

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO.1840 OF 2017

1. Madanmohan M. Kotia
of Mumbai, Indian Inhabitant
and having his address at
B/101-Kotia Nirman, New Link Road
Andheri (W), Mumbai - 400 053
 2. Lata M. Kotia
of Mumbai, Indian Inhabitant
and having her address at B/601-Kotia Nirman
New Link Road, Andheri (W)
Mumbai - 400 053
- ...Petitioners

Versus

1. The Municipal Corporation of Greater Mumbai,
a statutory Corporation constituted
under the provisions of the Mumbai
Municipal Corporation Act, 1888
and having its office at
Mahapalika Marg, Mumbai - 400 001
2. The Assistant Assessor & Collector
Municipal Corporation of Greater Mumbai
K/West Municipal Ward Office, 3 Floor
Paliram Path, Behind Brahkumari Hospital
Andheri (West), Mumbai - 400 058
3. Kotia Nirman Commercial Premises
Co-operative Society Ltd.
A Co-operative Society registered under the
Maharashtra Co-operative Societies Act, 1960

having its registered office at
A/201 Kotia Nirman Building
Veer Desai Road
Off New Link Road, Andheri (West)
Mumbai —400 053

4. Kotia Nirman Properties Pvt. Ltd.,
A Company registered under the Companies
Act, 1956 having its registered office at
601-B, Kotia Nirman Building
Veer Desai Road, Off New Link Road
Andheri (West), Mumbai — 400 053 ...Respondents

WITH
WRIT PETITION NO.2920 OF 2022

Kotia Nirman Cooperative Commercial
Premises Societies Limited
having its registered office at
Kotia Nirman, 844/3,
Shah Industrial Estate, Off Vira Desai
Road, New Link Road, Andheri
(West), Mumbai 400 053.
Through its Chairman and
Authorised representative - Rajiv Khushalani ...Petitioner

Versus

1. Municipal Corporation of Greater
Mumbai, having its office at
Mahanagar Palika Bhavan, Mahanagar
Palika Marg, Fort, Mumbai-400 001
represented through its Commissioner

2. Assessor & Collector, &
Asst. Assessor & Collector, K-West
Ward, Office of the Asst. Municipal
Commissioner, Municipal
Office Building, 1st Floor, Paliram Path,
Off. S.V.Road, Andheri West, Mumbai-400 058.
(Through the Mr. Jayant B. Naik
Assistant Assessor & Collector, K/West Ward)
3. M/s High Class Developers
having its office at A/306, Kotia
Nirman, 844/3, Shah Industrial
Estate, Off. Vira Desai Road
New Link Road, Andheri (West)
Mumbai — 400 053
represented through its Partners
(i) Mr. Rajesh Kotia and
(ii) Mrs. Mamta Kotia
4. Murarilal Kotia, Proprietor of
M/s. Asian Marble Industries
(Since Deceased) through his Legal Heirs
- 4a. Madan Murarilal Kotia,
B - 101 Kotia Nirman Building
New Link Road, Andheri (West)
Mumbai — 400 058
- 4b. Nemchand Murarilal Kotia
B - 101 Kotia Nirman Building,
New Link Road, Andheri (West)
Mumbai — 400 058
- 4c. Sheela Yogesh Sharma
C/o. B8/A1-Bahr Society
Cadell Road, V.S. Marg

Mahim, Mumbai — 400 016

- 4d. Kalpana Harshwardhan Sharma,
2903, F Wing, Rustomjee Azziano
Rustomjee Azziano Road, Maji Wada
Thane (West) — 400 601
- 4e. Neeta Omprakash Dashora
257/2 Sector, Shakti Nagar
Habibgani, Bhopal - 462 024
Madhya Pradesh.
- 4f. Rajeshree Ghanshyam Sharma,
B8/A1-Bahr Society, Cadell Road
V.S. Marg, Mahim,
Mumbai — 400 016
- 4g. Kesar Sharma
B - 101 Kotia Nirman Building,
New Link Road, Andheri (West)
Mumbai — 400 058

...Respondents

**WITH
CONTEMPT PETITION (LODGING) NO.30038 OF 2025
IN
WRIT PETITION NO.2920 OF 2022**

Kotia Nirman Co-operative Commercial
Premises Society Limited
having its registered office at:
Kotia Nirman Building, CTS No.844/3
2, New Link Road, Opp. Laxmi Industrial Estate,
Andheri (West), Mumbai 400 053
Through its Authorised Representative &

Secretary, Jaiparakash Mohta

...Petitioner

Versus

1. Municipal Corporation of Greater Mumbai, having its office at Mahanagarpalika Bhavan, Mahanagarpalika Marg Fort, Mumbai-400 001 represented through its Commissioner
2. Assessor & Collector, & Asst. Assessor & Collector, K-West Ward, Office of the Asst. Municipal Commissioner, Municipal Office Building, 1st floor, Paliram Path, Off. S.V.Road Andheri West, Mumbai-400 058 (through the Mr. Jayant B. Naik Assistant Assessor & Collector, K/West Ward)
3. M/s High Class Developers, having its office at A/306, Kotia Nirman, 844/3, Shah Industrial Estate, Off. Vira Desai Road New Link Road, Andheri (West) Mumbai — 400 053 represented through its Partners (i) Mr. Rajesh Kotia and (ii) Mrs. Mamta Kotia
4. M/s. Asian Marble Industries, having its office at B-601, Kotia Nirman 844/3, Shah Industrial Estate Off. Vira Desai Road, New Link Road Andheri (West), Mumbai 400 053 represented through its Partner

Madan Mohan Kotia

And

1. Mr. Ashok Namdeo Masal
Assistant Assessor & Collector
K West Ward, Municipal Office Building
3rd Floor, Opp. BEST Stop
Off. S. V. Road, Opp. Andheri Station
Andheri (West), Mumbai - 400 058
Presently Mr. Mahesh Rambhau Sakre
is holding the post
2. Mr. Raul
Assessor & Collector, K/West Ward
Municipal Office Building
3rd Floor, Opp. BEST Stop, Off S. V. Road
Opp. Andheri Station
Andheri (West), Mumbai - 400 058
Presently Mr. Ganesh Dattaram Kini
is holding the post
3. Mr. Shinde
Assistant Assessor & Collector, K/West Ward
Municipal Office Building, 3rd Floor, Opp. BEST Stop
Off S. V. Road, Opp. Andheri Station
Andheri (West), Mumbai - 400 058
4. Mr. Prithviraj Chavan
Assistant Municipal Commissioner, K/West Ward
Municipal Office Building, 3rd Floor
Opp. BEST Stop, Off S. V. Road
Opp. Andheri Station, Andheri (West)
Mumbai - 400 058

Presently Mr. Chakrapani Laxmi Rajgangaram
Alle is holding the post

5. Mr. Shankar Var
Deputy Municipal Commissioner
K/West Ward, Municipal Office Building
3rd Floor, Opp. BEST Stop, Off S. V. Road
Opp. Andheri Station, Andheri (West)
Mumbai - 400 058
Presently Ms. Bhagyashri Jyoti Tukaramji Kapse
is holding the post

6. Mr. Iqbal Singh Chahal
Municipal Commissioner
Municipal Corporation of Greater Mumbai (MCGM)
Municipal Head Office, Mahanagarpalika Marg
Fort, Mumbai - 400 001
Presently Mr. Bhushan Gagrani
is holding the post

...Contemnors

Mr. Ajay Panicker with Dhairya Sampat i/b Ajay Law Associates for the
Petitioner in WP/2920/2022 and CONPW(L)/30038/2025.

Ms. Ashwin Sakolkar (through video-conferencing) with Mr. Prakash
Chavan with Ms. Shruti Keer for the Respondent-MCGM.

Ms. Ankita Rathod i/b S. K. Legal Associates LLP, for the Respondent
No.3.

Mr. Chaitanya Sharma i/b M/s. S. Ashwinikumar and Co., LLP for the
Petitioners in WP/1840/2017 and for the Respondent No.4 in
CONPW(L)/30038/2025.

Officer - Ashok Namdeo Masal, Deputy Assessor and Collector, is
present.

***CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.***

DATE : 11th JUNE 2026

ORAL JUDGMENT (Per Bharati Dangre, J.):

1. The two writ petitions i.e. Writ Petition No.2920 of 2022 as well as Writ Petition No.1840 of 2017, the first one being filed by Kotia Nirman Cooperative Commercial Premises Societies Limited and second being filed by the individual member of the said Society, call in question the imposition of property tax by the Municipal Corporation and the petitions pray for a direction to the respondent Nos.1 and 2 to issue separate and individual property tax bills to each of the unit owners in the building known as “Kotia Nirman” situated in Andheri (West), Mumbai, for the period from 1st April 2010 onwards, as contemplated under the Mumbai Municipal Corporation Act, 1888 (MMC Act).

Since for non-clearance of the property tax dues the water supply to the petitioner’s building was disconnected, the primary relief in Writ Petition No.2920 of 2022 was in form of restoration of the

water supply to the petitioner's building by issuing appropriate directions.

Prayer clause 'C' also sought a writ of mandamus or appropriate direction to the Corporation to recover the entire property tax arrears in respect of the entire premises of the building, for the period prior to registration of the petitioner-Society by initiating appropriate action including attachment and sale of premises owned by respondent Nos.3 and 4 i.e. the developer and its partners and family members.

In addition, challenge is also raised to the validity of Water Charges Rules 2015 framed by the Corporation on the ground that it is beyond the power of the Corporation to formulate such Rules which has unlawfully authorised levy of Sewerage Tax for the period after the disconnection of the water supply and that too at an unreasonable rate of 8 to 9 times of the earlier Sewerage Tax which is charged in the property tax bills issued prior to the disconnection of the water supply.

2. We have heard the learned counsel for the petitioners as well as the learned counsel for the Corporation and by consent of the parties, we deem it appropriate to issue Rule, which is made returnable forthwith. Learned counsel appearing for the respondents waive notice on behalf of the respective respondents.

3. The two writ petitions placed before us were listed before the Division Bench of this Court (Coram: R. D. Dhanuka & Kamal Khata, JJ.) on 26th July 2022 and it is worth to note that an amicable solution was offered to the issue faced by the Society which specifically prayed that the individual members should be made aware about the property tax due and payable by them *qua* their unit and even the counsel for the developer, agreed for an arrangement to be worked out as there was a dispute whether the members had paid the tax to the developer and the developer had remitted it to the Corporation. As a mutual understanding, the counsel for the developer specifically agreed that the details, duly certified by the Chartered Accountants for the entire period shall be submitted to the

Municipal Corporation within a stipulated period. Similar statement was made on behalf of the respondent No.3, another developer.

The petitioners i.e. the Society also agreed to file the details of proof of payments duly certified by the Chartered Accountant within a period of one week.

Upon these details being submitted it was directed that the Assistant Assessor and Collector, K-West Ward of the Corporation would be entitle to call for such further documents as would be required from the parties including from the Municipal Corporation and it shall verify the details that would be submitted by the petitioners, the developer and make an endeavour to complete the process of verification within a period of six weeks. It was also clarified that, if the developer did not furnish the details, the Corporation shall be under any obligation to submit any individual property tax bill or individual demand notice to the parties who have failed to comply with the direction.

A very specific direction was contained in para 7 of the order, which read thus:-

“7. Upon completion of process of verification and after ascertaining individual property tax liability against each unit, the Municipal Corporation shall issue individual property tax demand notice for each unit with break-up of amount of taxes and other heads, if any, year-wise, from 01/04/2008 till date, to each unit-holder. The respective assesseees shall pay the amount, as may be specified in the notice, without prejudice to their rights and contentions. In the event of any default on the part of the unit-holders in making payment of their dues, the Municipal Corporation shall be free to adopt appropriate proceedings as per law for recovery of the arrears of taxes against such defaulters.”

4. The Division Bench therefore, sought to resolve the issue by directing the process of verification to be completed as there was a dispute about payment of property tax between 2008 to 2010 i.e. the period before which the Society was formed and since the direction by the Division Bench, upon verification, was to ascertain the individual property tax liability against each unit, it was directed that the Corporation shall issue individual property tax demand notice for each unit with break up of the amount of taxes and other heads.

5. During the pendency of the petitions, a Contempt Petition is filed by the petitioner's alleging disobedience of the order passed by this Court with a prayer for initiation of action under the Contempt of Courts Act against the Assessor and Collector, K-West Ward as well as the developer being impleaded as respondent Nos.3 and 4.

The Contempt Petition is also listed before us along with the two writ petitions.

Responding to the Contempt Petition, we have before us the affidavit filed by the Deputy Assessor and Collector Ward and in the said affidavit, the deponent has specifically given the compliance of the directions issued by the Court on 26th July 2022 which ultimately resulted in issuance of individual property tax assessment bills to each unit separately. In paragraph 11, the affidavit proceed to state that as a compliance of the order passed by this Court, on perusal of the documents submitted by the parties, since it was noticed that for the several units, the proof of payments were not submitted and there was discrepancy with respect to the non-addition of late fee on the payment charges to the property tax dues, a letter was issued on

2nd September 2022 to the parties requesting them to provide details in the prescribed format, unit wise and period wise from 1st April 2008 to 31st March 2022 along with the date of payment of each unit and determining the penalty and property tax duly certified by the Chartered Accountant.

Despite this, the parties did not comply and did not provide the relevant information, therefore a meeting was scheduled in the office of the Corporation on 29th September 2022 and it was brought to the notice of the attendees that it is imperative for them to submit the details of payment unit wise, period wise and date wise with the relevant proof of payments of each unit, so that it would be convenient for ascertaining the property tax and the penalty and to recover the same.

It was also informed that the audit report submitted by the Society do not match with the proof of the payments which have been made available. The Manager of the Society informed the Office Bearers of the Corporation that some of the members of the Society reside abroad and therefore it was difficult to procure all receipts of

proofs and some more time was sought.

Once again by letter dated 25th October 2022 the demand to furnish the necessary data was reiterated and ultimately based upon the information that was provided and upon its verification the Office of the Corporation issued individual and unit wise demand notices dated 20th March 2023 for the period from 2008 to 2022. The affidavit is accompanied with the tabulation of the property tax, unit wise from the year 2008 to 2022 and it is also accompanied with the individual notices issued by the Corporation, unit wise demanding the property tax.

6. A categorical statement is made in the affidavit that in respect of the property “Kotia Nirman”, the total outstanding property tax which is due and payable as on 31st March 2022 is Rs.7,83,22,991/- and this amount being due and payable, by the petitioners and/or its members/individual unit holders, it is reflected to be outstanding.

We have perused the computation annexed at Exhibit 'R-2' along with the affidavit which deal with unit wise as well as the amount of property tax due and payable for the year 2008, it offers the details of the amount demanded, the amount paid and the balance due and payable.

In addition, we find that the individual notices issued to the individual unit holder are also placed on record, which with reference to the order passed by the High Court, and the direction contained to ascertain the liability of the property tax from an individual unit from 1st April 2008 to 31st March 2022 mention the exercise undertaken and has set out the property tax due and payable as per Section 197 of the MMC Act. The Notices also indicated that failure to deposit the said tax would result into an action in terms of Sections 202 to 206 of the MMC Act. The outstanding amount of tax was specifically set out for each individual unit holder including the amount of penalty for the period from 1st April 2008 to 31st March 2022.

7. On hearing the learned counsel Mr. Ajay Panicker for the petitioner, though he seriously dispute the process that is undertaken by the Corporation and he strenuously urged before us that he can show the proofs of the amount that is being paid to the developer but which has not been remitted and for this purpose the unit holder is not liable to be penalised, we are of the considered view that assessment and collection of tax is the onus of the Corporation and what has been paid and what has not been paid or what was paid to the builder and what is not remitted to the builder, is difficult for us to appreciate and that is why the Division Bench directed this exercise to be carried out by the named person Mr. Ashok Namdeo Masal, Assistant Assessor and Collector, K-West Ward. He was also directed to undertake the whole exercise of collating the information in form of proof of payment of tax both from the developer and the individual members and thereafter compute the tax payable by segregating it unit wise.

From the affidavit being filed in the Contempt Petition, affirmed by the very same officer who was assigned the said task viz.

Mr. Ashok Namdeo Masal, we find necessary steps taken by him for collating the data but it appears that all the individuals either did not appear before him or did not submit the necessary proof and therefore after giving multiple opportunities to the members of the Society, he has ultimately drawn a chart, reflecting the liability *qua* each unit for each year and also computed the amount of tax paid and what is due and payable.

8. In exercise of our writ jurisdiction we are not expected to get into each and every entry/unit wise or for the period and if any individual member now has any grievance in respect of the individual notice that is received by him computing the property tax along with the penalty by the notice separately issued upon him, he is at liberty to raise an individual dispute.

We are of the view that the onus which was taken upon by the Society has now ultimately being diluted and the liability has fallen now upon the individual member who is now indicated as to what is the tax liability fastened *qua* each of them and hence, now the

grievance has become individual.

Needless to state that a remedy is available to an individual under Section 217 of the MMC Act, to file an appeal calling in question any rateable value or the capital value or the tax which was charged under the Act and this Appeal would lie before the Chief Judge of the Small Causes Court.

The learned counsel for the petitioners have urged before us that a limitation period of 21 days from the accrual of the cause of complaint is prescribed under Section 217(2) of the MMC Act. However, we must note that since the Society was before this Court through the present petition and even some individual members had also espoused their cause by filing separate petitions and taking cognizance of the grievance of the petitioners, this Court had issued a direction to reconcile the issue and compliance thereof was ensured by the Corporation in the year 2023, if the individuals are aggrieved by the imposition of the liability of property tax upon them and if they are desirous of availing the remedy available to them under Section 217, then, upon an application being preferred before the Small

Causes Court seeking condonation of delay, we direct that the Court shall take into consideration the fact that the Society was prosecuting its remedy along with some other individual members through the said petitions and its pendency shall be considered to be a 'sufficient cause' for the petitioners not invoking the appellate jurisdiction under Section 217 within the prescribed period'.

9. Another issue raised in the present writ petitions about the Sewerage and Waste Removal Rules, 2015 ('Rules of 2015'), we have heard Mr. Panicker, the counsel for the petitioner and also perused the grounds set out in the writ petitions and in particular, from paragraph Nos.38 to 40 and the grounds specifically set out in form of Ground 'n' to Ground 'r' in Writ Petition No. 2920 of 2022.

As the said Rules are formulated by the Standing Committee in exercise of the powers conferred by it under Section 170 of MMC Act for levying the Sewerage Charges, Sewerage Tax and Sewerage Benefit Tax for rendering Sewerage and such other services like removing human wastes and any polluted matter, liquid wastes etc.

We have perused the Rules.

Rule 4 of the Rules of 2015 provide for the levy of Sewerage Charges in lieu of Sewerage Tax for the services rendered and, Rule 5 is a provision for levy of Sewerage Charges when water is supplied under Section 92 of the MMC Act. Rule 7 provides for levy of Sewerage Tax where Sewerage charges are not levied and Rule 7.3 clearly specify that, if water supply to any premises within Brihan Mumbai limits, stands disconnected, Sewerage Tax as prescribed here in above shall be leviable, irrespective of whether the Water Tax is leviable or otherwise. Therefore, Ground 'n' raised in the petition No. 2920 of 2022 stand answered by Rule 7.3 of the said Rules.

As per the contention of the learned counsel for the petitioner Mr. Panicker that, by virtue of these Rules, based on the communication addressed by the Assessor and Collector, K-Ward to the developer, informing that water tax has been levied with effect from 23rd March 2017 and the property tax bills are amended and they are enclosed herewith, it is contended that the levy has been varied 7 to 8 times of the earlier levy.

A perusal of Rule 8 of the Rules of 2015 would reveal that the Sewerage Benefit Tax for different user categories of premises or part thereof, is directed to be levied on the basis of the Capital Value of the premises or part thereof at the rate mentioned therein and it was directed to have effect retrospectively with effect from 1st April 2010. Rule 8 has thus prescribed for different rates for different user categories and therefore its levy will depend upon various facts and circumstances and if it requires to take into consideration the user category, a blanket challenge to the Rules of 2015, in our view is not sustainable.

It is not in dispute that it is the power of the Standing Committee to frame such Rules and the contention of the learned counsel that the Rules run contrary to Section 169 of the MMC Act, also fail to appeal to us, as Section 169 is the power conferred on the Standing Committee to frame such Rules as are necessary for the supply of water and for levying charges for the supply of water and for any fittings, fixtures or services rendered by the Corporation under Chapter X and Section 169 only provides the subject matter that shall

be determined by the Rule and this include :

(i) the charges for the supply of water by a water tax and a water benefit tax levied under section 140 of a percentage of the rateable value or the capital value, as the case may be, of any property provided with a supply of water; or

(ii) a water charge in lieu of a water tax, based on a measurement or estimated measurement of the quantity of water supplied; or

(iii) combined charges under clauses (i) and (ii); or

(iv) a compounded charge in lieu of charges under clauses (i) and (ii).

It is ultimately for the Standing Committee to make such Rules and since it is not the contention of the petitioners that the Rules run ultra virus to the statute itself or result in defeating any provision in the statute, we are not inclined to declare the Rules of 2015 as invalid. However, at the same time we find that since now every individual/unit holder is issued a separate property bill and if it has also included the Water Tax/Sewerage Tax, every individual is at liberty to challenge his own levy by following the procedure under Section 217. In any case since we have permitted the individual petitioner/individual unit holder of the Society to raise a challenge to

the imposition/levy of the property tax for the period from 2008 to 2022 by individual notices being served upon them, which now is inclusive of the Water Tax/Sewerage Tax under the Rules 2015, it is permissible for the petitioners to raise a challenge to the levy of Sewerage Tax also.

In the wake of the aforesaid, we dismiss the writ petitions.

Writ Petition Nos.1840 of 2017 and 2920 of 2022 are disposed of accordingly. Rule is discharged.

Since we find that the order passed by this Court has been duly complied with and this is evident from the affidavit filed on behalf of the Corporation, the Contempt proceedings initiated are dropped.

MANJUSHA DESHPANDE, J.

BHARATI DANGRE, J.