PETITIONER:
MUNICIPAL CORPORATION OF GREATER BOMBAY

Vs.

RESPONDENT:
NEW STANDARD ENGINEERING CO. LTD.

DATE OF JUDGMENT07/12/1990

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
AHMADI, A.M. (J)
SAHAI, R.M. (J)

CITATION:
1991 AIR 1362 1990 SCR Supl. (3) 478
1991 SCC (1) 611 JT 1991 (1) 174
1990 SCALE (2)1236

ACT:
Bombay Municipal Corporation Act, 1888: Property Tax.
Section--154 Property tax--Rateable value of Respondent's building--How to be determined--Whether it is to be determined under sub-section (1) or sub-section (3) of Section 154.
Section 154--Explanation to Section 154(3)--"Recognised scheme of subsidised housing for industrial workers or persons belonging to lower income groups or poorer classes"--Consultation with corporation--Effect of non-observance of statutory prescription of consultation Held prior consultation mandatory.

HEADNOTE:
The Respondent Company an industrial concern constructed a building to provide housing accomodation for its workers under the Government Subsidised Scheme for Industrial Workers after obtaining a certain amount of subsidy and loan from the Government under an agreement dated 12.11.1959. Clause 5 of the agreement required the Respondent Company to adhere to all the terms, conditions and stipulations as in force at the date of 'Government of India Subsidised Housing Scheme for Industrial Workers' Clause 8 of the agreement imposed limitation on the company not to charge rent exceeding Rs.26.50 per month per tenement inclusive of municipal rates and taxes.
For the purpose of charging property tax on the Company's said building, the Municipal Corporation made the assessment under subsection (1) of Section 154 of the Act. In making the assessment the annual letting value was fixed at an amount higher than the actual rent charged for each tenement. The Company objected to the assessment raising the plan that the building has been constructed under the recognised Government subsidised housing scheme for industrial workers and it is restrained from charging rent exceeding Rs.26.50 per month from each allottee. Therefore the Rateable Value should be fixed under sub-section (3) and not under sub-section (1) of Section 154. The Corporation rejected the contentions of the Company. Appeal preferred by
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the Respondent-Company to the Small Causes Court was unsuccesful. On further appeal the High Court upheld the Respondent's claim and directed the Municipal Corporation to revise the Rateable Value taking into account only the actual rentals recoverable by the Respondent from each tenant which would be the Standard Rent for each of the blocks. On the crucial point of prior consultation, the High Court held that the same is more or less directive in nature and not to be regarded as mandatory and therefore the omission on the part of the Government to consult the Corporation cannot take the case out of the Explanation to sub-section (3) of Section 154 of the Act and the Corporation would not be at liberty to take the Rateable Value more than the actual rentals charged. The Corporation has appealed to this court challenging the correctness of the decision of the High Court. Allowing the appeal, setting aside the judgment of the High Court and restoring that of the Small Causes Court, this Court,

HELD: Procedural safeguards which are so often imposed for the benefit of persons affected by the exercise of administrative powers, are normally regarded as mandatory, so that it is fatal to disregard them. Where there is a statutory duty to consult persons affected, this must genuinely be done and reasonable opportunity for comment must be given. If the exercise of power is likely to impair the proprietary or financial interests of named bodies to be consulted, then generally the provision requiring consultation before the statutory power is exercised is construed as mandatory. [485G-H, 484H-485A]

There must be opportunity for the Corporation to express its views on the recognised scheme and the terms thereof. The opinion expressed by it may not be binding on the Government which may take its own decision but nevertheless consultation with the Corporation must be there on the essential points and the core of the subject involved. If there is no such consultation the Corporation cannot be compelled to fix the rateable value of the building under sub-section (3). The High Court seems to have erred in this regard. The right to be consulted in opposition to a claim or proposal which will adversely affect its financial interests is to be regarded as mandatory. [486F-G, E]

Banwarilal Agarwalla v. State of Bihar & Ors., [1962] 1 SCR 33; Kali Pada Chowdhury v. Union of India, [1963] 2 SCR 904; Naraynan Sankaran Mooss v. The State of Kerala & Anr., [1974] 1 SCC 68; Naraindas Indurkhya v. State of M.P., [1974] 4 SCC 788 and Agricultural, Horticultural and forestry Industry Training Board v. Ayles-
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bury Mushrooms Ltd., [1972] 1 WLR 190, followed.

BOOKS CITED

Administrative Law by H.R.R. Wade, 6th Ed. p. 247; De Smith's Judicial Review of Administrative Action, 4th Edition, pp. 144-45.

JUDGMENT: