesenti*" and not on the likelihood of user or exploitation of the asset "*in futuro*", especially when none of the factors delineated in Section 154(1A) of the Act, speaks of future prospects or such likelihood.

Review Petition before SC

MCGM, thereafter, filed a review petition against the SC Order, which was rejected by SC on 14 March 2023. Thus, although HC and SC upheld the constitutional validity of the amendments made to the Act, which empowered MCGM to levy property tax based on CV system, courts have:

- struck down the powers of MCGM to levy such taxes retrospectively i.e., for the period from April 2010 till 20 March 2012, and
- confirmed that MCGM is not permitted to compute CV of a land by taking into consideration future development potential / FSI of the land.

Impact

The implementation of CV system, will curb the disparity and bring in uniformity in the rates of property taxes applicable to each type of land and building across Mumbai. For instance, under the earlier system, residents of South Mumbai paid substantially lower amount of property tax as various buildings were last assessed prior to 1940, when rents were quite low. On the other hand, higher taxes were paid by residents in suburbs and extended suburbs where buildings were constructed after 1960 and rentals were comparatively much higher. Further, dismissal of the review petition has brought a sigh of relief amongst various developers and landowners across Mumbai who feared levy of property taxes by MCGM basis the future potential / FSI of the land and also levying the same retrospectively from 1 April 2010 onwards.

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