# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE JURISDICTION
## FIRST APPEAL NO. 1092 OF 2007

Municipal Corporation of Gr. Mumbai .. Appellant

**Versus**

Tahir Properties Ltd. .. Respondent

Mr. A. Y. Sakhare, Senior Counsel a/w Adv. Pradeep M. Patil i/b Adv. Komal Punjabi for the Appellant/BMC.
None for the Respondent.



**CORAM: FIRDOSH P. POONIWALLA, J.**
**Reserved on : 13th November, 2025**
**Pronounced on : 9th June, 2026**

**Judgement :**

1. This First Appeal has been filed against the Judgement dated 30th August, 1999 passed by the Small Causes Court at Bombay in Municipal Appeal No. 165 of 1999.

## FACTS

2. In this Judgement, Appellant No.1 will be referred to as MCGM.

3. One V.D. Chavan, the Deputy Superintendent working in the G/S Assessment Department of MCGM visited the premises at 341, Khan Abdul Gaffer Khan Road, Worli, Mumbai- 400025 on 17th February, 1998. He found that the building consisting of ground and first floor had been demolished. The rateable value of the said building consisting of ground and first floor

was assessed at Rs. 6460 net per annum (n.p.a.). The land beneath the demolished building with amenity land was put up for development purposes and construction work thereon had started with effect from 1st April, 1997.

4. In these circumstances, the officer of MCGM proposed to assess the land at the rate of Rs. 6700 per sq.meter as a land under construction with effect from 1st April, 1997. As per the sanctioned plan, the area of the plot of land admeasured 1693.98 sq. meters. Out of the said area, the area of the structure admeasuring 43.56 sq. meters was proposed to retained. Thus, deducting the area of the structure proposed to be retained from the total area of the plot of land, the balance area admeasuring 1648.42 sq. meters was put up for development purpose and the same has been denoted as land under construction.

5. On the basis of the rate of Rs. 6,700/- per sq. meter, the cost price of the land admeasuring 1648.42 sq. meters worked out to Rs. 1,10,44,414/-. From the said cost price of the plot of land of Rs. 1,10,44,414/-, the rate of 12% was adopted, and after giving 10% statutory deduction, the rateable value of the said plot of land as land under construction was worked out at Rs. 11,92,795/- n.p.a w.e.f 1st April, 1997.

6. The aforesaid proposal was put up by Mr. V.D. Chavan in the form of a Tabulated Ward Report. Pursuant to the aforesaid proposal, a Notice under Section 162(2) and a Notice under Section 167 of the Mumbai Municipal

Corporation Act, 1888 (hereinafter referred to as the "**MMC Act**") was issued and served upon the assessee, i.e, the Respondent.

7. After receipt of the said Notice, a complaint was lodged by the Respondent. The said complaint was registered by MCGM as complaint bearing No. GSCR-136 of 1997–98.

8. At the time of initial hearing of the said complaint on 20th June, 1998, Shri. I.G. Bhandare, who appeared on behalf of the Complainant, was given the details of the proposal as requested by him. Thereafter, the aforesaid complaint was adjourned and the same was heard from time to time and finally heard on 14th August, 1998.

9. On behalf of the MCGM, Superintendent Shri. S.A. Bane appeared before the Investigating Officer of MCGM.

10. The Investigating Officer came to the conclusion that the reasonable rate of the said plot of land would be Rs. 5050 per sq. meter instead of Rs. 6,700 per sq. meter as adopted by Deputy Superintendent Shri. V. D. Chavan. On the basis of rate of Rs. 5050 per sq. meter, the cost price of the land admeasuring 1648.42 sq. meters worked out to Rs. 83,24,521/-. At that time, the return of giltedge securities was 12%. Therefore, the Investigating Officer of MCGM adopted the rate of 12% and after giving 10% statutory deduction, the rateable value of the said plot of land was worked out to Rs. 8,99,050/- p.a. w.e.f 1st April, 1997.

11. The Respondent filed before the Small Causes Court at Bombay a Municipal Appeal challenging the said rateable value fixed at Rs. 8,99,050/-, being Municipal Appeal No. 165 of 1999, seeking the following reliefs :

> *"a. This Hon'ble Court may be pleased to set aside the rateable value fixed as aforesaid in GNSR 136 of 1997-98 on 14th August, 1998 and restore it to Rs. 6,460/-as per its original assessment in accordance with law or at such amount as this Hon'ble Court deems just, fit and proper in the circumstances of the case.*
>
> *b. The Respondents be further directed to deleter water tax and sewerage tax from the assessment bills on the rateable value fixed by the Hon'ble Court.*
>
> *c. The Respondents be directed to pay the cost of the appeal to the Appellant.*
>
> *d. Such further and other orders may be passed as may be necessary and proper in the interest of Justice."*

12. The Small Causes Court, after hearing the parties passed a Judgement dated 30th August, 1999. The order in the said Judgement reads as follows :

> *"ORDER*
>
> *The appeal is allowed.*
>
> *The order of Investigating Officer dt. 14.8.1998 fixing the rateable value at Rs. 8,99,050/- is hereby set aside the original rateable value at Rs. 6460/- is hereby restored.*
>
> *The Respondents are entitled to recover water charges and not sewerage charges. The Respondents to issue fresh bill accordingly.*
>
> *The excess amount if any deposited by the Appellants be refunded to them after adjusting upto date taxes.*
>
> *Parties to bear their own costs."*

13. Further, in respect of the rateable value, the Small Causes Court held that the land has to be assessed as vacant land. Further, it held that MCGM could not have assessed more than the earlier assessment. It concluded that the earlier assessment was Rs. 6460/- and, therefore, the rateable value cannot exceed the previous rateable value of Rs. 6460/-.

14. The Appellants have filed the present First Appeal challenging the said Judgement dated 30th August, 1999.

## SUBMISSIONS OF THE APPELLANTS

15. Mr. Sakhare, the learned Senior counsel appearing on behalf of the Appellants, submitted that the issue in this Appeal was as to how the land is to be assessed after the building has been demolished. He submitted that the land has to assessed as vacant land.

16. In support of his submissions, Mr. Sakhare relied upon the following Judgements :

a) *The Municipal Corporation of Greater Bombay Vs. M/s. Polychem Ltd. (1974) 2 SCC 198.*

b) *Naman Developers Pvt. Ltd. and Anr Vs. Municipal Corporation of Greater Mumbai, 2002 SCC Online Bombay 777.*

c) *Shree Saurashtra Patel Samaj Vs. Brihanmumbai Municipal Corporation, 2004 (1) Mh.L.J 27.*

17. Mr. Sakhare further submitted that the Small Causes Court was not right in holding that the MCGM cannot assess the land more than the earlier assessment. Mr. Sakhare submitted that the finding of the Small Causes Court, in paragraph 15, that the market rate adopted by MCGM is without basis, is also based on the point that the assessment cannot be more than the earlier assessment.

18. Further, Mr. Sakhare submitted that what is being assessed is a open plot of land and therefore rateable value can go up on the basis of potential of the vacant land.

19. In the context of water tax and sewerage tax, Mr. Sakhare relied upon the Judgement of a Full Bench of this Court in ***Mars Enterprises Vs. Mumbai Municipal Corporation of Greater Mumbai (Writ Petition No. 455 of 2005)***. Relying on this Judgement, Mr. Sakhare submitted that, in the present case, the Respondent is liable to pay water tax and water benefit tax in addition to the water charges.

20. Mr. Sakhare further submitted that, on the same analogy, sewerage tax would also have to be paid by the Respondent.

21. The Respondent, though served, did not appear.

## ANALYSIS AND FINDINGS

22. As far as the fixing of rateable value is concerned, it is the submission of Mr. Sakhare that rateable value of land under construction was to be fixed

on the basis that it is vacant land, however, the Small Causes Court was not right in holding that MCGM cannot assess the land more than the earlier assessment.

23. In order to consider Mr. Sakhare's submissions, I will first have to consider the Judgements relied upon by Mr. Sakhare in support of his submission.

24. The first Judgement relied upon by Mr. Sakhare is the Judgement in ***M/s. Polychem Ltd. (supra).*** Paragraphs 22, 23 and 27 of the said Judgement are relevant and are set out *hereunder*:

> *"22. The abovementioned authorities of this Court, which were cited before us, enable us to hold that the mode of assessment in every case must be directed towards finding out the annual letting value of land which is the basis of rating of land, and, by definition, "land" includes land which is either being built upon or has been built upon. Nevertheless, a reference to the provisions of the Act shows that, after a building has been completed, the letting value of the building, which becomes part of land, will be the primary or determining factor in fixing the annual rent for which the land which has been built upon "might reasonably be expected to be let from year to year". All that Section 154 seems to contemplate, by mentioning "land or building", is that land which is vacant or which has not been built upon may be treated, for purposes of valuation, on a different footing from land which has actually been built upon. But, relevant provisions of the Act do not mention and seem to take no account, for purposes of rating, of any building which is only in the course of being constructed although Section 3(r) of the Act makes it clear that land which is being built upon is also "land". Hence, so long as a building is not completed or constructed to such an extent that atleast a partial completion notice can be given so that the completed portion can be occupied and let, the land can,*

*for purposes of rating, be equated with or treated as vacant land. It is only when the building which is being put up is in such a state that it is actually and legally capable of occupation that the letting value of the building can enter into the computation for rating "Rebus sic Stantibus". Although, the definition of land, which is rateable, covers three kinds of "land", yet, for the purposes of rating Section 154 recognises only two categories. Therefore, all "land" must fall in one of these two categories for purposes of rating and not outside.*

*23. The doctrine of sterility, in the context of the provisions we have to construe, cannot apply here. In England, what happens is that when land, which is in the process of being built upon, is equated with vacant land, which is not yielding any profit, it ceases to be rateable land. But, under the statute we have before us, all "land", whether vacant, or in the process of being built upon, or built upon, is rateable according to the well settled principles. All that can be said is that, so long as a building being constructed on some land is not in a state fit for occupation, its rateable value should not be more or less than that of land which is vacant. That, however, is not the object of the respondent in invoking the doctrine of sterility. What has happened in the case before us is that the land which was being assessed as rateable so long as it was vacant land has been treated as entirely outside the scope or sphere of rateability just because a building is being erected upon it. As we find no statutory provision which has the effect of conferring such an immunity or exemption upon land which is being built upon, we cannot uphold a conclusion which produces such a startling result.*

*27. We do not think, for reasons already given, that it is necessary to examine English cases or authorities on the application of doctrine of sterility in England to land which is being built upon, because, after examining the relevant provisions of the enactment before us, we have reached the conclusion that land on which a building is being constructed does not cease to be rateable simply because a construction is going on upon it. The difference between English law and the position which emerges from the statute before us is vital for deciding the question before us. The most that can be said is that land which is being built upon should not be rated like land on*

> *which a building has been actually constructed unless and until the construction has reached a stage at which some occupation of the constructed portion is also legally and actually possible so that it could be taken into account in determining the rateable value. On this aspect, we have not found any material to indicate the state of the building on land on which it was being constructed. Evidence would, no doubt, have been there if the building had reached a stage at which any part of it was completed so as to be permitted to be occupied. Therefore, we think that the land upon which a building was under construction could and should be rated in the same way as vacant land."*

25. The Hon'ble Supreme Court held in the case of ***M/s. Polychem Ltd. (supra)*** that, just because a land is a land under construction, it does not cease to be rateable land. Further, the Hon'ble Supreme Court held that the rateable value of such a land shall be the same as vacant land.

26. The Judgement of the Hon'ble Supreme Court in ***M/s. Polychem Ltd. (supra)*** was followed by a Division Bench of this Court in ***Naman Developers (supra)***. The relevant portion of the said Judgement is as under :

> *"The Apex Court held that so long as building was not completed or constructed to such an extent that at least a partial completion notice could be given so that the completed portion can be occupied and let, the land can, for the purposes of rating, be only equated with or treated as vacant land. It is only when the building which is being put up is in such a state that it is actually and legally capable of occupation that the letting value of the building can enter into computation for rating. The Apex Court observed that though under the definition of land, three kinds of land namely, land, land under construction and the building are covered yet for the purpose of rating only two categories i.e. (i) land, and (ii) building are recognised under law and, therefore, all land must fall in one of these categories for the purposes of rating and not*

> *outside. With regard to land under construction, the Apex Court ruled that the land upon which a building was under construction could and should be rated in the same way as vacant land. Accordingly, the Apex Court sent the matter back to the Assessor and Collector of Bombay with regard to 1060 sq yd which was being built upon and directed that the whole land be valued for the purposes of rating in the relevant year as vacant land just as it was being done in the period immediately preceding the year 1962. Polychem is authority for the proposition that the land upon which the building is under construction should be rated in the same way as vacant land and that is the ratio of the case."*

27. Further, a Judgement of a Single Judge of this Court in ***Shree. Saurashtra (supra)*** follows the Judgements in ***Polychem (supra)*** and ***Naman Developers (supra)***. The relevant portion is as under :

> *"Proper reading of both the rulings viz. in Polychem by the Apex Court and in Naman Developers case by the Division Bench leaves no room for doubt that the Corporation in exercise of powers under section 154 of the said Act cannot apply different rateable value to a land under construction from that one which is applied for the vacant land and the land which is under construction, till the construction is complete and fit for occupation has to be rated in the same way as the vacant land. Law being very clear in that regard, merely because the owner or agent of the owner commences construction activities in the land that would not entitle the Corporation to apply a different rateable value for such land from the vacant land."*

28. The ratio of all these Judgements is just because a land is a land under construction it does not cease to be rateable land. Further, the rateable value of such a land should be the same as vacant land.

29. In the impugned Judgement, the Small Causes Court rightly holds that the land in issue, which was land under construction, should be assessed as

vacant land. However, thereafter, the Small Causes Court goes on to hold that the assessment cannot exceed the previous assessment of Rs. 6460/- n.p.a. In my view, this finding of the Small Causes Court is erroneous. The Small Causes Court failed to appreciate that the earlier assessment was on the basis of land and a building standing thereon. The Investigating Officer could not have adopted that assessment. The Investigating Officer should have assessed the land on the basis that it is vacant land. The Investigating Officer did not do so. Therefore, as far as rateable value is concerned, the matter needs to be remanded back to the Investigating Officer to decide the rateable value of the land on the basis that it is vacant land.

30. As far as water charges are concerned, it is an accepted fact that the land under construction has a water supply connection. Once that is so, MCGM is entitled to recover water charges and not water tax and water benefit tax as held by a full Bench of this Court in ***Mars Enterprises (supra)*** Paragraphs 19 and 20 of the said Judgement are relevant and are set out hereunder :

> *"19) Thus, under Section 169 of the Act, 'water charge' based on measurement or estimated measurement of the quantity of water supplied can be levied only 'in lieu' of water tax. In para-21 of its judgment in* ***Harish Lamba****, the Apex Court has noticed that the levy of water charges under the Rules made under Section 169 of the MMC Act is only 'in lieu' of water tax and water benefit tax. Accordingly, the Apex Court has clarified in Para-26 of the judgment that once water supply facility is availed by an owner/occupant, he would be liable to pay only water*

*charges on the basis of quantity of water actually consumed in lieu of water tax or water benefit tax. In Para-26, the Apex Court has clarified as under:*

> *26.....However, if the owner/occupant of the premises were to utilise the water supply facility made available to the premises through connection by means of communication pipes or municipal water works, as the case may be, the liability would be to pay only water charges on the basis of the quantity of water actually consumed, in lieu of property tax in the form of water tax or water benefit tax by virtue of Section 169 of the Act and in particular sub-section (2) thereof.*

*20) Thus, from provisions of Section 169(1) (ii) of the MMC Act, it is clear that the levy of water charges is in lieu of water tax. Though clause (ii) of subsection (1) of Section 168 uses only the word 'water tax', the Apex Court has held in Harish Lamba in paras-21 and 26 of the judgment that the levy of water charges would be in lieu of both water tax as well as water benefit tax. Therefore, once owner/occupier avails water supply facility and becomes liable to pay water charges under the provisions of Section 169(1)(ii) of the Act, payment of such water charges would be in lieu of water tax and water benefit tax. In short, it is not necessary for such owner/occupier to pay both water charges for actual consumption of water as well as water tax/water benefit tax. Question No. 3 is being accordingly answered accordingly."*

31. In these circumstances, the Respondent will be liable to pay water charges and not water tax or water benefit tax.

32. In these circumstances, the impugned Order has rightly held that the Respondent is liable to pay water charges.

33. As far as Sewerage charges are concerned, the Small Causes Court has held that the Respondent is not liable to pay the same as there is no drainage

line and there is no sewerage and bath place connected to the drainage as it is only a plot of land and the building is not yet constructed. The Small Causes Court has held that since, it is a open plot of land, the MCGM cannot recover sewerage taxes. In my view, the said finding of the Small Causes Court is correct and needs no interference in Appeal.

**ORDER**

In light of the aforesaid discussion, and for the aforesaid reasons, the following Orders are passed :

a) The Appeal is partly allowed.

b) As far as the rateable value is concerned, the matter is remanded back to the Investigating Officer of the MCGM to fix the rateable value of the land under construction on the basis that it is vacant land.

c) The Small Causes Court's finding that MCGM is entitled to recover water charges is upheld.

d) The Small Causes Court's finding that MCGM is not entitled to recover sewarage charges is upheld.

34. In the facts and circumstances of the case, there will be no order as to costs.

[FIRDOSH P. POONIWALLA, J.]