CNR NO. MHSCA20010192025

IN THE COURT OF SMALL CAUSES AT MUMBAI

COMMON ORDER BELOW
EXHIBIT – 12
AND
EXHIBIT - 1
IN
MUNICIPAL APPEAL NO. 7 OF 2025

Mr. Yogesh Panchal **...Appellant**

Versus

Municipal Corporation of Greater Mumbai & Anr. **...Respondents**

Appearance :
Mr. Ashish A. Dubey, Ld. Advocate for Appellant
Mrs.Sulakshana Kamble, Ld. Advocate for Respondents

Coram:- K. A. Bage-Patil, Addl. Chief Judge,
Court Room No.2
I/C. of Court Room No.18,
Date :- 25/11/2025

ORAL ORDER

1) The respondents have filed this application for dismissal of appeal for non-compliance of provisions of Section 217 of the Mumbai Municipal Corporation Act,1888 (in short the "MMC Act").

The facts set out in the application, in brief, are as under-

2) That the appellant has filed this appeal challenging the Special Notice dated 05.03.2024 bearing No.GS01394453 issued by the respondents for Assessment year 2023-2024 for fixing the capital value in respect of SAC No.GS0330160005000 at Rs.286,52,25,035/- NPA with effect from 01.04.2023 and also prayed to set aside the Special Notice dated 05.03.2024 as per Section 217 of the MMC Act,1888.

3) It is further contended that after issuing Special Notice dated 05.03.2024, the appellant has filed the complaint as per MMC Act and it is pending before the Investigating Officer. It is further contended that the appellant ought to have filed the appeal within 21 days from the date of order passed on the complaint. It is further contended that as the appeal is not as per the provisions of Section 217 of the MMC Act, it is not maintainable. So, the respondents pray to dismiss it with costs.

4) The appellant has filed his reply vide Exh-13 and resisted the application on various grounds. According to him, the application is contrary to the record, devoid of any substantive legal merit and it amounts to an abuse of process of law, the application is frivolous and it is based on technical objections without addressing the substantive grievances. It is further contended that, there was an initial delay of 131 days in filing the present Municipal appeal. The appellant filed MARJI No.252 of 2024 wherein the Hon'ble Court considered that the sufficient cause made out by the appellant and was pleased to condone the delay and thereafter the appeal is admitted. The respondents have failed to challenge the order passed in MARJI No.252 of 2024 by way of appeal or revision, so, they are now precluded from raising any objection on the ground of

limitation. It is further contended that the respondent had raised preliminary objections regarding maintainability of the appeal, including the objection pertaining to compliance of Section 217 of MMC Act. On hearing detailed submissions of both the parties, on the issue of maintainability, on 04.04.2025, this court was pleased to held that the present appeal is maintainable and directed to proceed with the matter. In order dated 04.04.2025, it is observed that the the appellant is restricting his claim to the appeal unit and his claim is confined to a particular unit. The fixation of capital value of entire premises/estate has its impact on the levy of property tax upon the appellant's unit. Therefore, he has no alternative but to challenge the fixation of capital value. In the circumstances, he cannot be compelled to pay property tax on entire estate. This being so, the appellant cannot be deprived from exercising his statutory right of appeal and hence the prayer to dismiss the appeal be summarily rejected and appeal be ordered to be registered after removing office objections, if any.

5) It is further contended that the application at Exhibit-10 came to be disposed off. The present application for dismissal of the appeal, seeking challenge to maintainability of the appeal is nothing but an attempt to bypass the settled order, so the application itself is not tenable. The appellant further contended that the burden is upon the respondents to demonstrate with reference to specific documentary evidence and statutory provisions that the filing of a complaint under Section 163 of the MMC Act was a mandatory precondition in the facts and circumstances of the present case and also to establish that non filing of such a complaint, if any, renders the appeal liable to be dismissed. It is further contended that the

special notice dated 05.03.2024 itself constitutes an arbitrary determination in the assessment, which has been challenged directly before this Court as the matter involves substantial questions of law, jurisdictional issues, and violations of fundamental principles of natural justice. It is further contended that the respondents have not pointed out any specific prejudice caused to them on account of any illegal non-filing of complaint.

6) It is further contended that the objection raised by the respondents is purely technical and pedantic in nature and does not go to the root of the matter or affect the substantial merits of the case. This Court, in exercise of its equitable jurisdiction and in furtherance of the constitutional mandate to do complete justice, may condone any technical irregularity, if any, in the larger interest of substantial justice and to prevent grave injustice being perpetrated upon the appellant.

7) It is further contended that the insistence by the respondents on technical compliance is contrary to the well-established principles of natural justice and equity as the substantive rights of the appellant are under serious threat. The appellant denies that the application is beyond the period of limitation. The appellant alternatively submits that if there is any technical delay in filing the appeal, the same is liable to be condoned in the interest of justice. It is further contended that even if it is assumed that the complaint was required to be filed before the Commissioner, before filing the appeal, its non-compliance would not render the appeal liable to be dismissed in limine, without affording an opportunity to the appellant to rectify the same. It is further contended that the appellant has already paid property taxes in respect of the subject

property. So, the appellant prays to reject the application with costs.

8) After considering the controversial pleadings, following points arise for my determination and my findings against it with reasons are as follows:

Sr. No.	POINTS	FINDINGS
1.	During the pendency of complaint before the Commissioner of Mumbai Municipal Corporation under Section 163 of the MMC Act, whether the appeal is maintainable under Section 217 of the MMC Act?	In the negative
2.	What order?	As per final Order.

REASONS

As to Point Nos.1 and 2:

9) Heard Learned Advocate for the appellant as well as respondents respectively. They have made submissions as per their application and say which will be reproduced at the relevant time, while discussing, hereinafter, but in order to avoid repetitions, the submissions are nor reproduced.

10) On perusal of record, it reveals that the respondents issued notice dated 05.03.2024 bearing No.GS01394453 along with Assessment Bill in respect of Gala No.38 situated on the Ground Floor of the Building Pragati Industrial Estate situated at 316, N.M.Joshi Marg, Mumbai – 400 011 (hereinafter referred to as "**the said Gala**" for the sake of brevity). Being aggrieved by the said notice, the appellant has preferred this appeal under Section 217 of the MMC Act.

11) The Learned advocate for the respondents submits that after determination of rateable value or capital value, the person aggrieved by the fixation of rateable value or capital value may file a complaint against the valuation as per Section 163 of the MMC Act. She further submits that an appeal against any rateable value or capital value fixed or charged under this Act, may be filed in the Court of the Chief Judge of Small Causes Court under Section 217 of the MMC Act, but as per Section 217(2)(b), no such appeal shall be filed unless a complaint has been previously made to the Commissioner under Section 163 and as such complaint has been disposed of. She further submits that the appellant, being aggrieved by the impugned notice, has filed the complaint before the Commissioner under Section 163 of the MMC Act and it is still pending. So, according to her, unless and until an order is passed under Section 163, the appeal is not maintainable. So, she prays to dismiss the appeal as it is premature.

12) The Learned advocate for the appellant submits that though the appellant has made a complaint to the Commissioner, no further action has been taken. So, the appellant has preferred this appeal. He further submits that the predecessor of this Court has considered the application and directed the respondents to file the computation. He further submits that accordingly, the respondents have filed their computation. Thereafter, this Court was pleased to pass an order by order dated 4/4/2025, and this Court has rejected the application/written computation filed by the respondents, seeking summarily dismissal of appeal due to non-compliance of Section 217(2)(d). So, he submits that as the proceeding has traveled a stage ahead of Section 217(2)(b), now this application is

not tenable.

13) As Section 154, 163, 164 and 217 of the MMC Act,1888 are in question, and they are related to each other, it is just to reproduce these Sections which are as follows -

(I) **Section 154 of MMC Act runs as follows -**

> 154. Rateable value [or capital value] how to be determined.— (1) In order to fix the rateable value of any building or land assessable to a property-tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten per centum of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever.
>
> (1A) In order to fix the capital value of any building or land assessable to a property tax the Commissioner shall have regard to the value of any building or land as indicated in the Stamp Duty Ready Reckoner for the time being in force as prepared under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995, framed under the provisions of the 4Bombay Stamp Act, 1958, (Bom. LX of 1958) 5[as a base value] or where the Stamp Duty Ready Reckoner does not indicate value of any properties in any particular area wherein a building or land in respect of which capital value is required to be determined is situate, or in case such Stamp Duty Ready Reckoner does not exist, then the Commissioner may fix the capital value of any building or land 6[taking into consideration the market value of such building or land, as a base value. The Commissioner while fixing the capital value as aforesaid, shall have regard to the following factors, namely:—]
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> (a) the nature and type of the land and structure of the building,
>
> (b) area of land or carpet area of building,
>
> (c) user category, that is to say, (i) residential, (ii)

commercial (shops or the like), (iii) offices, (iv) hotels (upto 4 stars), (v) hotels (more than 4 stars), (vi) banks, (vii) industries and factories, (viii) school and college building or building used for educational purposes, (ix) malls and (x) any other building or land not covered by any of the above categories,

(d) age of the building, or

(e) such other factors as may be specified by rules made under sub-section (1B).

(1B) The Commissioner shall, with the approval of the Standing Committee, frame such rules as respects the details of categories of building or land and the weightage by multiplication to be [assigned to various such factors and categories] for the purpose of fixing the capital value under sub-section (1A)].

(1C) The capital value of any building or land fixed under sub-section (1A) shall be revised every five years:

Provided that, the Commissioner may, for reasons to be recorded in writing, revise the capital value of any building or land any time during the said period of five years and shall accordingly amend the assessment book in relation to such building or land under section 167.]

(1D) (a) Notwithstanding anything contained in sub-section (1C),—

(i) due to the spread of COVID-19 pandemic, the capital value of any building or land fixed under sub-section (1A) shall not be revised in the year 2020-21 9[, the year 2021-22 and the year 2022-23];

(ii) for the year 2020-21, the property tax bill for any building or land shall be the same as is for the year 2019-20 1[, the year 2021-22 and the year 2022-23];

(iii) the capital value of any building or land fixed under sub-section (1A) shall be revised [in the year 2023-24], as if the clause (i) is not applicable for the year 2020-21.

(a-1) Notwithstanding anything contained in sub-section (1C),—

(i) the capital value of any building or land fixed under sub-section (1A) shall not be revised in the year 2023-24;

(ii) for the year 2023-24, the property tax bill for any building or land shall be the same as was for the year 2022-23;

(iii) the capital value of any building or land fixed under sub-section (1A) shall be revised in the year 2024-2025, as if clause (i) is not applicable for the year 2023-24.]

(b) Subject to the proviso to sub-section (1C), the next revision shall be in the year 2020-21, the year 2021-22 and the year 2022-23, and, thereafter, the revision of capital value of any building or land shall be in accordance with the provisions of sub-section (1C).

(2) The value of any machinery contained or situated in or upon any building or land shall not be included in the rateable value 5[or the capital value, as the case may be, of such building or land.

154A. Provisional fixation of capital value in certain cases. — Notwithstanding anything contained in section 154, the rateable value of any building or land or part thereof, for the official year 2009-2010, shall be the provisional capital value of such building and lands in respect of the official years 2010-2011, 2011-2012 and 2012-2013], and such provisional capital value shall be deemed to be the capital value validly and legally fixed under the provisions of this Act, pending fixing the capital value thereof; and it shall be lawful for the Commissioner to treat it as such for the purposes of assessment book kept under the provisions of this Act, and the bill for property taxes issued under sub-section (2) of section 140A shall be deemed to have been validly and legally issued under the provisions of this Act.

Provided that, in respect of the buildings and lands which are liable to be assessed for the first time on or after the 1st April 2010, the capital value of such buildings and lands shall, until the final capital value is determined under this section, be provisionally equal to the amount of rateable value worked out on the basis of the prescribed letting rates by the corporation in respect of the official year 2009-2010].

14) It is significant to note that after fixation of rateable value or capital value, there is a provision of filing a complaint against such amount requiring to mention the grounds on which the valuation is complained against. Said provision is given under Section 163, which runs as under -

> 163. Time and manner of filing complaints against valuation.— (1) Every complaint against the amount of any rateable value or the capital value, as the case may be, entered in the assessment-book must be made by written application to the Commissioner, which shall be left at his office on or before the day or the latest day fixed in this behalf in the public or special notice aforesaid.
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> (2) Every such application shall set forth briefly but fully the grounds on which the valuation is complained against.

15) Section 164 of the MMC Act deals with the procedure of issuing notice to the complainant and to fix a day for investigating the complaint.

> 164. Notice to complainants of day fixed for investigating their complaints.— The Commissioner shall cause all complaints so received to be registered in a book to be kept for this purpose and shall give notice in writing to each complainant, of the day, time and place when and whereat his complaint will be investigated.

16) Section 165 of the MMC Act deals with the manner of hearing the complaint, which runs as under -

> 165. Hearing of complaint.— (1) At the time and place so fixed the Commissioner shall investigate and dispose of the complaint in the presence of the Complainant if he shall appear, and, if not, in his absence.
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> (2) For reasonable cause, the Commissioner may from

time to time adjourn the investigation.

(3) When the complaint is disposed of, the result thereof shall be noted in the book of complaints kept under section 164, and any necessary amendment shall be made in accordance with such result, in the assessment-book.

17) Section 217 of the MMC Act makes the provision to file the appeal against the valuation and tax, which runs as under -

217. Appeals when and to whom to lie.— (1) Subject to the provisions hereinafter contained, appeals against any rateable value or the capital value, as the case may be, or tax fixed or charged under this Act shall be heard and determined; by the Chief Judge of the Small Cause Court.

(2) But no such appeal by the Chief Judge of the Small Cause Court, shall be entertained by the said Chief Judge, unless—

(a) it is brought within 7[twenty-one days] after the accrual of the cause of complaint;

(b) in the case of an appeal against a rateable value or the capital value, as the case may be, a complaint has previously been made to the Commissioner under section 163, as such complaint has been disposed of;

(c) in the case of an appeal against any amendment made in the assessment book under section 167 during the official year, a complaint has been made by the person aggrieved within twenty-one days after the first received notice of such amendment, and his complaint has been disposed of ;

(d) in the case of an appeal against a tax, or in the case of an appeal made against rateable value or the capital value, as the case may be, the amount of the disputed tax claimed the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value or the capital value, as the case may be, upto the date of filing of the appeal, has been deposited by the appellant with the Commissioner and such appeal is accompanied by a receipt of the full amount of tax to which appeal relates.

(2A) Where the appeal is not filed in accordance with the provisions of clauses (a) to (d) of sub-section (2), it shall be liable to be dismissed.

(3) In the case of any appeal entertained by the Chief Judge, but not heard by him, before the date of commencement of the Maharashtra Municipal Corporation (Amendment) Act, 1975 (Mah. LXIII of 1975), the Chief Judge shall not hear and decide such appeal, unless the amount of the dispute tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, as the case may be, up to the date of filling the appeal, has been deposited by the appellant with the Commissioner within thirty days from the date of publication of a general notice by the Commissioner in this behalf in the local newspapers. The Commissioner shall simultaneously serve on each appellant a notice under sections 484 and 485 and other relevant provisions of this Act, for intimating the amount to be deposited by the appellant with him.

(4) As far as possible, within fifteen days from the expiry of the period of thirty days prescribed under sub-section (3) the Commissioner shall intimate to the Chief Judge the names and other particulars of the appellants who have deposited with him the required amount within the prescribed period and the names and other particulars of the appellants who have not deposited with him such amount within such period. On receipt of such intimation, the Chief Judge shall summarily dismiss the appeal of any appellant who has not deposited the required amount with the Commissioner within the prescribed period.

(5) In the case of any appeal against any rateable value or property tax fixed or charged under this Act, which may have been entertained by Chief Judge before the commencement of the Act aforesaid, or which may be entertained by him after the said date, the Chief Judge shall not hear and decide such appeal unless the property tax, if any payable, on the basis of the original rateable

> value plus eighty per centum of the property tax claimed from the appellant on the increased portion of the rateable value of the property out of the property tax claimed under each of the bill, which may have been issued, from time to time, since the filling of appeal, is also deposited with the Commissioner within the period prescribed under the Act. In case of default by the appellant, on getting an intimation to that effect from the Commissioner, at any time before the appeal is decided, the Chief Judge shall summarily dismiss the appeal:
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> Provided that, in case the appeal is decided in favour of the Corporation, interest at 6.25 per centum per annum shall be payable by the applicant on the balance amount of the property tax from the date on which the amount of property tax was payable:
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> Provided further that, in case the appeal is decided in favour of the applicant and the amount of the property tax deposited with the Corporation is more than the property tax payable him, the Commissioner shall adjust the excess amount of the property tax with interest at 6.25 per centum per annum for the date on which the amount is deposited with the Corporation towards the property taxes payable thereafter.

18) So, on plain reading of Section 217(2)(b), it reveals that no such appeal against a rateable value or the capital value, as the case may be, shall be entertained unless a complaint has previously been made to the Commissioner under section 163, as such complaint has been disposed of. Here the word used in Section 217(2)(b) is "**shall".** So, before filing an appeal against rateable value or the capital value, as the case may be, filing of complaint before the Commissioner of Mumbai Municipal Corporation under Section 163 of the MMC Act as well as its decision is mandatory. In other words, unless the complaint filed before the Commissioner under Section 163 of MMC Act is disposed off, the appeal cannot be entertained.

19) In view of the above legal provision, if you peruse the facts and consider the documents on record, it reveals that the MCGM has issued notice to the appellant on 05.03.2024, wherein it is clearly mentioned that, it has fixed the capital value at Rs.2,86,52,25,035/- and served the notice under Section 162(2) of the MMC Act,1888. In the said notice, the respondents have further mentioned that, complaints, if any, shall be made in the attached format by lodging and delivering at the office of the Assistant Assessor and Collector at the ward address mentioned, within 21 days from the date of receipt of this notice. It was further informed to the appellant that, as required by section 163(2) of the MMC Act,1888, the complainant shall set forth briefly but fully the grounds on which the capital value is complained against in respect of "carpet area" and/or any other "Factor Values" along with the documentary evidence in support of the complaint.

20) The appellant has produced the copy of the complaint made by the appellant to The Assistant Assessor and Collector dated 29.03.2024, notice issued by Asstt.Assessor & Collector to the appellant dated 12.06.2025 as well as the Order Sheet from 08.10.2024 along with list Ex-15. On its perusal, it reveals that, being aggrieved by the impugned notice dated 05.03.2024, the appellant has made complaint to the Asstt. Assessor & Collector on 29.03.2024 under Section 163 of the MMC Act,1888 and the said complaint is received by the office of the Mumbai Municipal Corporation on 01.04.2024. It further reveals that by notice dated 12.06.2025, the Asstt. Assessor & Collector/GS-Ward issued notice to the appellant. The Order Sheet discloses that on 08.10.2024, the Investigating Officer was instructed to rectify the unit as Industrial

and further hearing was on 20.006.2025. On that day, the matter was closed for orders. The respondents have produced this latest position. So, from it, it reveals that the matter is still before the Commissioner/ Asstt. Assessor & Collector/GS-Ward under Section 163 of the MMC Act,1888. It further reveals that no final order has been passed under Section 163 r/w Section 165 of the MMC Act,1888. So, unless and until the complaint is disposed of, the appeal under Section 217 cannot be entertained as per provisions of Section 217(2)(b) of the MMC Act,1888.

21) The Learned Advocate for the respondents relied upon the authorities in the case of **Peninsula Land Ltd.,Mumbai V/s. Brihan Mumbai Mahanagarpalika and Ors. 2009(1)Mh.L.J. 710** wherein the Lordships of Division Bench of our own Hon'ble High Court observed as follows -

> *"28. The Scheme in relation to liability and payment of property tax is to be traced in the provisions of Sections 156 to 165 of the Act which regulates the maintenance of assessment book and the manner in which it is to be completed, issuance of notice and time and manner in which the complaints could be filed. Section 167 of the Act imposes an obligation upon the Commissioner to amend the assessment book upon representation from any person concerned or upon any other information received during the year. This amendment could relate to insertion of the name, increase or reducing of amount of rateable value of the assessment and the property tax payable thereupon. Section 197 contemplates that each of the property tax shall be payable in advance in half yearly installments on each first day of April and each first day of October. Sections 200 and 201 of the Act require the service of bill upon the owner of the property as well as make it is obligatory upon the Corporation to serve a notice of demand in terms of Section 202 of the Act. It is only after the prescribed procedure under*

these provisions have been complied with that the Corporation would ultimately prepare a bill, serve the same upon the owner of the property whose liability to pay become certain with the issuance of the notice of demand. Thus, the Scheme of the Act clearly provides a due process of law for imposition of property tax, its payment and ultimately the manner in which the appeals are to be filed and to be dealt with by the Court of Chief Judge. The Scheme thus is in complete consonance with the constitutional mandate and does not suffer from vice of arbitrariness, unreasonableness or unconstitutionality.

29. We may also clarify that the proceedings before the Chief Judge are proceedings not of the original nature but are of appellate jurisdiction. The original proceedings are passed by the Assessing Officer. Against those original proceedings, an appeal in terms of Section 217 of the Act has been provided to the Chief Judge. This being an appellate proceedings, parties are at liberty to raise the questions of fact and law both before the Chief Judge. The Supreme Court in the case of Municipal Corporation of Brihanmumbai and another vs State Bank of India, (1999) 1 SCC 123, has specifically stated that nature of proceedings under Section 217(1) are appellate proceedings."

22) So, in view of above discussed provisions as well as aforesaid authority, it is crystal clear that the proceeding before the Chief Judge are proceeding not of original nature, but are of Appellate Jurisdiction. The original proceedings are passed by the Assessing Officer. Against those original proceedings, an appeal in terms of Section 217 of the Act has been provided to the Chief Judge. Here, the original proceeding is not yet decided. So, the appeal filed in this matter is totally premature and devoid of merits. The appeal filed before passing order under Section 163 r/w Section 165 of the MMC Act,1888 is premature and not maintainable. Hence, point No.1 is answered in negative and Point No.2 in terms of final order.

In the result, I pass the following order -

O R D E R

1. The application (Exhibit-12) is allowed.

2. Appeal being premature stands dismissed.

3. The appellant is at liberty to prefer appeal after decision of the Assessor and Collector under Section 163 of the MMC Act,1888.

Digitally signed by KIRAN APPASAHEB BAGE PATIL
Date: 2025.12.11 17:52:29 +0530

(K. A. Bage-Patil)
Addl. Chief Judge
Court Room No.2
I/C.of C.R.No.18
25.11.2025

Judgment Dictated on : 25.11.2025
Judgment Transcribed on : 08.12.2025
Judgment checked and signed on : 09.12.2025