IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8586 OF 2021

1. Kharghar Co-op. Housing Societies Federation Ltd. through General Secretary

2. Jaikishan Kumatekar … Petitioners

Versus

1. Municipal Commissioner, Panvel Municipal Corporation.

2. State of Maharashtra

3. Urban Development Department …Respondents

Mr. C.S. Joshi a/w. Mr. B.C. Joshi for the petitioners.
Mr. Ashutosh Kumbhakoni, Senior Advocate a/w. Mr. Kedar B. Dighe for respondent no. 1/Panvel Municipal Corporation.
Ms. Rupali Shinde, AGP for the State/respondent nos. 2 and 3.

CORAM: G. S. KULKARNI & R. N. LADDHA, JJ.
RESERVED ON: 30 March, 2023
PRONOUNCED ON: 06 April, 2023

JUDGMENT (Per G.S. Kulkarni, J.)

The judgment has been divided into the following sections to facilitate analysis:

	Particulars	Paragraphs
A	Preface.	1 to 7
B	Challenge.	8 & 9
C	Preliminary Objection.	10 to 24

A) Preface

1. Petitioner No.1 claims to be a federation of co-operative housing societies constituted for welfare of the residents of Kharghar Node which is an area in Navi Mumbai. It is averred that petitioner No.1 is looking after the welfare of its Member Cooperative Housing Societies (for short "**the Societies**"). Petitioner No.2 is described to be a resident of Kharghar, and as an office bearer of a co-operative housing society, namely, one 'Stuti Residency Co-operative Housing Society Ltd.' The petition is affirmed by one Commander Siddheshwar Hira Kalawat who has described himself as General Secretary of petitioner No.1.

2. Respondent No.1 is the Commissioner of the Panvel Municipal Corporation (for short '**the PMC**'). The PMC is constituted by the State Government by issuance of a notification under Section 3 of the Maharashtra Municipal Corporation Act, 1949 (for short, '**the MMC Act**') with effect from 1 October 2016, so as to include 29 villages and other areas, which now includes the Kharghar Node.

3. This petition concerns levy of municipal taxes in relation to only one area of the PMC namely the "Kharghar Node". The infrastructure of the Kharghar Node was developed and maintained by the City Industrial Development Corporation (for short '**CIDCO**') which was constituted as a "New Town Development Authority", for the area constituting the twin city, namely, "Navi Mumbai". Until the formation of the PMC, CIDCO was looking after the infrastructure requirements of the Kharghar Node. By virtue of the PMC being constituted with effect from 1 October 2016, Kharghar Node stood included within the municipal jurisdiction of the PMC, for all purposes of municipal administration. The municipal authority in regard to Kharghar Node alongwith the other areas now having stood with the PMC, is not in dispute.

4. The PMC's municipal jurisdiction covers an area of about 110 kilometers, comprising of 29 villages alongwith the areas which were earlier vested with the CIDCO. It is stated that 2,68,718 properties are within the jurisdiction of the PMC for the purposes of PMC levying and collecting municipal taxes.

5. By virtue of the PMC being constituted as a municipal corporation under the provisions of the Maharashtra Municipal Corporation Act, 1949 (for

short '**the MMC Act**'), all powers and authority to levy property taxes with effect from 1 October 2016 stood vested with the PMC. It is not brought to our notice that any other authority than the PMC could levy "property taxes" within the meaning of the MMC Act, with effect from the period 1 October 2016. It also appears that some miscellaneous charges earlier collected by the CIDCO could never partake the character and colour of a property tax specifically leviable under the MMC Act.

6. On its constitution, PMC for the purposes of levy of property taxes, had commenced its work, which included large scale survey of all areas and the properties situated in such areas. As informed to us, the basic ground work was substantial, in preparing the assessment registers, making assessment and ultimately issuing property tax bills in relation to the various properties situated within its municipal jurisdiction, as there were large new areas which were never assessed to property taxes.

7. Thus entire exercise of PMC making the assessment, culminated into PMC issuing bills to all the properties including to the properties situated in the Kharghar Node, with which members of petitioner no. 1 are concerned, namely, the co-operative societies in the Kharghar Node. It is not in dispute

that Kharghar Node is a territorial area which forms small part of the municipal jurisdiction of the PMC.

B) Challenge

8. The challenge as mounted in this petition is quite peculiar, namely to the property tax bills, issued by the PMC to the co-operative societies who are stated to be the members of petitioner No.1. As noted above, the entire exercise relating to the assessment in question from the date the PMC was constituted, has culminated into the assessment and levy of the property taxes and the bills in question being issued. Illustratively, the petitioners have drawn Court's attention to a bill issued to one of its members namely Satyam Heights Co-operative Housing Society Ltd. which is for the period 1 October 2016 upto 2021-22 of an amount of Rs.1,69,151/-.

9. Thus, only substantive prayer in the present petition is for issuance of a writ of mandamus to cancel the bills and demand notices issued for levying retrospective tax since October, 2016 to 2021 – 2022 to individual members and societies of petitioner No.1.

C) Preliminary Objection

10. At the outset, Mr. Kumbhakoni, learned Senior Counsel for PMC has raised a preliminary objection to the maintainability of the present petition, as

also, on the petition being entertained by the Court in its extraordinary jurisdiction under Article 226 of the Constitution. Such objection is interalia on the ground that as the challenge is merely to the bills issued by the PMC demanding property taxes, from the members of petitioner No.1, they have an effective and effacious alternative remedy of filing an appeal as provided under the statute, namely, under the provisions of Section 406 of the MMC Act. It is his submission that none of the grounds as raised by the petitioners are such that they cannot be gone into by the appellate forum, namely, the Court of Civil Judge, Senior Division.

11. Secondly, it is contended that petitioner no. 1 *per se* does not have a cause of action nor the petitioner No.1 could be said to have suffered any legal injury, so as to maintain this petition.

12. On behalf of the PMC a reply affidavit dated 21 December 2021 has been filed of Mr.Ganesh Shete, Deputy Commissioner of Panvel Municipal Corporation, to which our attention has been drawn by Mr.Kumbhakoni, wherein in supporting the preliminary objections, the PMC has contended that the present petition as framed and filed, is not maintainable in law. It is contended that the petitioner No.1 has no locus nor has any cause of action that can be said to have arisen for petitioner No.1 to file the present petition.

13. There is an additional affidavit dated 20 March 2023 filed by Mr. Ganesh Shete, Deputy Commissioner, in support of PMC's contention on its objection to the maintainability and entertainability of the present petition, more particularly, as filed by petitioner No.1-federation. It is contended that petitioner No.1-federation has purportedly claimed that its member-societies are aggrieved by the impugned action of the PMC, however, according to such affidavit, such claims of the petitioners are not true and correct. It is contended that petitioner no.1-federation claims that it has filed and is prosecuting the petition in common interest and on behalf of all the member societies, is also not correct, as the ground reality is clear, that the member societies have not authorized the petitioner to represent them, atleast in support of the alleged cause. It is thus contended that the present petition is wrongly portraying that the petitioner-federation is canvassing the interest of all its members. According to the PMC, this is clear from the averments as made in the Interim Application No. 2108 of 2023, preferred by the petitioner for deleting its members, as they were not even ready to pay nominal court fees of Rs.125/- each. It is PMC's contention that refusal of said members to pay such meager amount of Rs.125/- would demonstrate that petitioner No.1 was claiming from them much higher amounts. It is contended that petitioner No.1 has gone to the extent of publishing a notice in the newspaper inviting public at large to contact the office bearers of petitioner No.1 to join in prosecuting the present

petition, which according to the PMC, speaks volumes about the ill-intention of the petitioner-federation. It is contended that this is clearly an attempt to mislead, if not cheat, the gullible public. The contention is that when the court fees was Rs.125/- per person/society, what was being demanded per person was Rs.250/-.

14. It is thus contended that the office bearers of the petitioner-federation are abusing the process of law for their personal benefits and thus for such reason, demonstrably this is not a case which would warrant exercise of extra-ordinary constitutional jurisdiction of this Court. It is also contended that although the petitioner-federation has claimed support from all the societies, not a single resolution passed by any co-operative society, is annexed to the petition, nor there is any averment stating that every co-operative society to which petitioner No.1 purportedly represents, has passed resolution supporting and authorizing the petitioner-federation to file and/or prosecute the present petition.

15. In the said affidavit, it is further contended by the PMC that the property owners in their individual capacity were free to litigate and oppose the levy of property taxes before appropriate forum and in accordance with law, if they felt that PMC was not collecting/charging the property tax from them in accordance with law. It is contended that instigating public not to pay property

tax and discouraging people who are willing to pay property tax by giving wide publicity by a wrong message i.e. 'DO NOT PAY PROPERTY TAX', on social media, print media, holding dharnas, organizing muhalla meetings is wholly and totally against public policy and against the rule of law. Copy of such newspaper cutting is placed on record.

16. It is thus contended that it is not permissible for the petitioner to by-pass the scheme of a fiscal provisions of the legislation and refrain from approaching the forum established to hear and decide property tax disputes and claims, for the reason that such persons would be required to compulsory deposit the amount of disputed tax though it would be deposited under protest. It is contended that the petitioner has completely overlooked that the PMC is not a private profit making business house, but it is for the people and is continuously working for the benefit of the residents within the territorial jurisdiction of Panvel Corporation. It is contended that property tax is the main source of revenue and if it is stopped, it will be difficult and rather impossible for the PMC to carry out its regular work.

17. We have also perused the rejoinder affidavit as filed on behalf of the petitioners. Most of the contents of rejoinder affidavit are reiterations of what has been contended by the petitioners in the Writ Petition. The tenor of the rejoinder affidavit is also to the effect that as the petitioners have paid Court

fees, this Court should hold the petition to be maintainable and entertain the same. The rejoinder affidavit also refers to previous orders passed on the petition and reiteration of the petitioner's contention that the demand for tax is illegal. The petitioners have referred to a totally unconnected case of "Property Owners Association", being a case filed interalia challenging the vires of the provisions of the Mumbai Municipal Corporation Act by which the capital method of levy of property taxes in Mumbai was assailed, which according to them, was entertained by this Court. It is on such ground that the petitioners contend that the reply affidavit ought not to be taken into consideration.

18. Mr. Kumbhakoni has contended that one would fail to appreciate as to how the present writ petition can be filed for reliefs which are to the effect that property taxes be not charged and collected, which is a major source of revenue for the PMC to carry out various municipal activities being undertaken in public interest, such as maintenance and development of infrastructure, providing all civic amenities, water requirements, street lighting, constructions of roads, by lanes, sanitary works, sewage treatment activities and infrastructure to be created and maintained, disposal of solid waste etc. It is contended that the present petition is, "not at all" filed much less prosecuted, in the larger public interest and therefore, on this ground itself, it needs to be rejected. It is contended that the petitioners have miserably failed to act upon the clear well-

established distinction between a representative proceedings and a public interest litigation. According to him, a representative proceedings in the garb of public interest litigation, is clearly not maintainable in law and in view of the clear facts of this case.

19. It is contended by Mr. Kumbhkoni, that PMC had undertaken individual assessment of property taxes which are being independently and individually levied on all the assessees, and accordingly steps taken by PMC towards collection of property taxes. It is contended that necessarily the cause of action, being purportedly pursued in this petition is in fact an individual cause of action which if at all has arisen to the assessees who individually fell aggrieved by the property tax bills as issued to them by the PMC, hence a representative proceeding like the present petition is untenable. It is submitted that every property-holder has an independent and separate cause of action for which proceeding will have to be initiated by each of the property-holder.

20. It is submitted that the statutory remedy for each of the individual societies who may feel aggrieved by the levy and demand of property tax, would be to file an appeal u/s 406 of the MMC Act. It is submitted that the said provision also mandates that the person aggrieved has to first deposit the tax amount for the appeal to be entertained by the Civil Judge Senior Divsion. It is the specific contention of Mr.Kumbhakoni that to avoid payment of tax

and to bypass the statutory remedy of an appeal, the petitioners have filed the present petition.

21. Mr. Kumbhakoni in supporting his preliminary objection has placed reliance on the decision of the co-ordinate Bench of this Court in **M/s Mestra A. G. Switzerland Vs. State of Maharasthra and Ors.**[1] to contend that in dealing with the question in regard to an assessment order, passed by the Deputy Commissioner of Sales Tax, levying tax under Maharashtra Value Added Tax 2002, which was being assailed in a writ petition filed under Article 226 of the Constitution of India, the Division Bench has held that the statutory requirements of an appeal being provided to assail the levy could not have been bypassed by the petitioner. In reaching to such conclusion, the Division Bench referred to the settled principles of law in regard to the scope of jurisdiction of the High Court under Article 226 of the Constitution of India, observing that it was a discretionary remedy, inter alia observing as to in which circumstances could such a discretion to entertain a writ petition could be exercised by the High Court. The Division Bench in reaching to a conclusion that a writ petition in such circumstances would not be maintainable has referred to the decision of the Supreme Court in **Thansingh Nathmal & Ors.**

1 WP No.12297 of 2021 decided on 16.2.2022.

Vs. A.Mazid, Superintendent of Taxes[2] ; **Mahyco Monsanto Biotech (India) Pvt. Ltd. Vs. The Union of India & Ors.**[3], along with several other decisions.

22. Mr. Kumbhakoni has also placed reliance on the decision of the Division Bench of the Nagpur Bench of this Court in **Vijaysingh Gajrajsingh Chauhan Vs. Governor of Maharashtra**[4] and **Arun Yashwant Kulkarni Vs. State of Maharashtra & Ors.**[5] to contend that the cause of action being pursued in the present petition, is necessarily an individual cause of action, and such collective cause of action, certainly cannot be entertained in the present proceedings.

23. Mr.Kumbhakoni would submit that the petitioner has failed to show that petitioner no. 1 has suffered a civil or evil consequences as a Federation. It is his submission that it does not matter if the points are common, however, that does not make the cause of action to assail the bills as a common cause of action for the writ petition to be entertained in the manner it is filed. He submits that it is not one single bill which is being challenged in the present petition, but the bills/notices issued to the individual members of the petitioner no.1-Federation, who are independent societies registered under the Cooperative Societies Act, are being assailed in the present petition. It is thus

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2 AIR 1964 SC 1419.

3 2016 SCC OnLine Bom 5274.

4 Civil WP No. 3077 of 2020 decided on 9.2.2021.

5 2021(4)Mh.L.J.

his submission that even if it is held that the petition, in the manner in which it is filed, is maintainable, however it should not be entertained, as not only the petitioner as a 'Federation' would not have a cause of action, but also on the ground that its so-called members have equally efficacious alternate remedy to assail the bills by way of statutory appeal u/s 406 of MMC Act. Mr. Kumbhakoni's submission is that there is no reason whatsoever in law to bypass the right of appeal which has been conferred by the statute, namely, the MMC Act.

24. It is submitted by Mr. Kumbhakoni that the major source of revenue of the PMC is its income to be derived from the property taxes. He submits that the entire endeavour of the petitioners is to deprive this newly formed Municipal Corporation of the benefits of its major source of revenue from the property taxes, by filing the present writ petition, as the intention of the petitioners is not to pay taxes.

D) Petitioners Opposition to the preliminary objection

25. Mr. Joshi, learned counsel for the petitioners has vehemently opposed the preliminary objection as urged on behalf of the PMC. Mr.Joshi would submit that the petition is not only maintainable but it also needs to be entertained. His first contention is that levy of tax itself is illegal for the reason

that there is a breach of principles of natural justice in the PMC levying taxes, subject matter of demand under the impugned bills. It is next submitted that PMC has acted in breach of the taxation rules as contained in Chapter VIII under the "Taxation Rules" appended to the MMC Act and more particularly, Rule 30 which provides for property taxes to be payable half-yearly in advance. He submits that also there is breach of Section 99 of the MMC Act which provides for fixing of rates of taxes. He submits that on all counts the PMC has breached the provisions of law in making assessment. His next contention is levying of retrospective taxes demanded from 1 October 2016 till financial year 2021-2022, itself is illegal. It is his contention that there is no basis in law for such retrospective demand. It is his submission that the decisions as cited by Mr.Kumbhakoni are totally non-applicable in the facts of the present case.

26. Mr. Joshi has submitted that preliminary objection of Mr.Kumbhakoni to the petition not being maintainable, is totally untenable, in support of this contention, Mr.Joshi has placed reliance on the recent decision of the Supreme Court, in **M/s Godrej Sara Lee Limited Vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors.**[6] to contend that by applying the ratio of the said decision, it would be required to be held that the petition is not only maintainable but also needs to be entertained. Insofar as contention on taxes being demanded for retrospective period, Mr.Joshi has placed reliance on the

6 2023 SCC OnLine SC 95.

judgment of the Division Bench of this Court, in **Satish Dattatray Shivalkar (Dr.) Vs. Pimpari Chinchwad Municipal Corporation & Anr.**[7] and the decision of the Supreme Court, in **Municipal Corporation of City of Hubali Vs. Subha Rao Hanumatharao Prayag & Ors.**[8] In regard to the objection of Mr. Kumbhakoni, on maintainability of the petition is concerned, Mr. Joshi has also referred to an interim order dated 22.2.2023 passed by a co-ordinate Bench of this Court, in **Mahadev Waghmare & Anr. Vs. State of Maharashtra & Ors.**[9] to contend that in similar circumstances, as against present case, the Court has held a writ petition to be maintainable, however, the issue of whether the petition can be entertained, was kept open by the Division Bench.

E) Analysis and Conclusion

27. Having heard learned Counsel for the parties and having perused the record, we may, at the outset observe that the prayers in the petition are limited, namely for issuance of a writ of mandamus to cancel the bills and demand notices issued for levying retrospective tax since October 2016 to 2021-2022 to the individual members societies of the petitioner.

28. Thus primarily what is objected and assailed in the petition is the issuance of bills demanding property taxes from the co-operative societies who are stated to be the members of petitioner No.1-federation. Insofar as the

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7 2002 4 Bom CR 183.

8 (1976) 4 SCC 830.

9 WP no. 15937 of 2022 decided on 22.2.2023.

statutory regime in this regard is concerned, Section 406 of the MMC Act is an alternate statutory remedy available to a person who is interalia aggrieved by a tax fixed or charged by the municipal corporation. Section 406 of the MMC Act is required to be noted which reads thus:-

> *"Section 406. 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 Judge.*
> *(2) No such appeal [shall be entertained] unless–*
> *(a) it is brought within fifteen 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 as provided under this Act and such complaint has been disposed of ;*
>
> *(c) in the case of an appeal against any tax [including interest and penalty imposed] in respect of which provision exists under this Act for a complaint to be made to the Commissioner against the demand, such complaint has previously been made and disposed of ;*
>
> *(d) in the case of an appeal against any amendment made in the assessment book for property taxes during the official year, a complaint has been made by the person aggrieved within [twenty-one days] after he first received notice of such amendment and his complaint has been disposed of ;*
>
> *(e) in the case of an appeal against a tax, or in the case of an appeal made against a rateable value [or the capital value, as the case may be] [the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the dispute rateable value up to the date of filing the appeal, has been deposited by the appellant with the Commissioner].*
>
> *(2A) Where the appeal is not filed in accordance with the provisions of clauses (a) to (e) of sub-section (2), it shall be liable to be summarily dismissed.*
>
> *[(3) In the case of any appeal entertained by the Judge, but not heard by him, before the date of commencement of the Maharashtra Municipal Corporations (Amendment) Act, 1975, the Judge shall not hear and decide such appeal unless the amount of the disputed 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 filing the appeal has been*

deposited by the appellant with Commissioner, within thirty days from the date of publication of a general notice by the Commissioner in this behalf in the local news-papers. The Commissioner shall simultaneously serve on each such appellant a notice under sections 473 and 474 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 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 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, which may have been entertained by the Judge before the date of commencement of the Act aforesaid or which may be entertained by him on and after the said date, the Judge shall not hear and decide such appeal, unless the amount of the tax claimed by each of the bills, which may have been issued since the entertainment of the appeal, is also deposited, from time to time, with the Commissioner in the first month of the half year to which the respective bill relates. In case of default by the appellant at any time before the appeal is decided, on getting an intimation to that effect from the Commissioner, the Judge shall summarily dismiss the appeal.]

(6) An appeal against the demand notice in respect of levy of cess under Chapter XIA or the Local Body Tax under Chapter XIB shall lie,-

(i) to the Deputy Commissioner, when the demand notice is raised by the Cess Officer or any other officer, not being the Deputy Commissioner.

(ii) to the Commissioner, when the demand notice is raised by the Deputy Commissioner.

(7) The appeal under sub-section (6) shall be filed within fifteen days from the date of the demand notice.

(8) No appeal under sub-section 96) shall be entertained by the Deputy Commissioner or, as the case may be, the Commissioner unless the amount of the disputed tax claimed from the appellant has been deposited by the appellant with the Commissioner."

(emphasis supplied)

29. About 59 years back, a three Judge Bench of the Supreme Court in the case of **Shivram Poddar Vs. Income Tax Officer, Central Circle II, Calcutta and Anr.**[10] has held that resort to the High Court in exercise of its extraordinary jurisdiction conferred and recognized by the Constitution in matters relating to assessment, levy and collection of tax (in such case, income-tax) may be permitted only when questions of infringement of fundamental rights arise, and where on undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess. In attempting to bypass the provisions of the statute by inviting the High Court to decide the questions which are primarily within the jurisdiction of the Revenue Authorities, the party approaching the Court has often to ask the Court to make assumptions of facts which remain to be investigated by the Revenue Authorities.

30. In another decision of a three Judge Bench of the Supreme Court in "**Income-Tax Officer, Lucknow Vs. M/s.S.B. Singar Singh & Sons & Anr.**"[11], it was held that the High Court was not justified in deciding the matter primarly within the jurisdicton of the revenue authorities by entertaining a writ petition. The Supreme Court also referring to the decision in **Shivram Poddar Vs. Income Tax Officer, Central Circle II, Calcutta and Anr.** (supra) observed thus:-

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10 AIR 1964 SC 1095

11 (1976)4 SCC 325

"19. In the light of what has been observed above, we are of opinion that the High Court could not justifiably interfere in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution with the appellate orders of the tribunal. In any case, the question as to whether the omission to record a finding on ground no. 1 by the tribunal was due to the failure of the appellant to urge that ground or due to a lapse on the part of the tribunal which deserved rectification, was a matter entirely for the authorities under those taxation statutes. It will be well to recall once more what this Court speaking through J.C. Shah, J. (as he then was), had stressed in **Shivram Poddar vs. Income-tax Officer, AIR 1964 SC 1095.**

Resort to the High Court in exercise of its extraordinary jurisdiction conferred or recognized by the Constitution in matters relating to assessment, levy and collection of income-tax may be permitted only when questions of infringement of fundamental rights arise, or where on undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess. In attempting, to bypass the provisions of the Income-tax Act by inviting the High Court to decide questions which are primarily within the jurisdiction of the revenue authorities, the party approaching the court has often to ask the court to make assumptions of facts which remain to be investigated by the revenue authorities.

20. In the instant case, the High Court had assumed jurisdiction on the assumption that a certain ground had been urged before the Income-tax Appellate Tribunal which had arbitrarily refused to consider the same and record a finding thereon. This assumption, in our opinion, stood thoroughly discounted by the concomitant circumstances of the case, including the dilatory and questionable conduct of the assessee. This was therefore not a fit case for the exercise of its special jurisdiction under Article 226 by the High Court."

31. In **Assistant Collector of Central Exicse, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. & Ors.**[12] referring to the decision in **Titaghur Paper Mills Co.Ltd. Vs. State of Orissa**[13], the Supreme Court observed that Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of

12 (1985)1 SCC 260

13 (1983)2 SCC 433

extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it, it may take recourse to Article 226 of the Constitution. It was held that the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute.

32. Mr.Joshi, learned Counsel for the petitioners has referred to a recent decision of the Supreme Court in **M/s.Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors.** (supra) to contend that applying the ratio as laid down in this decision, it ought to be held that the present petition is not only maintainable but ought to be entertained. In **M/s.Godrej Sara Lee Ltd.** (supra) the question for consideration before the Supreme Court was whether the High Court was justified in declining interference on the ground of availability of an alternate remedy of an appeal to the applicant under Section 33 of the VAT Act, which it had not pursued and if the answer was to be in the negative, whether the Supreme Court was required to decide whether to remit the writ petition to the High Court for hearing it on merits. The appellant in such case had questioned the jurisdiction of the Deputy Excise and Taxation Commissioner (ST)-cum-Revisional Authority to reopen proceedings, in exercise of suo motu revisional power conferred by

Section 34 of the VAT Act and to pass final orders holding that the two assessment orders in question, suffered from illegality and impropriety as delineated therein. The High Court had referred to the decision in **Titaghur Paper Mills Co.Ltd. Vs. State of Orissa** (supra) as relied on behalf of the respondent wherein the Supreme Court had observed that the remedy available under the Act was required to be availed under the Act and accepting such contention, the High Court had formed an opinion that there cannot be presumption that the appellate authority would not be able to grant relief as sought in the writ petition and accordingly, dismissed the petition. It is in such context, the Supreme Court speaking through Shri.Justice Dipankar Datta observed thus:-

> *"4. …. … … … ... The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable". In a long line of decisions,*

this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

5. A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in 1958 SCR 595 (State of Uttar Pradesh vs. Mohd. Nooh) had the occasion to observe as follows:

> *"10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. ***"*

6. At the end of the last century, this Court in paragraph 15 of the its decision reported in (1998) 8 SCC 1 (Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others) carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a

writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:

(i) where the writ petition seeks enforcement of any of the fundamental rights;

(ii) where there is violation of principles of natural justice;

(iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged.

7. Not too long ago, this Court in its decision reported in 2021 SCC OnLine SC 884 (Assistant Commissioner of State Tax vs. M/s. Commercial Steel Limited) has reiterated the same principles in paragraph 11.

8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of Uttar Pradesh & ors. vs. Indian Hume Pipe Co. Ltd.) and (2000) 10 SCC 482 (Union of India vs. State of Haryana). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available."

33. True it is, that availability of an alternate remedy does not operate as an absolute bar to the maintainability of the writ petition, and the rule which requires the party to pursue an alternate remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. However, the High Court in exercise of its writ jurisdiction has a discretion whether to entertain a writ petition or not, and it would not normally entertain a writ

petition, where an effective and efficacious alternative remedy is available, as also held in **M/s.Godrej Sara Lee Ltd.** (supra).

34. In the context of what has been held by the Supreme Court in **M/s.Godrej Sara Lee Ltd.** (supra), it is significant that in the present petition, there is no challenge to the vires of the provisions of either the MMC Act or the Rules made thereunder. The challenge is purely to the property tax bills issued by the PMC. Thus, applying the very principles laid down by the Supreme Court in **M/s.Godrej Sara Lee Ltd.** (supra) which considers the principles of law as laid down by the Supreme Court in **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others**[14], it is quite intriguing as to how the petitioners can contend that this petition needs to be entertained, so as to permit the petitioners to challenge the bills levying property taxes and issues of such levy to be adjudicated in the present proceedings. We are thus afraid as to how in the present facts, the decision of the Supreme Court in **M/s.Godrej Sara Lee Ltd.** (supra) would assist the petitioners.

35. As noted above, the relevant provisions of MMC Act read with the Rules, creates a robust statutory mechanism not only in respect of everything leading to the levy and collection of taxes but also providing for a specific statutory remedy of an appeal under Section 406 of the MMC Act of an appeal

14 (1998) 8 SCC 1

being provided, if a person is aggrieved by the fixation of a rateable value or capital value or 'tax fixed' or 'charged' under MMC Act, to be assailed in such appeal, which is to be filed before the Judge as defined under Section 2(29) of the MMC Act. Such provision defines "the Judge" to mean in the (City of Pune) the Judge of the Court of Small Causes, and in any other City the Civil Judge (Senior Division) having jurisdiction in the City. Thus, clearly, a statutory remedy of an appeal is available to the member/cooperative societies of petitioner no.1, for redressal of their individual grievances/disputes on the quantum of the property tax or any other issue leading to the issuance of property tax bills. It, however, appears that such appeal would be maintainable, provided there is a "pre-deposit", as provided under sub-section 2(e) of Section 406. Sub-section 2(e) of Section 406 provides that amount of disputed taxes shall be required to be deposited with the Municipal Corporation. Further, as per provisions of sub-section (2A) of Section 406 of MMC Act, when such appeal is not filed in accordance with the provisions of clause (e) of sub-section (2), it shall be liable to be dismissed. It appears that for such reasons, it is not convenient for the member societies of petitioner no.1 to take recourse to alternate statutory remedy as provided under Section 406 of the MMC Act to assail the bills in question. This is also a contention as urged on behalf of the PMC.

36. Be that as it may, we would also consider as to whether the grounds on which the present petition has been filed, in any manner are precluded to be raised, in such statutory appeal. As noted above, primarily the grounds as raised by the petitioners in the present petition are, *firstly,* non-adherance to the provisions of law in assessment and levy of property taxes which is quite vague, *secondly*, no authority to levy retrospective tax and *thirdly*, principles of natural justice not being followed.

37. We are not impressed with any of the grounds as urged by the petitioner so as to pursuade us to entertan this petition and/or to come to a conclusion, that the petitioners be permitted to by-pass the statutory remedy made available by law to persons who are aggrieved and who intend to assail the property tax bills. All these grounds are certainly grounds which can be raised by the petitioners in a statutory appeal under Section 406 of MMC Act. In our opinion, the grounds as raised by the petitioner in fact can be more effectively raised, only by taking recourse to the statutory remedy of an appeal, as each of the assessees would be required to prove on evidence, that the PMC in issuing individual bills in respect to each of these assesses, has not acted in accordance with the provisions of law and/or that in respect of such assesses there was a breach of principles of natural justice. We may also observe that all these are issues which are purely subjective and which are required to be individually

adjudicated before the appellate authority. On a deeper scrutiny, it would certainly not be possible for this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India and in such blanket manner, examine these issues, albeit camouflaged by the petitioners to be common issues.

38. If we accept the contentions as made on behalf of the petitioners, we fear that we are creating a new pattern and jurisprudence in relation to such matters being entertained in exercise of writ jurisdiction, thereby rendering the provision for a statutory appeal wholly otiose. This would lead to severe and drastic consequences, in as much as assessments as may be levied by the several Municipal Corporations, governed by the provisions of the MMC Act, would become vulnerable to challenge by approaching the High Court in its extraordinary writ jurisdiction. This would be applicable across the board in respect of all the Municipal Corporations in the State of Maharashtra. We would hence certainly not accept such wanton contention as sought to be urged by the petitioners, that an enbloc writ petition assailing the property tax bills be entertained. The legislative wisdom behind Section 406 providing for a statutory appeal cannot be defeated, merely because petitioner no.1 is a Federation, with several member societies, and merely because it is claimed that they have a common cause. It would be wrong reading of law that merely by forming a federation, a different color could be given to an individual cause so

as to contend that the writ petition be entertained. In our opinion, for such reasons the petitioners are under an erroneous impression that merely because they have many members who purportedly share a common cause, namely, to assail the bills issued to them, the petitioners would have a foothold to maintain the present petition and that looking at the numbers albeit miniscule number of assessees, the High Court would be under some obligation, to entertain such a petition. Certainly, the law would not accept such a drastic proposition.

39. Further, the question is also whether any cause of action arises to petitioner no. 1 to maintain this petition. In such context, Mr.Kumbhakoni's reliance on the decision of the Division Bench of this Court in "**Arun Yashwant Kulkarni Vs. State of Maharashtra & Ors**"[15.] is quite apposite in the facts of the present case. The Division Bench in such decision considered the concept of cause of action as also of a *locus standi*. It was observed that the rights under Article 226 of the Constitution of India can be invoked only by an aggrieved person except in the case where the writ prayed is for *habeas corpus* or *quo warranto* and/or is in a public interest litigation. Referring to the decision of the Supreme Court in **Ayaaubkhan Noorkhan Pathan vs State Of Maharashtra & Ors.**[16], it was observed that only a person who has suffered, or suffers from

15 2021(4) Mh.L.J. 613

16 (2013)4 SCC 465

legal injury can challenge the act/action/order etc. in a court of law. Applying such principle, Mr.Kumbhakoni would be correct in his contention that petitioner No.1 can never be a person whose legal rights have been infringed or for that matter there is a cause of action for petitioner No.1 to maintain this petition. As observed above, insofar as petitioner No.2 is concerned, certainly by having a combination of petitioner No.1 which by itself has no cause of action or who cannot be itself aggrieved, petitioner No.2 cannot contend that the petition be held maintainable or be entertained qua petitioner No.2. We have observed that petitioner No.2 if aggrieved, he would have a statutory remedy of filing an appeal as provided for under Section 406 of the MMC Act.

40. In the context of locus of the petitioners to maintain the present petition, reliance is placed by Mr. Joshi on a decision of a learned Single Judge of the Karnataka High Court in the case of **Vishwabharathi House Building Co-operative Society Ltd. Vs. Bangalore Development Authority**[17]. In our opinion, Mr.Joshi's reliance on this decision is not well founded for the reason that it is not petitioner no. 1 who is aggrieved by issuance of any bills. No civil wrong is caused to petitioner no. 1 but is alleged to be caused to its members. Also this is not a petition which is filed in public interest, so that the well settled principle of *locus standi* can be stretched to the cause action being pursued. The petitioners consciously have not filed this petition as Public

17 (1991)0 AIR(Kar) 133

Interest Litigation. Thus, in our opinion, in fact, neither any fundamental rights of the petitioner No.1 nor any legal / statutory rights of petitioner No.1 are, in any manner, violated, for petitioner No.1 to maintain this petition. Insofar as petitioner No.2 is concerned, as noted above, if he is aggrieved by any bill issued, he has a statutory remedy available to assail such bill.

41. For the sake of completeness, we also examine as to whether any exceptional case is made out by the petitioners so as to permit the petitioners to urge their contentions in assailing the bills, in the present proceedings under Article 226 of the Constitution of India. In such context, we would be required to examine the primary grounds of challenge to the bills as raised in the writ petition. The contention as urged on behalf of the petitioners that there is a breach of principles of natural justice in issuing the bills in question. The PMC has filed a detailed affidavit setting out all the steps which were taken since the constitution and formation of PMC, in regard to the massive work of survey being undertaken of all the properties, notices including special notices being issued to the property owners and ultimately taking a final decision to raise the property bills on the basis of the rateable value of the property as determined. We cannot delve on an issue as to why notices of the PMC were not responded by a particular assessee, or whether the same was not served on the assesses etc. The PMC has stated in its affidavit that the

petitioners, without taking into consideration the procedure followed by PMC, have made false and baseless statements in the petition. Various steps which were taken by the PMC not only to survey the Kharghar node but also the other areas have been set out in detail in the reply affidavit filed by the PMC. It is also set out that the whole process suffered a setback since March 2020 because of the Covid-19 pandemic having affected the country. The following contents of the affidavit in regard to the rules being followed and objections being invited can be noted, which read thus:

> *"31. I say that as per the report and recommendation of the administrative tax committee special notice in respect of property tax was issued to all property owners (under provisions of section 150A of the Act). As provided by the statute, objections were invited from property owners under the provisions of rule 15 of Taxation rules (Chapter VIII) (Taxation rules, for short) and on receipt of objections in respect of levied property tax personal hearing was given to each property owner who had raised objection in respect of his property tax bill (as is statutorily provided under provisions of rule 18 of taxation rules).*
>
> *32. The administrative tax committee, on receipt of objections and after hearing the property owners, reviewed its decision in respect of each property tax bill and made necessary changes, if any, to the final bill in accordance with the provisions of Rule 19 of the Taxation Rules. I crave leave to refer to and rely upon the documents in respect of the hearing given to the Petitioner.*
>
> *33. I say and submit that after considering objections from the residents of the Corporation area, NGOs, leaders of various social and political parties etc, it was felt necessary to review the percentage of tax to be levied. Hence on 06-042021 the General Body of the Corporation in clause 1,7,8,9 of resolution No. 310 proposed to reduce the annual letting rate of properties in municipal limit by 50% thereby substantially reducing the tax in the corporation limits. I say and submit that the proposal made by the general body to reduce annual letting rate by 50% was not approved by the Special Administrative Tax Committee. I say that they instead approved reduction in annual letting rate by 30% instead of 50%. I say that only*

in node G of the corporation area i.e. Taloja Industrial Area (Taloja MIDC) no reduction was given. I say that after this whole process of fixing property tax was complete in a particular node the Corporation issued final tax bills to the residents.

35. I say that the reviewed report of the administrative committee to reduce the property tax bills by 30% was placed before the Hon'ble Commissioner who in accordance with the statutory provisions and established administrative procedures placed the said committee report before the general body for its approval vide Resolution 310 dated 06-04-2021. I say that the expert administrative tax committee has overruled the recommendation made by the general body to levy tax only from 2019 and not from 2016. I say that the said committee observation are recorded in clause 7 and 9 of the 310 resolution dated 09-04-2021. I say and submit that the chairman of the petitioner forum has signed the said resolution as well. Copy of the said resolution is annexed to the compilation of the documents filed separately along with the reply. The administrative tax committee report dated 09-04-2021 which is binding on the Corporation. I say that the Hon'ble Commissioner of the said Corporation has taken necessary steps in accordance with the said decision of the administrative tax committee report.

36. I say that thus resolution No. 310 passed by the General Body was placed before the Administrative Committee which met to deliberate over the said resolution on 09-04-2021. I say that the Administrative Committee forwarded its recommendations to the Commissioner of the Corporation. I say that the Administrative Committee recommended that except Node-G (Taloja MIDC Area), the new revised Annual Letting Rate be reduced by 30% as against 50% as is resolved by the General Body; resolution No. 7 passed by the General Body that property tax be imposed w.e.f. 01-04-2021 instead of from 01-10-2016 cannot be accepted; representation be forwarded to CIDCO to stop charging service charges w.e.f. 01-04-2021 etc. I say that the Commissioner of Panvel Municipal Corporation accepted the recommendation of the Administrative Committee as aforesaid vide his order dated 30-03-2021, a copy of the said order is annexed to the compilation of documents."

42. Insofar as the petitioner's contention that the PMC ought not to have imposed property taxes with effect from its constitution, as CIDCO was collecting service charges has also been stated to be totally untenable by PMC. It is PMC's contention that the statutory levy of property taxes cannot be

compared to what was being charged by CIDCO, as it was not permissible for CIDCO to accept any taxes under the provisions of the constitution as CIDCO was not a municipal corporation. The relevant averments in that regard are required to be noted, which read thus:

> *"37. I say that the contention of the Petitioner that as they are already paying Charges to CIDCO it is not legal on part of the Corporation to collect property tax from the residents of Panvel is unfounded and not tenable in eyes of law. I say that CIDCO has been declared as New Town Development Authority under the provisions of section 113(3A) of the MRTP Act for several of the villages and areas which now fall within the municipal limits of the Respondent No. 2 Corporation. I say that the functions of CIDCO are inter alia planning, development, use of land in regions established for that purpose, to make better provisions for preparation of Development Plan and its execution, creation of new town etc as is provided under the MRTP. I say that for the aforesaid functions, CIDCO charges Services Charges on persons within the area of its operation. I submit that Constitution mandates that no tax shall be levied or collected except by authority of law and CIDCO being development authority is not statutorily empowered or authorized to collect property tax from the residents. I further say and submit that the CIDCO derives power to impose and recover Development Charges / Service Charges from persons by virtue of section 124 C of the MRTP Act which power is in addition to and not in derogation of any other provision in any other statute for the time being in force. As such, the authority for CIDCO to impose Development or Service Charges is in addition to and not in derogation of the authority of the Corporation to impose and recover property tax which is in exclusive domain of the Corporation. The CIDCO charges which petitioner has referred to in the petition are in the form of 'fees' as opposed to tax.*
>
> *38. I say that the petition is misconceived in as much as it equates Development and/or Service Charges imposed by CIDCO with property tax imposed by the Corporation and terms the same as double taxation. I say and submit that law in this regard is absolutely trite and the contentions in the petition spring from sheer ignorance of the said trite law. In fact, the law is further trite that the Corporation can levy tax even on the Special Planning Authority such as CIDCO to say the least. I categorically state that CIDCO does not charge and is not authorized to charge any property tax from the resident of Panvel Municipal Corporation area. Thus, the contention of the Petitioner in this regard is devoid of merits. Petitioner is aggrieved only in respect of property tax levied in areas of the respondent Corporation in which CIDCO is the*

development and planning authority and charges development fees / charges.

39. I say that it is well settled in law that there is difference in service charges and property tax and hence both can be simultaneously levied on the citizens and does not amount to double taxation as is wrongly potrayed. Formation of Respondent Corporation is under provisions of the Act while the appointment of CIDCO as Planning Authority is under the provisions of the MRTP Act. The service charges and property tax applicable work in different spheres and hence does not amount to double taxation.

40. 1 say and submit that there is no discrimination or inequality in imposition of property tax in respect of property holders from CIDCO Administrative Region (CAR, for short) and property holders in rural areas and property owners from Panvel municipal council area."

43. In regard to the petitioner's contention that it was illegal for the PMC to levy tax with retrospective effect, the PMC has stated that there is no levy of tax with retrospective effect as contended by the petitioner. In this regard, the PMC has contended that the PMC has determined the Annual Letting Rate, Rateable Value and Tax for the period commencing from the formation of the Corporation (1 October, 2016), for which, it has surveyed all properties which fell within its municipal area w.e.f. 1 October, 2016 and issued Demand Notices for the untaxed period as permissible under Section 150A of the MMC Act, under which municipal corporation can demand taxes for a retrospective period of six years. Hence, PMC's contention that levying of property tax from the date of formation of the Corporation has a legal foundation. The PMC has also contended that the petitioner's contention in regard to requirement by the Commissioner in preparing assessment book for every

official year is untenable in view of Rule 21 of the Taxation Rules falling under 'Chapter VIII' of 'Schedule D' of the MMC Act, which provides that Assessment book need not be prepared every official year. Hence, such contention being contrary to the rules cannot be accepted.

44. In such context, the petitioners have placed reliance on the decision in **Satish Dattatray Shivalkar (Dr.)** (supra) and **Municipal Corporation of City of Hubali Vs. Subha Rao Hanumatharao Prayag & Ors.** (supra) to contend that by issuance of bills in question there is retrospective levy of taxes without any authority. Such contention needs to be stated to be rejected. The decision in **Satish Dattatray Shivalkar (Dr.)** (supra) would not be applicable inasmuch as the controversy in such case was in regard to the notices issued by the respondent-corporation therein, to the extent the amendment was made in the assessment book with retrospective effect. In the present case there is no challenge to any amendment to the assessment book with retrospective effect, as admittedly, there was no assessment book prior to the period 1 October 2016, as the municipal corporation itself was not born or not constituted. As rightly pointed out on behalf of the respondent-corporation, the charges as collected by the CIDCO can never take the form of property taxes as CIDCO itself is not a municipal body within the meaning of 'Corporation' which could have authority to collect the property tax under the MMC Act. Thus, looked

from any angle, the decision in **Satish Dattatray Shivalkar (Dr.)** (supra) is inapplicable in the facts of the present case.

45. Even otherwise, this is not a case that there is no power with the PMC and more particularly in the peculiar facts of the present case when the regime of municipal taxation being introduced to make retrospective levy. Such powers have been expressly conferred under Section 150A of the Act. Section 150A begins with a non-obstante clause to provide, that if for any reason, any person liable to pay any of the taxes or fees leviable under this Act has escaped assessment in any year, the Commissioner may, at any time within six years from the date on which such person should have been assessed, serve on such person a notice assessing him to the tax or fee due and demanding payment thereon within 15 days from the date of such service, and the provisions of the MMC Act and the rules made thereunder shall apply as if the assessment was made in the year to which the tax or fee relates. Section 150A reads thus:

> *150A. Power to assess in case of escape from assessment*
>
> Notwithstanding anything to the contrary contained in this Act or the rules made thereunder, if for any reason any person liable to pay any of the taxes or fees leviable under this Act has escaped assessment in any year, the Commissioner may, at any time within six years from the date on which such person should have been assessed, serve on such person a notice assessing him to the tax or fee due and demanding payment thereon within 15 days from the date of such service, and the provisions of this Act and the rules made thereunder shall, so far as may be, apply as if assessment was made in the year to which the tax or fee relates."

46. A bare reading of Section 150A shows that it is a widely worded provision. It has an overriding effect over the other provisions of the Act and the Rules. In our opinion, it would not be a wrong reading of the said provision, if it is observed that such provision, would take within its ambit such situations whereby the municipal corporation could not levy taxes for a retrospective period. This would certainly include the situation as in the present case, namely, the difficulties such as in the present case, when municipal taxes are being imposed after some years of the formation of the municipal corporation as for finalizing the levy of taxes in relation to all the properties within the municipal corporation, is a long drawn process which cannot be overnight. Thus, in view of the clear provisions of Section 150A, the contention of the petitioners that there was no authority with the municipal corporation to levy taxes for the past period in respect of which the bills have been issues, is totally untenable. It also needs to be observed that Section 150A was incorporated by the Maharashtra Amendment Act 11 of 2011 with effect from 10 March 2011. The decision of the Division Bench of this Court in **Satish Dattatray Shivalkar (Dr.)** (supra) is a decision of the year 2002, which is much prior to Section 150A of the MMC Act being incorporated. The tax demanded in the present case is after the incorporation of Section 150A of the 2011 Amendment Act. Hence, for such reason also the contention as urged on behalf of the petitioners of any lack of authority with the municipal corporation to levy tax

retrospectively, is wholly without merit. Even, the facts in **Satish Dattatray Shivalkar (Dr.)** (supra) are totally distinct and not applicable in the facts of the present case inasmuch as there is nothing on record to show that there was a prior assessment book in relation to the property taxes before the PMC was constituted on 16 October 2016.

47. We may also observe that any assessment leading to individual bills being issued to any member society of petitioner no.1, necessarily is on an independent consideration depending upon the nature of property each of such cooperative societies, and depending upon various factors of different amounts. Thus, assessment of property taxes in respect of each individual society would be on different considerations by applying the taxation rules. Thus, each of such assessments are subjective, and on specific considerations as applicable to the property of individual assesses. Illustratively, a cooperative society in a given case may have 70% commercial tenements and 30% residential tenements whereas in case of another cooperative society it may be vice versa or more differently. It may also happen that a particular cooperative society has a very limited tenements and may have a large open space. Thus the basis of assessment for levy of tax in respect of each of the properties of the members of petitioner no.1 would be independent and distinct. The Municipal Corporation makes assessment on varied factors which are infact

requirements of the taxation rules. It cannot be a blanket common consideration in issuance of bills for different properties nor it is so pleaded in the writ petition.

48. From what has been contended by Mr.Joshi, it appears that at a click of a button, all its members have been issued similar property tax bills, which can hence be assailed in a common action, as being agitated in the present proceedings. We are quite astonished with such contentions as urged on behalf of the petitioners when the petitioners assert that the petition in its present frame, needs to be entertained. Following discussion would further aid the conclusion.

49. The procedure for levy and collection of municipal taxes falls under **Chapter XI** of the MMC Act titled as ***"Municipal Taxation"***. Section 127 which falls under the said Chapter, is the charging Section, providing that the Municipal Corporation, inter alia, is authorised to impose taxes and one of them being property taxes. Section 128 provides for the prescribed manner in which the Municipal taxes may be recovered by the Rules. Section 128-A provides that the property taxes leviable on buildings and lands in the City under the Act shall include water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess, street tax and betterment charges. Section 129 provides for property taxes leviable on rateable value, or on capital

value, as the case may be and at what rate. The entire chapter dealing with Municipal Taxation comprises of provisions of Section 127 to Section 152-1A. This apart, Chapter VIII falling under Schedule 'D' of the MMC Act provides for Taxation Rules, which contains **Rules 1 to 63** dealing with the assessment of taxes. It can certainly be said that the provisions of "Chapter IX (Municipal taxation)" from Section 127 to 152-1A of the MMC Act read with the "Taxation Rules" (Rule 1 to 63) incorporated thereunder is a Code by itself. Thus, on one hand the MMC Act provides substantive provisions in regard to the municipal taxation. Read with these provisions is the provision of Section 406 which forms an inextricable concomitant, of the taxing provisions, when it provides for a statutory remedy of an appeal. Thus, such provision which is integral to the mechanism of the taxing provisions, necessarily is required to be given its highest weightage, when the Court considers whether a challenge to levy or demand of tax being raised in the proceedings under Article 226 of the Constitution of India could be entertained. The petitioners' contention to disregard this provision is not the correct approach.

50. We find that Mr.Kumbhakoni's reliance on the decision in **M/s. Mestra A.G.Switzerland** (supra), certainly would assist the case of the PMC. In this case, the Division Bench taking review of the decisions on alternate remedy being available to the petitioner therein, has held that in any matter relating to

tax, where the party has an option of approaching the appellate forum, it would not be prudent in the judicious exercise of discretion to derail from the procedure as ignoring the law as contained in the statute in question. The observations of the Court in paragraph nos.17 to 19 reads thus:

> *"17. Mr. Sridharan is again right, but only partially. Notwithstanding that questions of fact emerged for decision in Thansingh Nathmal (supra), the Supreme Court had the occasion to lay down therein a principle of law which is salutary and not to be found in any other previous decision rendered by it. The principle, plainly is that, if a remedy is available to a party before the high court in another jurisdiction, the writ jurisdiction should not normally be exercised on a petition under Article 226, for, that would and allow the machinery set up by the concerned statute to be bye-passed. The relevant passage from the decision reads as follows:*
>
> > *"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally*

will not permit, by entertaining a petition under Article 226 of the Constitution, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up." (emphasis supplied)

18. Echo of the aforesaid view is found in a later decision of the Supreme Court reported in (1983) SCC 2 433 [Titaghur Paper Mills Co.Ltd. & Anr. Vs. State of Orissa and Ors.], arising out of the Orissa Sales Tax Act, 1947. Such enactment, quite similar to the MVAT Act, provided a hierarchy of authorities who could be approached for redress. Instead of pursuing the remedy thereunder, the writ jurisdiction of the Orissa High Court was invoked challenging orders of assessment. The law laid down therein is in the following terms:

"6. We are constrained to dismiss these petitions on the short ground that the petitioners have an equally efficacious alternative remedy by way of an appeal to the Prescribed Authority under sub-section(1) of Section 23 of the Act, then a second appeal to the Tribunal under sub-section(3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act….."

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"11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. ..."

19. Drawing guidance from the aforesaid dicta, rendered in

> *connection with matters relating to tax and not any other subject, we are of the considered opinion that since the petitioner has the option of approaching this Court in a different jurisdiction at an appropriate stage, if at all the decision of the Tribunal is adverse to its interest, it would not be prudent in the judicious exercise of discretion to derail the procedure ignoring the law contained in the MVAT Act."*

51. Mr. Kumbhakoni's reliance on the decision of a Division Bench of this Court in **Vijaysingh Gajrajsingh Chauhan** (supra) is also quite apposite when he contends that there is no legal injury to petitioner no.1. If a litigant has sufferred no legal injury then certainly such litigant cannot be a person who is aggrieved. The Division Bench in such decision has considered the concept of cause of action which would operate when the petitioner approaches the writ Court. The Court was considering the issue as to whether the petitioner therein had a locus and any cause of action to challenge the validity of an amendment to the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, in such context considering several decisions on the issue as to when a person can be aggrieved and the cause of action would arise, the Court in paragraphs 7, 8 and 10 observed thus :

> *7. The right to approach a Court of law by a party, is intrinsically linked to a cause of action, accrued in favour of such a party. The approach, is always for the redressal of a grievance or an entitlement, the denial of which gives rise to a cause of action to a party whose right is affected by any such cause of action. Thus, the traditional view as to a "cause of action" is always personal to the party. The question whether passing of a legislation by itself would give rise to a cause of action, has been considered by the Hon'ble Apex Court in Rai Bahadur Hurdut Roy Moti Lal Jute Mills (supra) as under :-*

"7. On behalf of the appellant Mr Lal Narain Sinha has contended that the High Court was in error in holding that the proviso to Section 14-A violates either Article 20 (1) or Article 31 (2) of the Constitution. He has addressed us at length in support of his case that neither of the two articles is violated by the impugned proviso. On the other hand, the learned Solicitor-General has sought to support the findings of the High Court on the said two constitutional points; and he has pressed before us as a preliminary point his argument that on a fair and reasonable construction, the proviso cannot be applied to the case of the first respondent. We would, therefore, first deal with this preliminary point. In cases where the vires of statutory provisions are challenged on constitutional grounds, it is essential that the material facts should first be clarified and ascertained with a view to determine whether the impugned statutory provisions are attracted; if they are, the constitutional challenge to their validity must be examined and decided. If, however, the facts admitted or proved do not attract the impugned provisions there is no occasion to decide the issue about the vires of the said provisions. Any decision on the said question would in such a case be purely academic. Courts are and should be reluctant to decide constitutional points merely as matters of academic importance."

(emphasis supplied)

The same has also been considered in Kartar Singh (supra) as under :-

"12. The standards themselves, it would be noticed, have been prescribed by the Central Government on the advice of a Committee which included in its composition persons considered experts in the field of food technology and food analysis. In the circumstances, if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any apriopriate reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Article 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations. That where a party seeks to impeach the validity of a rule

made by a competent authority on the ground that the rules offend Article 14 the burden is on him to plead and prove the infirmity is to well established to need elaboration. If, therefore, the respondent desired to challenge the validity of the rule on the ground either of its unreasonableness or its discriminatory nature, he had to lay a foundation for it by setting out the facts necessary to sustain such a plea and adduce cogent and convincing evidence to make out his case, for there is a presumption that every factor which is relevant or material has been taken into account in and formulating the classification of the zones and the prescription of the minimum standards to each zone, and where we have a rule framed with the assistance of a committee containing experts such as the one constituted under Section 3 of the Act, that presumption is strong, if not overwhelming. We might in this connection add that the respondent cannot assert any fundamental right under Article 19 (1) to carry on business in adulterated foodstuffs.

13. Where the necessary facts have been pleaded and established, the Court would have materials before it on which it could base findings, as regards the reasonableness or otherwise or of the discriminatory nature of the rules. In the absence of a pleading and proof of unreasonableness or arbitrariness the Court cannot accept the statement of a party as to the unreasonableness or unconstitutionality of a rule and refuse to enforce the rule as it stands merely because in its view the standards are too high and for this reason the rule is unreasonable. In the case before us there was neither pleading nor proof of any facts directed to that end. The only basis on which the contention regarding unreasonableness or discrimination was raised was an apriori argument addressed to the Court, that the division into the zones was not rational, in that hilly and plain areas of the country were not differentiated for the prescription of the minimum Reichert values. That a distinction should exist between hilly regions and plains, was again based on apriori reasoning resting on the different minimum Reichert values prescribed for Himachal Pradesh and Uttar Pradesh and on no other. It was, however, not as if the entire State of Himachal Pradesh is of uniform elevation or even as if no part of that State is plain country but yet if the same minimum was prescribed for the entire area of

Himachal Pradesh, that would clearly show that the elevation of a place is not the only factor to be taken into account."

In Kusum Ingots (supra) the Hon'ble Apex Court held as under :-

"19. Passing of a legislation by itself in our opinion do not confer any such right to file a writ petition unless a cause of action arises therefor.

21. A parliamentary legislation when it receives the assent of the President of India and is published in an Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled, would not determine a constitutional question in vacuum."

8. Thus the consistency of judicial opinion, in so far as it considers the cause of action, for the purpose of laying a challenge to the constitutional validity of any statutory provision, as spelt out from the above decisions, clearly indicates that the person raising such challenge, ought to have a cause of action, which would mean material facts, enabling the existence of a cause of action.

10. It is further material to note that the petitioner also does not fall within the expression "aggrieved person", as indicated in Ayaaubkhan Noorkhan Pathan (supra) in the following manner:-

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the

> *authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same.*
>
> *10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised."*
>
> (emphasis supplied)

52. On maintainability of the writ petition, Mr.Joshi has placed reliance on an interim order passed by a coordinate Bench of this Court in *Mahadev Waghmare & Anr. Vs. The State of Maharashtra, Urban Development Department & Ors.* (supra). We may, at the very outset, observe that the said interim orders would not assist the petitioner, for more than one reason; firstly, interim orders do not make a precedent; secondly, the said order is passed in the facts of the case before the Court; and thirdly, such order has not decided the issue of entertainability of the petition, as issue on entertainability of the

said petition has been expressly kept open by the co-ordinate Bench, whereas we are called upon to decide not only the issue of maintainability but also on entertainability of the present proceedings as discussed in detail in the foregoing paragraphs.

53. Adverting to the above principles of law, we are at a loss to comprehend as to how petitioner no.1 can be said to be aggrieved and can have a cause of action to maintain this petition and the same would be entertained by this Court.

54. In view of the above discussion, we uphold the objection of Mr. Kumbhakoni to the maintainability of the petition. For such reasons, we are certain that the petition is neither maintainable as framed, nor the same can be entertained under Article 226 of the Constitution of India. It is accordingly dismissed. It is however, open to the members of petitioner No.1 and petitioner No.2 to avail of the statutory remedy of an appeal as available under Section 406 of the MMC Act, in assailing the levy of property taxes/bills issued by the PMC. All contentions in that regard are expressly kept open.

55. Another aspect which has been urged on behalf of PMC needs a reference, namely, the strenuous submissions as urged by Mr. Kumbhakoni on the affidavit of Mr. Ganesh Shete dated 20 March, 2023 in regard to conduct of petitioner no. 1 in relation to the present proceedings. We have not gone into the contentions as urged on behalf of the PMC although placed on record

on affidavit all such allegations as made against petitioner no. 1. We may, however, observe that if there is any truth in such contention, it is something which is unfortunate.

56. Before parting we may also observe, when this Court is called upon to exercise writ jurisdiction, the Court cannot be oblivious to the consequences which would be brought about, in entertaining petitions of the nature, as in hand. The petitioners, admittedly, are minuscule member of tax payers of the PMC. The PMC has a large area of 110 sq.km. comprising of 29 villages plus the CIDO areas as transferred to it. If challenge as raised in the present petition is entertained, it would bring about drastic and adverse consequences on the levy of property taxes/issuance of bills, to other assesses who have not filed any proceedings and are due to pay the bills or have taken a position not to litigate. A public body like the respondent-PMC cannot be placed in a cloud of such uncertainty when it comes to levy and recovery of municipal taxes. Thus, entertaining this petition would open flood gates of litigation before this Court. This more particularly, as none of the grounds as raised in the petition impresses us, so as to exercise our extra-ordinary writ jurisdiction by permitting these assessees to bypass the remedy of a statutory appeal. This apart, entertaining such petitions would also send a wrong signal to the other municipal corporations/municipalities in the State of Maharashtra, that in matters of challenge to property taxes, an enmass plea of the nature as in the

present case can be entertained. We do not intend to subscribe to any such impression or set up an example as being canvassed by the petitioner that on every possible aspect in regard to the municipal taxation, the matter should come to the High Court, in its writ jurisdiction. It is always the discretion of the Court whether to entertain a writ petition and exercise its extraordinary jurisdiction under Article 226 of the Constitution considering the facts and circumstances of the case. We have accordingly exercised our discretion in the facts of the present case, not to entertain this petition.

57. No costs.

(R.N. LADDHA, J.) (G. S. KULKARNI, J.)