

**Bombay Provincial Municipal Corporations (Gujarat
Amendment And Validating Provisions) Act, 1970**

5 of 1970

[31 March 1970]

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**Bombay Provincial Municipal Corporations (Gujarat
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An Act further to amend the Bombay Provincial Municipal Corporations Act, 1949 for certain purposes. It is hereby enacted in the Twenty-first Year of the Republic of India as follows:-

1. Short Title :-

This Act may be called the Bombay Provincial Municipal Corporations (Gujarat Amendment and Validating Provisions) Act, 1970.

2. Amendment Of Section 2 Of Bom. Lix Of 1949 :-

In the Bombay Provincial Municipal Corporations Act, 1949 (Born LIX. of 1947) (hereinafter referred to as "the principal Act"), in section 2,-

(1) before clause (1) the following clause shall be, and shall be deemed always to have been, inserted, namely:-

"(1A) "annual letting value" means,-

(i) in relation to any period prior to 1st April, 1970, the annual rent for which any building or land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might, if the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947(Bom. LVII of 1947) were not in force, reasonably be expected to let from year to year with reference to its use;

(ii) in relation to any other period, the annual rent for which any building or land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might reasonably be expected to let from year to year with reference to its use;

and shall include all payments made or agreed to be made to the owner by a person (other than the owner) occupying the building or land or premises on account of occupation, taxes, insurance or other charges incidental thereto:

Provided that, for the purpose of sub-clause (ii),-

(a) in respect of any building or land or premises the standard rent of which has been fixed under section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 the annual rent thereof shall not exceed the annual amount of the standard rent so fixed;

(b) in the case of any land of a class not ordinarily let, the annual rent of which cannot in the opinion of the Commissioner be easily estimated, the annual rent shall be deemed to be six per cent of the estimated market value of the land at the time of assessment;

(c) in the case of any building of a class not ordinarily let, or in the case of any industrial or other premises of a class not ordinarily let, or in the case of a class of such premises the building or buildings in which are not ordinarily let, if the annual rent thereof cannot in the opinion of the Commissioner be easily estimated, the annual rent shall be deemed to be six per cent of the total of the estimated market value, at the time of the assessment, of the land on which such building or buildings stand or, as the case may be, of the land which is comprised in such premises, and the estimated cost, at the time of the assessment, of erecting the building, or as the case may be, the building or buildings comprised in such

premises;"

(2) for clause (54), the following shall be, and shall be deemed always to have been, substituted, namely:-

"(54) "rateable value" means the value of any building or land fixed, whether with reference to any given premises or otherwise, in accordance with the provisions of this Act and the rules for the purpose of assessment to property taxes;"

3. Amendment Of Section 5 Of Bom. Lix Of 1949 :-

In section 5 of the principal Act, in sub-section (4), for the words "twenty years" the words "thirty years" shall be, and shall be deemed always to have been, substituted.

4. Amendment Of Section 49 Of Bom. Lix Of 1949 :-

In section 49 of the principal Act, in sub-section (1),-

(1) for the words "such of the duties of the Commissioner" the words "such of the duties of the Commissioner, including powers and duties of a judicial or quasi-judicial nature," shall be, and shall be deemed always to have been, substituted;

(2) after the first proviso, the following further proviso shall be, and shall be deemed always to have been, added, namely:-

"Provided further that nothing in this sub-section shall be deemed to empower the Commissioner to issue any order regulating the exercise of powers or performance of duties of a judicial or quasi-judicial nature deputed by him."

5. Amendment Of Section 69 Of Bom. Lix Of 1949 :-

In section 69 of the principal Act, in sub-section (1)-

(1) after the words "powers, duties or functions" the words "including powers, duties or functions of a judicial or quasi-judicial nature" shall be, and shall be deemed always to have been, inserted;

(2) the following proviso shall be, and shall be deemed always to have been, added, namely:-

"Provided that nothing in this sub-section shall be deemed to empower-

(i) the Commissioner or the Transport Manager to exercise control over, or

(ii) the State Government, the Corporation, the Commissioner or the Transport Manager to prescribe any conditions or limitations in

regard to,
the exercise, performance or discharge of powers, duties or functions of a judicial or quasi-judicial nature by a municipal officer under this sub-section,".

6. Amendment Of Section 129 Of Bom. Lix Of 1949 :-

In section 129 of the principal Act, to clause (b), the following proviso shall be, and shall be deemed always to have been, added, namely:-

"Provided that when determining under section 99 or section 150 the rate at which conservancy tax shall be levied for any official year or part of an official year, the Corporation may determine different rates for different classes of properties.".

7. Amendment Of Section 137 Of Bom. Lix Of 1949 :-

In section 137 of the principal Act, to sub-section (1), the following proviso shall be added, namely:-

"Provided that if the Corporation shall have determined for any official year any different rate of conservancy tax for any class of properties to which any of the properties referred to in this sub-section belongs, the Commissioner shall not, without the previous approval of the Corporation, fix, for such official year or part thereof, the conservancy tax to be paid in respect of any property belonging to such class for which such different rate may have been determined by the Corporation, at any other different rate under this sub-section.".

8. Insertion Of New Section 139A In Bom. Lix. Of 1949 :-

After section 139 of the principal Act, the following new section shall be and shall be deemed always to have been, inserted, namely:-

"139A. Apportionment of responsibility for property tax when the premises assessed are let or sub-let.--

(1) If any building or land or premises assessed to any property tax are let, and their rateable value exceeds the amount of rent payable in respect thereof to the person from whom, under the provisions of section 139, the said tax is leviable, the said person shall be entitled to receive from his tenant the difference between the amount of the property tax levied from him, and the amount which would be leviable from him if the said tax were calculated on

the amount of rent payable to him.

(2) If the building or land or premises are sub-let and their rateable value exceeds the amount of rent payable in respect thereof to the tenant by his subtenant, or the amount of rent payable in respect thereof to a sub-tenant by the person holding under him, the said tenant shall be entitled to receive from his sub-tenant or the said sub-tenant shall be entitled to receive from the person holding under him, as the case may be, the difference between any sum recovered under this section from such tenant or sub-tenant and the amount of property tax which would be leviable in respect of the said building or land or premises if the rateable value thereof were equal to the difference between the amount of rent which such tenant or sub-tenant receives, and the amount of rent which he pays.

(3) The provisions of this section shall apply only in relation to the property tax levied for any period prior to 1st April 1970 referred to in sub-clause (i) of clause (1A) of section 2."

9. Amendment Of Section 152A Of Bom. Lix Of 1949 :-

In section 152A of the principal Act,-

(1) In sub-section (1),-

(i) for the words, brackets and figures "Bombay Provincial Municipal Corporations (Gujarat Amendment) Act, 1968 as if the said Act" the words, brackets and figures "Bombay Provincial Municipal Corporations (Gujarat Amendment) Act, 1968 and the Bombay Provincial Municipal Corporations (Gujarat Amendment and Validating Provisions) Act, 1970, as if the said Acts" shall be substituted;

(ii) for the words "commencement of the said Act" the words "commencement of the aforesaid Acts" shall be substituted;

(2) after sub-section (2), the following sub-section shall be inserted, namely:-

"(3) Notwithstanding anything contained in any judgment, decree or order of any court, it shall be lawful and shall be deemed always to have been lawful, for the Municipal Corporation of the City of Ahmedabad to withhold refund of the amount already collected or recovered in respect of any of the property taxes to which sub-section (1) applies till assessment or reassessment of such property taxes is made, and the amount of tax to be levied and collected is determined under sub-section (1):

Provided that the Corporation shall pay simple interest at the rate

of six per cent per annum on the amount of excess liable to be refunded under sub-section (2), from the date of decree or order of the court referred to in sub-section (1) to the date on which such excess is refunded."

10. Amendment Of Section 406 Of Bom. Lix Of 1949 :-

In section 406 of the principal Act, in sub-section (2),-

(1) for the words "shall be heard" the words "shall be entertained" shall be substituted; and

(2) the following proviso shall be added after clause (e), namely:-

"Provided that where in any particular case the Judge is of opinion that the deposit of the amount by the appellant will cause undue hardship to him, the Judge may in his discretion dispense with such deposit or part thereof, either unconditionally or subject to such conditions as he may deem fit."

11. Amendment Of Section 411 Of Bom. Lix Of 1949 :-

In section 411 of the principal Act, after clause (a), the following clause shall be inserted, namely:-

"(bb) from any order of the Judge under the proviso to sub-section (2) of section 406; and; ".

12. Amendment Of Chapter Viii Of Schedule A To Bom. Lix Of 1949 :-

In Schedule A to the principal Act, in Chapter VIII,-

(i) in sub-rule (3) of rule 7, for the words "annual rent for which such building, land or premises might reasonably be expected to let from year to year a sum equal to ten per cent of the said annual rent" the words "annual letting value of such building, land or premises a sum equal to ten per cent of such annual letting value" shall be, and shall be deemed always to have been, substituted; and

(ii) in sub-rule (1) of rule 42, for the words "as preferred" the words "is preferred or entertained" shall be substituted.

13. Validation Of Investigation And Disposal Of Complaints By Certain Officers And Of Determination Of Special Rate Of Conservancy Tax Corporation Or Commissioner :-

Notwithstanding anything contained in any judgment, decree or order of any court or tribunal or any other authority,-

(1) no investigation or disposal of a complaint under rule 18 of the Taxation Rules contained in Chapter VIII of Schedule A to the principal Act, made by a Deputy Municipal Commissioner, Assistant Municipal Commissioner or any other municipal officer in exercise or discharge, or purported exercise or discharge, of the powers, duties or functions of the Commissioner, deputed or delegated, or purported to have been deputed or delegated, to him under the principal Act, at any time before the commencement of the Bombay Provincial Municipal Corporations (Gujarat Second Amendment and Validating Provisions) Ordinance, 1969 (Guj. Ord. 6 of 1969) (hereinafter referred to as the said Ordinance), shall be deemed to have been invalidly made by reason of the powers, duties or functions so deputed or delegated or purported to have been so deputed or delegated, being of a judicial or quasi-judicial nature, and any such investigation and disposal of complaint shall be deemed to be valid and shall be deemed always to have been validly made under the provisions of the principal Act as if the principal Act authorised the deputation or delegation of such powers, duties and functions at the time when such deputation or delegation was made as also at the time when such investigation or disposal was made; and no such investigation or disposal of complaint or any entry made in any assessment book pursuant thereto or any levy of tax made or bill or notice of demand or distress or attachment issued or executed for collection of taxes entered in any assessment book pursuant to such investigation, and disposal of any complaint as aforesaid shall be called in question in any court or before any tribunal or authority merely on the ground that the Deputy Municipal Commissioner, the Assistant Municipal Commissioner or, as the case may be, the municipal officer concerned who investigated and disposed of the complaint had no jurisdiction, power or authority to do so, or on any ground consequential thereto;

(2) no determination of any special or different rate of conservancy tax by a Municipal Corporation constituted by or under the principal Act in respect of any hotel, club, stable, industrial premises or other large premises in exercise or purported exercise of its powers under any of the provisions of the principal Act, at any time before the commencement of the said Ordinance, shall be deemed to have been invalidly made by reason of the Corporation having no power to determine such rate at the time when such determination was made; and any such determination shall be deemed to be valid and shall be deemed always to have been validly made under the

provisions of the principal Act as amended by this Act as if this Act had been in force at the time when such determination was made; and no such determination of different or special rate of conservancy tax, or any entry of tax made in any assessment book pursuant thereto, or any levy of such tax or bill or notice of demand or distress or attachment issued or executed for collection of such tax, shall be called in question in any court or before any tribunal or authority merely on the ground that the Corporation had no power or authority to determine such different or special rate of conservancy tax in respect of any hotel, club, stable, industrial premises or other large premises or on any ground consequential thereto.

14. Repeal Of Guj. Ord. 6 Of 1969 :-

The Bombay Provincial Municipal Corporations (Gujarat Second Amendment and Validating provisions) Ordinance, 1969 (Guj. Ord. 6 of 1969) is hereby repealed and the provisions of sections 7 and 25 of the Bombay General Clauses Act, 1904 (Bom I of 1904) shall apply to such repeal as if that Ordinance were an enactment.