

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12304 of 2019

With

R/SPECIAL CIVIL APPLICATION NO. 12305 of 2019

With

R/SPECIAL CIVIL APPLICATION NO. 863 of 2020

With

R/SPECIAL CIVIL APPLICATION NO. 11528 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

Sd/-

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVALI

Sd/-

Approved for Reporting	Yes	No
	✓	

HITESHBHAI PRAVINCHANDRA KAPASHI

Versus

STATE OF GUJARAT & ANR.

Appearance:

IN R/SPECIAL CIVIL APPLICATION NOS.12304 of 2019 & 12305 of 2019

MR CHINTAN K GANDHI for RAVAL & TRIVEDI ASSOCIATES FOR THE PETITIONERS

MS TANUSHREE SHRIMAL, AGP FOR THE RESPONDENT No.1

MR H S MUNSHAW, FOR THE RESPONDENT No.2

IN R/SPECIAL CIVIL APPLICATION NOS.863 of 2020 & 11528 of 2020

MR SANDIP H MUNJYASARA FOR THE PETITIONERS

DR VENUGOPAL H. PATEL FOR THE RESPONDENT (IN SCA NO.863 OF 2020)

MR H S MUNSHAW, FOR THE RESPONDENT (IN SCA NO.11528 OF 2020)

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVALI

Date : 30.09.2026

COMMON ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. In the present group of petitions, the petitioners have challenged the office order dated 27.03.2015 issued by the respondent Bhavnagar Municipal Corporation.

2. All the petitioners are aggrieved by the order passed by the Corporation introducing a new category of shops covered in the Rules dated 02.04.2013 issued by the respondent No.1 - Urban Development and Urban Housing Development Department.

3. It is the case of the petitioners that their shops, which were covered under the category of NU-2 and had a multiplier of 3 for payment of taxes, were converted to the category of NU-1, which has a multiplier of 5, by the impugned order dated 27.03.2015 issued by the Bhavnagar Nagarpalika, thereby increasing the rate of property tax.

4. It is also the case of the petitioners that the impugned notices levying retrospective property tax are also required to be quashed and set aside, as in some of the cases, the respondent-Corporation has directly sought the attachment warrant without serving a special notice.

5. Learned advocates appearing for the petitioners have submitted that after the impugned order dated 27.03.2015 was passed, the State Government issued fresh Rules dated 31.03.2020 notifying in the official gazette, thereby removing the defect which was found in the impugned order dated 27.03.2015, and hence, the issue with regard to the levy of property tax on the petitioners would be governed for the intervening period from 27.03.2015 till 31.03.2020.

6. It is submitted that the respondent-Corporation has amended the property tax Rules dated 02.04.2013, approved

by the State of Gujarat, without following the procedure as stipulated under Sections 454 and 455(1) of the Gujarat Provincial Municipal Corporations Act, 1949 (for short, “the Act”), and hence, it is on this ground that the same is required to be quashed and set aside.

7. It is submitted that the Corporation has no power to issue any clarification and modify the nature of the properties, such as shops, on the basis of carpet area, thereby imposing an enhanced tax by covering the shops which were in the NU-2 category, having a multiplier of 3, under the NU-1 category, having a multiplier of 5.

8. While referring to the provisions of Section 141B of the Act, it is submitted that the said Rules also do not, in any manner, provide for bifurcating the commercial properties, such as shops, on the basis of carpet area and thereby enhancing the property tax.

9. Further, it is submitted that the petitioners were not issued any special notice as required under Rules 15(2) and 20(2) of Chapter VIII of the Taxation Rules under the Gujarat Provincial Municipal Corporations Act, 1949. It is submitted that the impugned order dated 27.03.2015 was also not published in the Official Gazette, and it is urged that the impugned order may be set aside, as prescribed under Section 455(2) of the Act.

10. Pursuant to the order dated 16.09.2026 passed by us, learned AGP, on instructions taken from the State Government,

has submitted that the impugned order dated 27.03.2015 passed by the respondent-Corporation is clarificatory in nature, clarifying the property taxation Rules, for which the department has not been consulted.

11. However, it is submitted that the Corporation, under the provisions of Section 141B of the Act, can classify property into residential or non-residential property and determine the various factors as mentioned in Section 141B(4) of the Act. It is thus submitted that the Municipal Commissioner is empowered to classify the property for usage factor.

12. Learned AGP has finally submitted that, in case the Court intends to quash and set aside the order, the same may be made applicable to the petitioners only, as observed by this Court in the case of Bhavnagar District Chamber of Industries vs. State of Gujarat, (2013) 5 GLR 4214.

13. Learned advocate Mr.Munshaw, appearing on behalf of the respondent-Corporation, has adopted the arguments advanced by the learned AGP, and it is submitted that the Commissioner is empowered to further classify the properties after the approval of the Rules by the State Government. It is submitted that, accordingly, the Commissioner has further bifurcated the category of shops on the basis of carpet area. It is submitted that, in all the cases, the petitioners were issued special notices and thereafter demand notices were also issued, which were affixed on the property. In support of their submissions, the petitioners have placed reliance on the decision of this Court in the case of ***Bhavnagar District Chamber of Industries (supra)***.

14. The petitioners, being aggrieved by the order passed by the Commissioner of the respondent Bhavnagar Corporation dated 27.03.2015, have challenged the same primarily on the ground that the same violates the statutory provisions of the Act.

15. The following facts emerge from the pleadings:

15.1 The State Government, through its Urban Development and Urban Housing Development Department, vide Resolution dated 02.04.2013, in exercise of powers under Section 454 read with Sections 141B and 141AA of the Act, framed the Rules for determining the property tax on the basis of carpet area with effect from 01.04.2013. While exercising the powers under Section 455(1) of the Act, the State Government approved the Rules. The same were published in official gazette.

16. As per the aforesaid Resolution, the State Government, in its Appendix A, specified the rates under Chapter VIII, read with Sections 141A and 141AA of the Act, fixing the property tax as per the carpet area. These Rules are thus formulated in line with Chapter VIII of the Act.

17. The case of the petitioners falls under paragraphs 4(ka) and (kha). The State Government determined the commercial buildings falling under the categories of NU-1 and NU-2 prescribed a multiplier of 5 and 3 for respective category for calculating the property tax.

18. The categories which are mentioned under NU-1 and NU-2 are translated as under:-

“(A) NU-1 = Buildings for Commercial Purposes: In respect of buildings used for the purposes specified below, the prescribed rate multiplier shall be 5.00.

All air-conditioned hotels having 20 or more rooms, all types of shopping malls, all types of showrooms and offices connected therewith for marketing/trading, Central Government offices, State Government offices, local authority offices, jewellery shops, banks, buildings used for banking services, buildings of insurance companies, call centres, share and stock trading offices, corporate and marketing offices of commercial and/or industrial units, oil companies and various corporations, petrol pumps, mobile phone towers, buildings not falling under any other sub-category of this section, and all such other buildings as may, from time to time, be determined by the Commissioner for this purpose.

NU-2 = Buildings of Shops, Restaurants, Small Hotels, Places of Entertainment, etc.:

In respect of buildings used for the purposes specified below, the prescribed rate multiplier shall be 3.00.

Air-conditioned hotels having fewer than 20 rooms and all other types of hotels, restaurants, offices and control rooms of cable operators, offices and godowns of pandal/mike/electrical decoration contractors, commercial tuition classes, multiplex theatres and properties used for purposes incidental thereto, typing institutes, all types of markets, health centres, marriage halls, video theatres and parlours, private sports stadiums, places of entertainment, open-air theatres, club houses, gymkhanas, private dispensaries, hospitals, clinics, consulting rooms, maternity homes, laboratories, dispensaries, blood banks, and medical diagnostic centres, such as MRI centres, CT Scan centres, CAT Scan centres, etc., club messes, lodging and boarding facilities, guest houses, party plots (excluding community halls), and godowns, warehouses and stores of the aforesaid buildings, as well as buildings ancillary or attached to such establishments.

It shall also include all such other buildings as may, from time to time, be determined by the Commissioner for this purpose.”

19. Thus, for larger building the multiplier of 5 is prescribed, whereas for smaller buildings it is 3. It is true that the aforesaid Rules categorizing the properties also gives the discretion on the Commissioner to include other buildings as may be determined from time to time. However, the issue which falls for deliberation before us is that as to whether the Commissioner by introducing the cut-off carpet area alter the categories without sanction of the State government. As discussed below, the Rules only empowers the Commissioner for inclusion of other buildings, but it does not give the discretion to bifurcate buildings on the basis of carpet area altering the category of a particular building without approval of the state government.

20. The petitioners do not have any objection to the aforementioned categories of NU-1 and NU-2. However, pursuant to the approval of the Rules dated 02.04.2013, the Municipal Commissioner, in exercise of his powers under Section 67, read with Section 141B of the Act and Rule 8 of the Taxation Rules, by issuing the impugned order further classified the showrooms as well as shops on the basis of carpet area. The translation of the relevant Clause 1 of the order dated 27.03.2015 is as under:

"1. Showrooms and shops having a carpet area of more than 35 sq. metres shall be treated as NU-1 properties. However, all units located in an air-conditioned mall shall be treated as NU-1. Further, the space containing stock kept along with the sales area in showrooms and shops shall not be separately treated as a godown."

21. Thus, the Commissioner of the respondent-Corporation specified and divided the shops and showrooms by prescribing

a carpet area of 35 square metres as NU-1. It is the case of the petitioners that the Commissioner could not have bifurcated or amended the approved Rules without the sanction of the State Government by prescribing a carpet area of 35 square metres and above, thereby bringing their shops from the category of NU-2 to NU-1.

22. At this stage, we may incorporate the provisions of Section 141AA of the Act, which prescribes what the property taxes shall consist of and the rate at which they are leviable. The relevant provision, namely, Section 141AA(c) of the Act, reads as under:

"141AA. Property taxes of what to constitute and at what rate leviable.— For the purposes of sub-section (1) of Section 127, property taxes shall comprise the following taxes which shall, subject to exception, limitations and conditions hereinafter provided, be levied on buildings and lands in the city:

(a)....xxxx

(b)....xxxx

(c) a general tax which may be levied in accordance with the provisions of Section 141B, if the Corporation so determines, on a graduated scale."

"Explanation I.— Where any portion of a building or a land is liable to a higher rate of the general tax, such portion shall be deemed to be a separate property for the purpose of municipal taxation."

23. The respondents have also placed reliance on the provisions of Section 141B, which finds place in Clause (c) of Section 141AA. The relevant provision is as under:

"141B. [General tax] at what rate leviable.

(1)For the purposes of [clause (c) of section 141AA, general tax] [Substituted for the words 'sub-section (1) of section 127, property tax' by The Bombay Provincial Municipal

Corporations (Gujarat Amendment and Validation) Act, 2007 (2 of 2007) (w.r.e.f. 09-03-1999).] shall, subject to such exceptions, limitations and conditions hereinafter provided, be levied annually on buildings and lands in the City at such rate per square metre of the carpet areas of buildings and of the areas of lands (hereinafter referred to as "the rate of tax") as the Corporation may determine.

(2)For the purpose of levy of tax on buildings in the City under sub-section (1) ,-

(a)the buildings may be classified into residential buildings and buildings other than residential; and

(b)the Corporation may determine one rate of tax for residential buildings and.the other rate of tax for buildings other than residential:

Provided that it shall be lawful for the Corporation to determine for residential buildings, the carpet area of which does not exceed forty square metres, such rate of tax as is lower than the rate of tax determined for residential buildings generally under this sub-section.

(3)The rate of tax determined under sub-section (1) read with sub-section (2) shall not-

(a)in respect of residential buildings, be less than ten rupees per square metre of carpet area and more than forty rupees per square metre of carpet area, and

(b)in respect of buildings other than residential, be not less than twenty rupees per square metre of carpet area and more than eighty rupees per square metre of carpet area.

(4)The Corporation may, subject to rules, increase or decrease or neither increase nor decrease the rate of tax determined under sub-section (1) read with sub-sections (2) and (3),-

(a)in the case of residential buildings, having regard to the following factors, namely:-(i)the market value of the land in the area of the City in which the buildings are situated,(ii)the length of the time of the existence of the buildings.(iii)the type of the buildings, and(iv)whether the buildings are occupied by owners or tenants.

(b)in the case of buildings other than residential, having regard to the following factors, namely:-(i)the market value of

the land in the area of the City in which the buildings are situated.

(ii) the length of the time of the existence of the buildings,

(iii) the purpose for which the buildings are used, and

(iv) whether the buildings are occupied by owners or tenants.

(5) In lieu of the [general tax] [Substituted for the words 'property tax' by The Bombay Provincial Municipal Corporations (Gujarat Amendment and Validation) Act, 2007 (2 of 2007) (w.r.e.f. 09-03-1999).] leviable under sub-section (1) read with sub-sections (2) and (3), there shall be levied annually on,-

(a) residential huts, and

(b) residential tenements in a chawl, each such tenement having carpet area not exceeding twenty-five square metres,- such amount of tax as the Corporation may determine:

Provided that the amount so determined shall not be less than such amount as the State Government may, by notification in the Official Gazette, specify

Explanation. - For the purpose of levy of tax under this section, where an addition is made to an existing building whereby the carpet area of that building is increased, such addition shall be treated as a separate building and the length of the time of its existence shall be computed from the year in which the addition is made."

24. A close reading of the provisions of Section 141B of the Act manifests that, for the determination of property tax as general tax under the provisions of Section 141AA of the Act, such tax can be levied annually on buildings and lands at such rate per square metre of the carpet area of buildings and of the areas of lands as the Corporation may determine.

25. Sub-section (2) to Section 141B of the Act further empowers the Corporation to determine the levy of tax on

buildings, which may be classified into “residential buildings” and “buildings other than residential buildings”. Further, as per sub-clause (b), such rate can be determined on a variable basis.

26. The proviso to Section 141B of the Act clinches the issue raised before us. The proviso stipulates that the Corporation can determine the property tax for residential buildings having a carpet area which does not exceed 40 square metres.

27. Sub-section (3) of Section 141B of the Act further empowers the Corporation to determine the rate of tax under sub-section (1) read with sub-section (2) of Section 141B of the Act.

28. The intention of sub-section (3) of Section 141B of the Act is prohibitory, as it uses the term "shall not". Thus, the rate of tax determined under sub-sections (1) and (2) shall not, as per sub-clause (a) to sub-section (3) of Section 141B of the Act, in respect of “residential buildings”, be less than ten rupees per square metre of carpet area and more than forty rupees per square metre of carpet area; whereas per sub-clause (b) to sub-section (3) of the Section 141B of the Act, in respect of “buildings other than residential buildings”, be less than twenty rupees per square metre of carpet area and more than eighty rupees per square metre of carpet area.

29. Thus, if the proviso to sub-section (2) is read in conjunction with sub-clause (a) of sub-section (3) of Section 141B of the Act, the Corporation can prescribe the rate as mentioned therein, i.e. ten rupees and forty rupees per square

metre of carpet area, whereas clause (b) of sub-section (3) of Section 141B of the Act, prescribes a rate of twenty rupees per square metre of carpet area and more than eighty rupees per square metre of carpet area. Thus, the rate prescribed for buildings other than residential properties is intended to be between twenty rupees and a maximum of eighty rupees per square metre of carpet area.

30. Thus, the proviso below sub-section(2) of Section 141B of the Act, specifically empowers the Corporation for the determination of property tax for “residential buildings” by supplying a specific cut-off of 40 square metres, whereas there is no such provision made for buildings other than residential buildings, i.e. commercial properties as specified in NU-1 and NU-2. The Rules dated 02.04.2013 divides various properties both residential and non-residential in various categories with respect to the area.

31. We may, at this stage, refer to the provisions of Section 455 of the Act, which are as under:

“455. Power to make rules subject to sanction of [State] Government.

(1)The power to make, add to, alter or rescind any rule under section 454, shall be subject to the sanction of the [State] [This word was substituted for the word 'Provincial' by the adaptation of Laws Order, 1950.] Government and to the condition of the rules being made after previous publication.

(2)All rules made under section 454 shall be finally published in the Official Gazette and shall thereupon have effect as if enacted in this Act.

(3)In addition to the publication required under sub-sections (1) and (2) the Corporation may determine in each case what

further publication, if any, is required for rules made or proposed to be made."

32. The provisions of Section 455 of the Act mandate that the power to make, add to, alter or rescind any rule under Section 454 of the Act shall be subject to the sanction of the State Government, and all the rules made under Section 454 of the Act shall be finally published in the Official Gazette.

33. Sub-section (6) of Section 456 of the Act empowers the State Government to require the Corporation to make rules under Section 454 of the Act in respect of any purpose or matters specified in Section 457 of the Act.

34. Section 454 of the Act refers to alterations of and additions to the Schedule. Sub-section (2) of Section 454 of the Act empowers the Corporation to make rules either prospectively or retrospectively for the purpose of levying property taxes under Section 141AA of the Act. However, the same are subject to the sanction of the State Government under Section 455 of the Act.

35. In the present case, unquestionably, the office order dated 27.03.2015, levying property tax by fixing 35 sq.mtrs of resulting in to bifurcation of the commercial properties into the NU-1 and NU-2 has been passed without the prior sanction of the State Government. Therefore, it appears that it was also not published in the Official Gazette as required under Section 455 of the Act.

36. The scheme of the provisions of Section 141B read with Section 141AA(c) of the Act empowers the Corporation to

increase or decrease the rate of tax based on the factors as mentioned in the provisions of Section 141B of the Act for residential and non-residential buildings as per carpet area. However, the same does not, in any manner, permit the rate to be determined by fixing a particular carpet area by which the original Rules determined by the State Government, categorizing the properties into NU-1 and NU-2 categories, gets altered sans its approval.

37. The non-residential buildings which fall in the NU-2 category prescribe a multiplier of 3 for fixing the property tax, whereas NU-1 prescribes a multiplier of 5. This has resulted into levy of enhanced property tax without issuance of any notice either public or individual. Hence, on this ground also the impugned action of the Corporation calls for interference by this Court. By introducing the criterion of 35 square metres and above, the Commissioner has, in fact, altered the nature of the properties from the NU-2 category to NU-1, which is impermissible, without the sanction of the State Government under Section 455 of the Act.

38. It is also noticed by us that subsequently, the State Government has issued a fresh Resolution dated 31.03.2020 promulgating the Rules which are published in official gazette. It is also not disputed by the respondents that after 31.03.2020, the property tax has been collected without there being any bifurcation of the shops on the basis of the cut-off square metres which had been introduced by the impugned order dated 27.03.2015.

39. The petitioners have also challenged the action of the Corporation in levying the tax for retrospective effect. It is agreed on behalf of the petitioners that they fresh bill may be issued from the following dates and they are ready and willing to pay.

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|----|--------------------|------------|
| 1. | SCA. No.12304/2019 | 01.04.2019 |
| 2. | SCA No.12305/2019 | 01.04.2019 |
| 3. | SCA No. 863/2020 | 01.04.2018 |
| 4. | SCA No.11528/2020 | 23.12.2019 |

40. For the issue of levy of tax with retrospective effect, the petitioners have placed reliance on the decision dated 21.07.2016 of the Coordinate Bench of this Court in case of Tokle Timber Mart Vs. State of Gujarat & Anr, Special Civil Application No.16400 of 2015. The relevant observations are extracted as below:

“20. The fact that the Corporation can levy tax only after assessment done in accordance with the provision noted above is beyond cavil. The question is how can we apply this conclusion on the facts of the case on hand. As noted, the case of the Municipal Corporation is that the present property owners are occupying the premises within the limits of the GMB since several years. The property tax could not be collected previously due to one reason or the other. In the meantime, the Taxation Rules of 31.03.1997 came to be struck down by the High Court. The situation, therefore, now has arisen where the Corporation can levy tax only as per the pre 31.03.1997 formula. The crucial question thus has come up is for which period such tax can be allowed to be collected. In this context, we have noticed that according to the Corporation, all petitioners were served with special notices dated 08.08.2011. Though many of these petitioners have admitted to have received such notice some of them have disputed it. Since we are exercising writ jurisdiction, we would not enter into this disputed question and proceeded on the basis that all petitioners were served with special notices dated 08.08.2011

as amended by the Corporation. These notices, however, contained proposed tax assessment of several years past. It is true that if the situation envisaged in Rule 21A of the Taxation Rules obtained, it is open for the Commissioner to levy tax for the past period also. We have noticed that sub rule (1) of Rule 5 casts the duty on the person primarily responsible to pay the tax to notify to the Commissioner any change regarding enlargement of building or occupation of the property. If the persons so liable fails to do so, Rule 21A authorizes the Commissioner to issue a notice for collection of tax which does not limit the power of the Commissioner to collect retrospective taxes. However, it limits the power of the Commissioner to issue such notice within a period of one year from the date on which the relevant event came to his notice. In other words, Rule 21A limits the period of one year from the date of knowledge of the relevant development. The Commissioner cannot issue a notice say 10 years later of having come to know about the relevant development seeking to levy tax for the first time or at higher rate. The power of the Commissioner therefore, to assess any owner or occupier on the basis of a notice under Rule 21A would therefore necessarily be for a period not longer than one year from the date of his knowledge.

21. In none of the notices or outside, the Corporation has pleaded that the event, which would create the liability of the owner or the occupier to be assessed to tax came to the notice of the Corporation only recently though such an event might have taken place many years back. In absence of any such even primary pleading, we would not permit the Corporation to collect taxes for the periods long prior to the issuance of special notices under Rule 15(2). The period of tax would be confined to one year prior to the date of issuance”.

41. Thus, while examining the provisions of Rules 15(2) and Rule 21A of Chapter VIII of the Taxation Rules, this Court, albeit has not doubted the power of the Corporation in levy of taxes with retrospective effect, the power of Commissioner to issue notice for levy within a period of one year from the date on which the relevant even came to notice or from the date of knowledge of the relevant development. In the instant case, the petitioners have contended that the Corporation was

having the knowledge of the development, whereas it is contended by the Corporation, that the petitioners have not informed the Corporation. We are restricting over selves in venturing into fact finding exercise.

42. On the substratum of our foregoing analysys, we issue the following directions:

a) The impunged order dated 27.03.2015 as well as the subsequent action taken pursuant to the order dated 27.03.2015 are quashed and set aside. Accordingly, we direct the respondents to remove the seals from the property in question and allow the petitioners to use the same, after they pay the outstanding taxes from the dates mentioned in paragraph 39.

b) As far as the levy of property tax with retrospective effect is concerned, it will be open for the Corporation to issue fresh tax bills to the petitioner within a period of twelve weeks from the receipt of the order. Before issuing fresh notice, the concerned authority shall consider the decision of this Court dated 16.08.2016 passed in Special Civil Application No.18287 of 2015,as referred by us in foregoing observations. We clarify that if any adverse order of levy of taxes with retrospective effect is passed against the petitioners, it will be open for the petitioners to file appropriate proceedings before appropriate forum. However, such order may not be implemented for a period of two weeks. Any amount which is paid by the petitioner shall be adjusted towards outstanding tax liability.

43. We accede to the suggestion made by learned AGP and adopt observations made by this Court in the case of

Bhavnagar District Chamber of Industries (supra).

Accordingly, we direct that the directions issued by this Court in the present order are confined to the present petitioners only, and the tax payers who have already paid taxes, without any demur/protest, their cases shall not be re-opened or reassessed.

44. The writ petitions are ***allowed***. Rule made absolute to the aforesaid extent.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(VAIBHAVI D. NANAVATI,J)

MAHESH/SUPP.BOARD-I/01