Municipal Corpn.Of Greater Mumbai vs Harish Lamba Of Bombay, Indian ... on 22 October, 2019

Equivalent citations: AIR 2019 SUPREME COURT 5543, AIRONLINE 2019 SC 1268, 2020 (1) ABR 666, (2019) 14 SCALE 287, (2020) 2 ALLMR 480

Author: A.M. Khanwilkar

Bench: A.M. Khanwilkar, Indira Banerjee, Dinesh Maheshwari

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.142 OF 2009

Municipal Corpn. of Greater Mumbai ..…Appellant(s)

Versus

Harish Lamba of Bombay,
Indian Inhabitant & Ors. ….Respondent(s)

JUDGMENT

A.M. Khanwilkar, J.

1. This appeal takes exception to the judgment and order dated 21st November, 2006 of the High Court of Judicature at Bombay in Writ Petition No.1206 of 1999, whereby the bills/demand raised by appellant including towards water benefit tax and the Warrant of Attachment in respect of the stated premises belonging to the respondents came to be quashed and set aside being illegal.

2. The appellant is a corporate body constituted under the provisions of the Mumbai Municipal Corporation Act, 1888 (for short, "1888 Act" or "the Act") and respondent No.1 is a sole proprietor in the business, which was carried on by him in the name and style of Volga Frozen Foods and Ice Cream Company, hereinafter referred to as the "said firm". The stated business was located at Volga House, 1□C, K.K. Marg, Mahalaxmi, Bombay□400034, hereinafter referred to as the "said

premises". The respondent No.2 is the landlord of respondent No.1 in respect of the said premises. The respondent No.3 is the tenant of respondent No.2 in respect of the remainder area of the said building other than the area in possession of respondent No.1. The respondent No.1's firm required 10 lakh gallons of water for its frozen food and ice cream business, which was being supplied by the appellant (under the fixed quota of 10 lakh gallons of water) till October, 1983. On 29th October, 1983, an illegal strike call was given by the workmen in the factory of respondent No.1, due to which the production work in the factory was suspended by the management. Therefore, the respondent No.1 wrote to the appellant on 2nd February, 1987 and 15th October, 1987, requesting to discontinue the water quota allotted and then charge them on actual consumption basis, as they did not require the large quantity of water any more due to shut down of the production. Besides, a new water meter came to be installed on 15th October, 1987. Later on, the appellant informed respondent No.1 vide letter dated 27 th January, 1992, that his water connection will be cut off as requested by the company. That was finally done on 25 th October, 1993. Since then, respondent No.1 is dependent on water supply by private water tankers.

3. Accordingly, respondent No.1 wrote to the appellant vide letter dated 10th December, 1993 that since the water connection to the premises has been disrupted/cut off by the Water Department and he having paid all the dues until then amounting to Rs.46,794/-(Rupees Forty Six Thousand Seven Hundred Ninety Four Only), the appellant ought to install a new water meter. Upon receipt of this communication, the appellant demanded a deposit of Rs.72,000/-(Rupees Seventy Two Thousand Only) for processing the request for a new water meter. However, respondent No.1 did not pay the said amount on the ground of financial crisis because of closure of the factory. The respondent No.1 in turn requested the appellant to accept the deposit amount in installments of Rs.5,000/-(Rupees Five Thousand Only), which request was declined by the appellant. Therefore, there was no water connection/meter in the premises of respondent No.1 since 25th October, 1993.

4. The appellant thereafter in 1997 started raising bills for the period from 1st October, 1993 including towards water benefit tax in respect of the subject premises. In January, 1997, seven bills of water tax and water benefit tax were raised in respect of the said building (for the period from 1 st October, 1993 to 30th September, 1998) aggregating to Rs.10,60,312/-(Rupees Ten Lakh Sixty Thousand Three Hundred Twelve Only). The respondent No.3 paid his share of the bill in protest but respondent No.1, on advice, refused to pay his prorata share of the bill.

5. Resultantly, on 5th August, 1998, the appellant issued Warrant of Attachment and levied an attachment upon the said premises and building for the arrears of stated tax being property tax amounting to Rs.9,11,708/-(Rupees Nine Lakh Eleven Thousand Seven Hundred Eight Only) and further penalty of Rs.1,48,503/-(Rupees One Lakh Forty Eight Thousand Five Hundred Three Only). Thus, the aggregate demand was for Rs.10,60,312/-(Rupees Ten Lakh Sixty Thousand Three Hundred Twelve Only), against respondent No.1. Further, vide letter dated 18 th November, 1999, issued by the Legal Department of the appellant, respondents were informed that if the arrears of taxes were not paid, the appellant would proceed to advertise the public auction relating to premises occupied by respondent No.1.

6. Being aggrieved, respondent No.1 filed Writ Petition No.1206 of 1999 before the High Court of Judicature at Bombay to quash/set aside the bills and demand raised by the appellant and the Warrant of Attachment dated 5 th August, 1998 for recovery of the amount. The High Court was pleased to quash and set aside the bills/demands along with the Warrant of Attachment dated 5th August, 1998, vide impugned order dated 21st November, 2006. For that, the High Court relied upon the judgment of this Court in Municipal Corporation of Greater Bombay Vs. M/s. Nagpal Printing Mills and Another1. The High Court held that the corporation can levy charge only in respect of water supplied to and consumed by the consumer and to be levied on the basis of measurement or estimated measurement. It concluded that as, admittedly, supply of water to the premises was stopped from 25th October, 1993, there was no consumption by the respondents and hence they were not liable for any water charge or tax, as the case may be.

7. The appellant has assailed the view so taken by the High Court on the ground that the demand in question was towards property tax in the form of water benefit tax and not referable to demand under Section 169 of the Act, as such. In case of a tax, which is ascribable to Sections 139 and 140 of the Act, it is in the nature of a compulsory imposition or levy to be used for general public good. Had it been a demand for charges 1 (1988) 2 SCC 466 towards water actually consumed, it would come within the sweep of Section 169 of the Act. In that case alone it need to be commensurate with the quantity of water actually consumed. If the consumer avails the water supply facility extended by the corporation, the liability would be towards charges in lieu of water tax, as predicated in Section 169 of the Act and the Rules framed thereunder namely, Water Charges Rules in force at the relevant time. In the present case, the dispute relates to the bills raised by the appellant towards property tax in the form of water benefit tax in respect of the premises of respondent No.2 (Owner) and of which respondent No.1 is the tenant.

8. It is submitted that water tax or water benefit tax is a property tax and is determinable as a percentage of rateable value of the land or building as prescribed in Section 154 of the Act. Section 141 of the Act postulates that such tax shall be levied in respect of premises (i) to which a private water supply is furnished from OR (ii) which are connected by means of communication pipes with any municipal water works. In the present case, even though the water connection was disconnected on 25th October, 1993, the premises in question were still connected by means of communication pipes with the municipal water works. The term “communication pipes” is defined in Section 260A (a) of the Act to mean a pipe extending from a municipal water main up to and including municipal stop□cock. Hence, the demand raised by the appellant against the respondents towards water benefit tax under Section 141 of the Act was just and proper. It was not a recovery of charges under Section 169 of the Act as such, which could be limited to the quantity of consumed water. If the respondents had continued to consume the water supplied by the appellant through communication pipes connecting the premises in question, they would have become liable only to pay water charges under Section 169 of the Act, commensurate with the quantity of water consumed in lieu of water tax or water benefit tax. Having stopped consuming water and by the act of cutting off the water connection on 25 th October, 1993, whilst continuing the communication pipes connected to the premises, the respondents became liable to pay property tax in the form of water benefit tax under Section 141 of the Act.

9. It is contended that the scheme of the provisions in question and the interplay of Sections 140, 141, and 142 of the Act on the one hand and Sections 160 and 169 on the other hand, the Bombay High Court in its recent decision in Sumer Builders Vs. Municipal Corporation of Greater Mumbai2 opined that water charges recovered under Section 169 of the Act are not synonymous to the demand towards property tax in the form of water tax or water benefit tax under Section 141 of the Act. The appellant would adopt the exposition in the said decision to buttress the ground urged before this Court. It is then contended that the High Court erroneously placed reliance upon Nagpal Printing Mills (supra) although it was a case dealing with interpretation of Rule III (d) (i) of the Water Charges Rules which provided for deemed charges where a quota of water had been fixed. It is urged that the said case was a case of water charges levied under Section 169 (1) (ii), which has no application to the facts of the present case.

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10. The appellant has also countered the argument canvassed by respondent No.1 in particular to the effect that the demand raised by the appellant was invalid being retrospective in nature. According to the appellant, the decision in Kalyan Municipal Council and others Vs. Usha Paper Products (P) Ltd. and another3 as well as Municipal Corporation of City of Hubli Vs. Subha Rao Hanumatharao Prayag and Others4 dealt with question of levy of property tax after alteration in the assessment list and about the power to levy tax after authentication of the assessment list. These decisions, according to the appellant, have no bearing on the present case. For, the same is founded on the singular plea taken in ground (d) of the writ petition that the demand towards water benefit tax is for period prior to 10th January, 1994 and is barred by limitation. However, no material fact has been pleaded in the writ petition filed by the respondents before the High Court so as to demonstrate that the demand raised by the appellant was after expiry of limitation period, consequent to alteration in the assessment 3 (1988) 3 SCC 306 4 (1976) 4 SCC 830 list or authentication of the assessment list, as the case may be. No factual foundation was laid before the High Court that the authentication of the assessment list had occurred 3 (three) years preceding the issuance of the impugned demand notices in January 1997. Admittedly, the demand of property tax in the form of water benefit tax dues issued in January 1997 was for official year 1993□94 (1st April, 1993 to 31st March, 1994). For that reason, the demand raised in January, 1997 going back only upto 1st October, 1993 cannot be considered as being barred by limitation. The appellant would, therefore, urge that the impugned judgment be set aside and the appellant be permitted to proceed with the enforcement of the impugned demand notices and the Warrant of Attachment.

11. Per contra, the respondents would contend that the demand was nothing but water charges recoverable under Section 169 of the Act. It ought to have been commensurate to the quantity of water supplied and consumed by the respondents. Admittedly, after disconnection of water supply on 25th October, 1993, no water supply was continued to the premises. For that very reason, it was not open for the corporation to levy any charges, be it in the name of water tax or water charge. It is urged that the demand is nothing but water charges for supply of water to the premises and not in the nature of tax. Even in case of a tax, the corporation cannot recover the same in absence of supply of water to the premises, which in the present case, admittedly, was disconnected w.e.f. 25th October, 1993. It is urged that the principle underlying the dictum in Nagpal Printing Mills (supra)

would squarely apply, as is applicable to Section 169 of the Act towards water tax.

12. It is then urged that in any case, the impugned demand notice was barred by limitation and had the inevitable effect of levy of property tax with retrospective effect qua the premises in question. The respondents would invite our attention to the term 'official year' defined in the Act and the interplay of Sections 156, 160, 163, 165, 166, 168 and 169, to contend that the Commissioner is required to prepare assessment book for every official year and on authentication of assessment book under Section 166 of the Act, the assessee can be made liable to pay the property tax for such official year. Reliance is placed on the decision of this Court in Municipal Corporation of City of Hubli (supra) and Kalyan Municipal Council (supra) to buttress this contention. It is then urged that it must be presumed that for the official year 1993□94, the assessment book was finalised and authenticated in due course of official business, within prescribed time. However, no demand followed despite finalisation of assessment book for the concerned years in particular official year 1993□94. If the appellant had issued demand notices for the concerned year towards property tax in due course, the respondents would have paid the same subject to just exceptions. In other words, the impugned demand notices issued in January, 1997 for the period commencing from 1st October, 1993, being after expiry of three years, are barred by limitation. The appellant cannot be allowed to raise any demand which is inherently barred by limitation. Resultantly, the appellant cannot be permitted to pursue the impugned demand notices. Taking any other view would legitimize retrospective levy, that cannot be countenanced. As a matter of fact, it must be presumed that the water taxes were never shown in the assessment book for the official year 1993□94 until January, 1997. Keeping in view the exposition in the relied upon decisions of this Court, the High Court order quashing the impugned demand notices be upheld on this count alone.

13. Lastly, it is contended that even if, the respondents fail to persuade this Court to uphold the decision of the High Court, the Court may grant reasonable time to the respondents to pay the dues in suitable installments. Further, the Court may extricate the respondents from their liability to pay interest on the outstanding dues. This is so because the respondents had filed the writ petition before the High Court in April, 1998 immediately after receiving the impugned demand notices and have also succeeded before the High Court. Due to reasons beyond their control the matter had remained pending in this Court, which delay is not attributable to the respondents. It is urged that had the High Court rejected their writ petition, they would have had no option but to pay the outstanding dues long back. Taking into account these facts and circumstances, it is urged that the respondents be absolved from the liability of interest on the principal amount. The other respondents have adopted the argument pursued on behalf of respondent No.1.

14. We have heard Mr. Atul Y. Chitale, Senior Advocate for the appellant and Mr. Anirudh Joshi, Advocate for the contesting respondent (respondent No.1), Mr. Praveen Kumar Rai, Advocate for the respondent No.2 and Mr. Ashish Wad for the respondent No.3.

15. The main issue is whether: the impugned notices can be styled as demand towards water charges or stricto sensu demand towards property tax in the form of water benefit tax. That can be answered by adverting to the impugned demand notices (Annexure R□5 collectively). It may be apposite to reproduce one such notice pertaining to official year 1993□94. The same reads thus:

16. The impugned demand notices for subsequent official years are more or less similar except variation in the figures, as applicable for the concerned official year.

17. On a bare perusal of these demand notices, it is amply clear that the demand is towards property tax in the form of water benefit tax and sewerage benefit tax. It is not a notice for payment of water charges ascribable to Section 169 of the Act as such.

18. The concept of water tax and water benefit tax and that of water charges is qualitatively distinct. By its very nature, the former has been made part of the property tax in terms of Section 140 of the Act, in sub-section 1(a) (i) & (ii) thereof. Section 140 reads thus:

> "140. Property taxes leviable on rateable value, or on capital value, as the case may be, and at what rate.
>
> (1) The following property taxes shall be leviable on buildings and lands in Brihan Mumbai, namely:-
>
> (a) (i) the water tax of so many per centum of their rateable value, or their capital value, as the case may be, as the Standing Committee may consider necessary for providing water supply;
>
> (ii) an additional water tax which shall be called 'the water benefit tax' of so many per centum of their rateable value, or their capital value, as the case may be, as the Standing Committee may consider necessary for meeting the whole or part of the expenditure incurred or to be incurred on capital works for making and improving the facilities of water supply and for maintaining and operating such works;

Provided that all or any of the property taxes may be imposed on a graduated scale.

(b) (i) the sewerage tax of so many per centum of their rateable value, or their capital value, as the case may be, as the Standing Committee may consider necessary for collection, removal and disposal of human waste and other wastes;

(ii) an additional sewerage tax which shall be called the "sewerage benefit tax" of so many per centum of their rateable value, or their capital value, as the case may be, as the Standing Committee may consider necessary for meeting the whole or a part of the expenditure incurred or to be incurred on capital works for making and improving facilities for the collection, removal and disposal of human waste and other wastes and for maintaining and operating such works;

General tax

(c) a general tax of not less than eight and not more than fifty per centum of their rateable value, or of not less than 0.1 and not more than 1 per centum of their capital value, as the case may be, together with not less than one-eighth and not more than five per centum of their rateable value or

not less than 0.01 and not more than 0.2 per centum of their capital value, as the case may be, added thereto in order to provide for the expense necessary for fulfilling the duties of the corporation arising under clause (k) of section 61 and Chapter XIV;

"Provided that, the Corporation shall not levy property tax leviable under this clause, on residential buildings or residential tenements, having carpet area of 46.45 sq. meter (500 sq. feet) or less.

Explanation. – For the purposes of the above proviso, the term "residential buildings or residential tenements, having carpet area of 46.45 sq. meter (500 sq. feet) or less" means the residential buildings or residential tenements, existing on the date of coming into force of the Mumbai Municipal Corporation (Amendment) Act, 2019, having carpet area of 46.45 sq. meter (500 sq. feet) or less and recorded with such area in the Municipal records on the 1st January 2019 or in respect of which the permission to occupy has been granted by the Corporation permitting such area to be occupied after such date of coming into force of the said Act.".

Education cess (ca) the education cess leviable under section 195E; (cb) the street tax leviable under section 195G.

(d) betterment charges leviable under Chapter XII□A. (2) Any reference in this Act or in any instrument to a water tax or a halalkhor tax shall after the commencement of the Bombay Municipal Corporation (Amendment) Ordinance, 1973, be construed as a reference to the water tax or the water benefit tax or both, or the sewerage tax or the sewerage benefit tax, or both as the context may require." (emphasis supplied) It may be useful to advert to Section 141, which permits levy of water tax and water benefit tax concerning prescribed premises. The same reads thus:

> "141. Water taxes on what premises to be levied.
>
> (1) Subject to the provisions of section 169, the water tax shall be levied only in respect of premises–
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> (a) to which a private water supply is furnished from or which are connected by means of communication pipes with, any municipal water works; or
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> (b) which are situated in a portion of Brihan Mumbai in which the Commissioner has given public notice that sufficient water is available from the municipal water works for furnishing a reasonable supply to all the premises in the said portion.
>
> (2) Subject to the provisions of section 169, the water benefit tax shall be levied in respect of all premises situated in Brihan Mumbai, except the buildings and lands or parts thereof vesting in, or in the occupation of, any consul de carriers, whether called as a consul general, consul, vice□consul, consular agent, pro□consul or by any other name of a foreign State recognised as such by the Government of India, or of any members (not being citizens of India) of staff of such officials, and such buildings and lands or parts thereof which are used or intended to be used for any purpose

other than for the purpose of profit." (emphasis supplied) The water benefit tax is thus determined on prescribed per centum of rateable value of specified premises or its capital value, as the case may be. The levy of water benefit tax being a property tax, however, has been made subject to Section 169 of the Act. Section 169 of the Act reads thus:

"169. Rules for water taxes and charges.

(1) Notwithstanding anything contained in section 128, the Standing Committee shall, from time to time, make such rules as shall be necessary for supply of water and for charging for the supply of water and for any fittings, fixtures or services rendered by the Corporation under Chapter X and shall by such rules determine □

(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).

(2) A person who is charged for supply of water under clause (ii) or (iv) of sub□section (1) shall not be liable for payment of the water tax, but any sum payable by him and not paid when it becomes due shall be recoverable by the Commissioner as if it were an arrear of property tax due.

(3) Notwithstanding anything contained in section 146, the water taxes and charges shall be primarily recoverable from person or persons actually occupying the premises." (emphasis supplied)

19. Section 169 is an enabling provision which empowers the standing committee to make rules for supply of water and for charging for the supply of water and for any fittings, fixtures or services rendered by the corporation. The extent to which such charges can be levied has been delineated in Section 169 of the Act. This provision envisages levy of charges for the supply of water and further that if such supply materialises, water charges be levied in lieu of a tax (water tax/water benefit tax) prescribed under Section 140 of the Act. Concededly, the primary liability to pay property tax in the form of water benefit tax is co□extensive with meeting the whole or part of the expenditure incurred or to be incurred on capital works for making and improving the facilities of water supply and for maintaining and operating such works, as the case may be in terms of Sections 140 and 141 of the Act. The levy towards property tax fructifies on fulfilment of conditions stipulated therefor in Section 139 read with Sections 140 and 141 of the Act. The extent of such levy is also predicated in Sections 140 and 141 of the Act. It is a compulsory imposition.

20. If it is a compulsory imposition, the fact that the water is de facto utilised by the occupants or the owners of the building becomes insignificant. It is not a tax on income where the levy is linked to income. We are concerned with property tax, which becomes payable in respect of specified property. Water Tax or Water Benefit Tax, in law, is a property tax and described by the legislature as being one of the component of property tax. That becomes payable as soon as the owner/occupant of the premises is in a position to avail of water connection to his premises in the prescribed manner. That liability is inevitable in terms of Section 141 of the Act, even if the water supply/water meter is later on disconnected.

21. Indeed, in case of disconnection of water supply/water meter the corporation cannot recover water charges under Section 169 of the Act. For, the water charges can be recovered commensurate to the quantity of water actually supplied and consumed from the connection of communication pipes or municipal water works to the premises concerned.

22. Reverting to the view taken by the High Court, we agree with the appellant that the High Court has palpably misapplied the decision in Nagpal Printing Mills (supra) by erroneously assuming that the present case was also a case of levy of 'water charges' referable to Section 169 of the Act. The High Court completely glossed over the distinction between the concept of property tax in the form of water benefit tax on the one hand; and water charges in respect of the quantity of water actually consumed on the other hand. In the former case, being a property tax, it is a compulsory imposition and liability to pay the same accrues irrespective of the quantity of water supplied and consumed in the premises concerned. That liability flows from Sections 139 read with 140 and 141 of the Act. The quantum of tax payable is specified by the standing committee from time to time on the basis of per centum of rateable value of premises or its capital value. The impugned demand notices, ex facie, are ascribable to Section 141 of the Act. The same in no manner can be construed as having been issued under Section 169 of the Act.

23. Had it been a case of demand under Section 169 of the Act, the principle stated in Nagpal Printing Mills (supra) would have come into play. We agree with the appellant that the decision in Nagpal Printing Mills (supra) is in reference to interpretation of Rule (3) (d) (1) of Water Charges Rules framed under Section 169 of the Act. The principle stated in that decision, therefore, can have no application to a demand notice(s) towards property tax in the form of water tax or water benefit tax, payable in respect of the premises by virtue of Section 139 read with Sections 140 and 141 of the Act. The appellant has justly relied on the exposition of the High Court of Bombay in Sumer Builders (supra), wherein the Court after considering the interplay between the relevant provisions of the Act, observed as follows:

> "7. Conjoint reading of the above provisions and Sections 142 and 170 is required, to understand levy of the two taxes and charges by respondent No. 1. Section 140 of the M.M.C. Act states different components of the property taxes. They are, water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess, street tax and betterment charges. The water tax/ sewerage tax and water benefit/sewerage benefit tax are quantified by certain per centum of the rateable value of the property on which the property taxes are to be levied. The rateable value

of any property is to be determined under Section 154 of the M.M.C. Act. As stated in that provision, the factors relevant for determination of the rateable value are (i) nature and type of land and structure of the building, (ii) area of the land or carpet area of the building, (iii) the different categories of use of the property, (iv) the age of the building and (v) such other factors as may be specified by the rules made for the purpose. It is obvious from Section 140 that water tax or sewerage tax payable under it, has no connection whatsoever with the actual supply of the services therefor. Another aspect that becomes clear from the provision is that the water/sewerage taxes run along with the property, whether constructed upon or not, also whether put to actual use or not. Even an open piece of land is subject to property tax, the components of which include water/sewerage tax, water benefit/sewerage benefit tax. Sections 141 and 142, though refer to only water/sewerage taxes, as such, make it clear that the same are subject to the provisions of Section 169 and 170 respectively. Therefore, Sections 169 and 170, the controlling sections would be the most relevant provisions. They provide for rules for water/sewerage taxes and water/sewerage charges and to determine the charges. They empower the Standing Committee of the Municipality to make such rules as may be necessary for, supply and for charging for the supply of water etc., and for supply of service of removing human wastes, polluted matters, effluents etc. Sections 169 and 170 provide for four modes of payment of the charges. The first mode is by payment of water/sewerage tax and water/sewerage benefit tax under Section 140 by way of a percentage of a rateable value. The second mode is payment of water/sewerage charge in lieu of water/sewerage tax based on measurement or estimated measurement of the quantity of the water supplied or of the quantity of water discharged from the premises. The third mode is of combined charges under the first two modes i.e. partly by way of taxes and partly by way of charges. The fourth mode is a compounded charge in lieu of the first two modes i.e. a fixed sum to be paid in lieu of the taxes and charges. These modes, in particular the first and the second mode, make it very clear that water/sewerage charges are not synonymous with water/sewerage taxes and there is no scope for confusing one for the other. Therefore, I find substance in the submission of Mr. Pakale that even if there is no water supply given to the property for which no charges can be recovered by the Municipality, there is no escape from payment of water taxes/ sewerage taxes by a property owner, which is solely dependent upon the rateable value of the property fixed." (emphasis supplied)

24. Having said this, we must conclude that the High Court misread the impugned demand notices as being under Section 169 of the Act, when in fact the same were for recovery of property tax in the form of water benefit tax under Section 139 read with Sections 140 and 141 of the Act. The liability to pay such tax arises irrespective of disconnection of water supply/water meter including due to non☐ payment of taxes, being a compulsory imposition. 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.

25. That takes us to the next plea of the respondents about the demand for the period preceding 10th January, 1994, i.e. 1st October, 1993 to 9th January, 1994, being barred by limitation. It is also urged that the impugned demand notices entail in levy of taxes retrospectively. This argument has been justly rejected by the High Court by relying on the dictum of the same High Court in State Bank of India Vs. Brihanmumbai Municipal Corporation of Greater Bombay and Others5. In similar situation, the Court had observed thus:

> "7. Insofar as the first contention is concerned, there is really no merit in the contention. The respondents have not imposed any tax with retrospective effect. All that the respondents have done is issuance of bills for the period previous to the date of the bills. In other words the bills are issued for the period for which they are payable by sending a bill after that period. There is 5 MANU/MH/0667/2004=2005 (1) Bom. C.R. 296, 2005 (107(1)) BOM.L.R. 271, 2004 (4) Mh.L.J. 773 no provision either under the Act or rules by which claim for sewerage charges/sewerage tax can be anticipated or made in advance. That can only be done subsequent to the charge/taxes becoming due and payable. Retrospectivity in levying tax would mean that a law has been enacted with retrospective effect.

That is not the case over here. All that the respondents have done is to merely make demands for charges which had become due prior to issuance of the bills. That cannot be said to be levying of tax with retrospective effect. The first contention must therefore, be rejected."

26. Indisputably, the challenge on the ground of limitation is limited to period prior to 10 th January, 1994, i.e., between 1 st October, 1993 to 9th January, 1994. This period falls within the official year 1993□94 (from 1 st April, 1993 to 31st March, 1994). In that sense, the amount towards property tax had become due and payable upon completion of official year 1993□94 i.e., 31st March, 1994. Three years limitation period, therefore, would have expired on 30 th March, 1997. However, the impugned demand notice(s) have been issued on 10 th January, 1997. Thus, the challenge to the impugned demand notice(s) being barred by limitation, as asseverated in ground

(d) of the memo of writ petition filed by the respondents, is devoid of merits. No other averment is found in the writ petition filed before the High Court to reinforce the plea under consideration. In our opinion, therefore, the decisions of this Court in Kalyan Municipal Council (supra) and Municipal Corporation of City of Hubli (supra) will have no bearing on the matter under consideration. Resultantly, the challenge to the impugned demand notice(s) being barred by limitation or having the effect of retrospective tax demand, is rejected.

27. The next question is: whether the respondents should be called upon to pay statutory interest on the delayed payment of principal amount stated in the impugned demand notices. We find merits in the submission of the respondents that they be relieved from the liability to pay statutory interest for the period spent by them in pursuing the proceedings in good faith before the High Court and thereafter before this Court. Inasmuch as, time so spent is not attributable to the inaction or neglect

of respondents in making payment; moreso because of the interim orders operating in favour of the respondents during the pendency of writ petition before the High Court and also because the impugned demand notices were set aside by the High Court. As the said notices will be revived in terms of this order, therefore, the respondents are entitled to an equitable arrangement to meet the ends of justice. Somewhat similar situation has been dealt with in State of Rajasthan and Another Vs. J.K. Synthetics Limited and Another6 and Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others7. Applying the principle underlying these decisions, we deem it appropriate to quantify the interest component at the rate of 18% per annum on the outstanding principal tax amount or the statutory interest as may have been prescribed under the extant Regulations, whichever is less, for the period during the pendency of writ petition and the present appeal, as the case may be. For rest of the default period, from the date of demand notices until payment of the outstanding amount mentioned therein, the respondents shall be liable to pay interest at the rate as prescribed in the extant Regulations applicable in that regard. This would meet the ends of justice.

28. It is seen from the records that impugned demand notice(s) were issued on 10th January, 1997, when the principal tax amount had become due and payable forthwith. 6 (2011) 12 SCC 518 (paragraph nos.12, 23, 41 & 42) 7 (1997) 5 SCC 772 The interest at the statutory rate, therefore, would commence from that date. However, for the period from the date of filing of the writ petition on 21st April, 1999 till the judgment of the High Court dated 21st November, 2006, the interest be reckoned as aforestated. Similarly, for the period during pendency of special leave petition in this Court from 27 th August, 2007 till the pronouncement of this judgment. Except these two periods, the rate of interest payable by the respondents for the delayed payment would be as prescribed in the governing Regulations. The respondents shall pay the outstanding amounts including interest within three months from today, failing which it will be open to the appellant□corporation to proceed against the respondents in accordance with law.

29. For the view that we have taken, it is unnecessary to dilate on the efficacy of the provisions contained in Water Charges Rules as applicable at the relevant time framed under Section 169 of the Act.

30. The appeal is allowed in the aforementioned terms. Impugned judgment of the High Court is set aside. No order as to costs.

31. All pending applications are also disposed of in the above terms.

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J (A.M. Khanwilkar) .....

J (Ajay Rastogi) New Delhi;

October 22, 2019.