

MUNICIPAL CORPORATION OF GREATER MUMBAI

No. J.M.C./A&C/3019 Dt. 23.01.2023

Subject - Implementation of judgement of Hon'ble Supreme Court in SLP No.17009 of 2019.

Reference - Email of Shri V.Sridharan Sir dtd. 23.01.2023.

Hon'ble Supreme Court has passed final order in SLP 17009 of 2019 on 07.11.2022. As per the said order Rule No.20,21 & 22 of the Capital Value Rules 2010 and 2015 have been held ultra-vires. Accordingly, as on date these rules are not in force. Further, BMC has filed review petition against the said order. Pending the decision of review petition, legal opinion was sought on the following -

- 1) Whether to send demand notices of property tax as per the formula (50% tax) given in the interim order of W.P.2592 of 2013 which was thereafter adopted by Hon'ble Supreme Court also in S.L.P.17009 of 2019

Or

- 2) To demand the tax as per decision of Supreme Court in S.L.P.17009 2019
- 3) At the time of issue of NOC for occupation certificates and issue of "P" form for water connection, whether to accept payment as per 1 or 2 above.

Sr.Advocate Shridharan Sir gave his opinion on 23.01.2023 (Page No. __ to __)

Legal opinion is based on following grounds

- 1) Rule No.20,21 & 22 of the Capital Value Rules 2010 and 2015 are not in force.
- 2) As the final order has been passed by Hon'ble Supreme Court in SLP 17009 of 2019, the interim order of 50% payment of tax is not in force.
- 3) Assessment of Property Tax is subject to limitations prescribed under the Act such as Section 167 and Section 216 B of B.M.C.Act 1888.
- 4) The fact that rules have been declared ultra-vires by Hon'ble Supreme Court and the Corporation has filed review petition is no ground to claim that the invoices would not be subject to limitation.

Accordingly, Sr. Advocate Shridharan Sir gave his opinion as under -

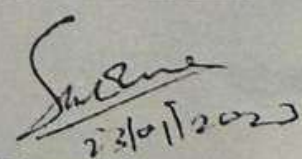
- i) Corporation should continue the issuance of invoices based on rules declared ultra-vires by Hon'ble Supreme Court.
- ii) The corporation should incorporate a note on the invoice stating that the invoice has been issued on protective basis and no recovery shall be made based on this invoice. The draft note is as follows -

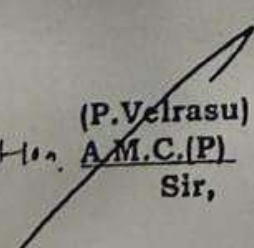
"Hon'ble Supreme Court in case of Municipal Corporation of Greater Mumbai Vs. Property Owners Association and others (Civil Appeal No. 8239 OF 2022) has, inter-alia, upheld the judgement of Hon'ble Bombay High Court striking down Rules 20, 21 and 22 of the Capital Value Rules of 2010 and 2015. The Corporation has filed review petition against the said judgement. The present invoice has been raised on protective basis and no recovery shall be made based on this invoice."

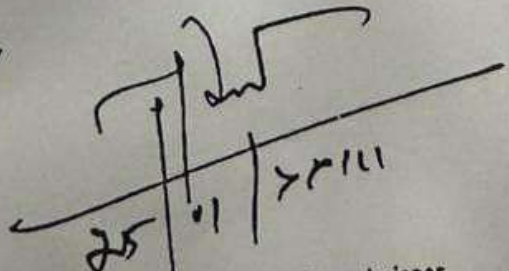
As the general issue bills for the year 2022-23 are already issued, the note can be incorporated on the amended bills and prospective general issue bills for 2023-24 onwards.

- iii) However, Corporation cannot enforce the recovery based on these invoices.
- iv) Corporation can accept voluntary payment made by property owners. Such payment will be subject to the final outcome of the dispute.
- v) The recovery cannot be enforced even while issuing NOCs. However, the Corporation can issue the NOC subject to the payment of property taxes finally due based on the judgment of Hon'ble SC or retrospective legislative amendments (if any).
- vi) The Corporation can obtain an undertaking from the applicant in this regard.

Approval of Hon'ble A.M.C.(P) Sir is requested to implement the opinion of Sr. Advocate Shri Sridharan Sir from (i to vi) above.


23/01/2023
(Sunil Dhamne)
Jt.M.C.(A&C)


(P. Velrasu)
Hon. A.M.C.(P)
Sir,


25/01/2023
Additional Municipal Commissioner
(Project)

Desktop / gsl/dictation