(1979) 04 BOM CK 0014

Bombay High Court

Case No: Misc. Petition No. 126 of 1970

Popatlal Gokuldas and Others		APPELLANT
	Vs	
State of Maharashtra and Others		RESPONDENT

Date of Decision: April 2, 1979

Acts Referred:

- Bombay Land Revenue Code, 1879 - Section 214, 45, 52, 52(1)
- Bombay Land Revenue Rules, 1921 - Rule 22, 80, 80
- Constitution of India, 1950 - Article 226
- Salsette Estates (Land Revenue Exemption Abolition) Act, 1951 - Section 11

Citation: AIR 1980 Bom 140

Hon'ble Judges: Lentin, J

Bench: Single Bench

Advocate: L.V. Deshpande, for the Appellant; A.E. Karmali, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This is a petition under Article 226 of the Constitution for an appropriate writ directing the respondents to withdraw and or cancel the impugned orders dated 20th November 1957, 21st April 1962, 18th February 1965 and 28th April 1967 (Exs. A to D to the petition) and the notice of demand dated 19th December 1969 (Ex. E to the Petition).

2. The 1st respondent is the State of Maharashtra, the 2nd respondent is the Additional District Deputy Collector and 3rd respondent is the Mamlatdar, Taluka Kurla.

3. The main question that arises in this petition is whether the Collector was entitled to invoke Rule 81 (3) of the Land Revenue Rules, 1921 and, if so, whether his order levying enhanced assessment is in compliance with the requirements of that rule.

4. The petitioners carry on, and at all material times carried on, business in the name and style of M/s. Eastern Aluminum Works. The Petitioners are the owners of certain lands admeasuring 6832 square yards situate at old Agra Road, Kurla, Greater Bombay since 5th July 1950. At that time, the village of Kurla was a proprietary village owned by the successors in title of Hormusji Bomanjee. Prior to 1931, a portion of these lands was put to building use. Out of the total area of 6832 square yards, the built-up area is about 2045 square yards, whereon the petitioners have their factory known as Eastern Smelting and Rolling Mills.

5. By the Salsette Estate (Land Revenue Exemption Abolition) Act, 1951, which came into force from 1st March 1952, the proprietary rights of the Khot of Kurla were abolished and the lands belonging to private owners became, for the first time, liable to payment of land revenue to Government. Until then, a fixed land revenue was payable to the Khot of Kurla, and there was no restriction on the user of the land within the Khoti village of Kurla.

6. By an order dated 20th November 1957 passed by the then Additional District Deputy Collector, the petitioners were informed that their lands were made liable to payment of non-agricultural assessment with effect from 8th January 1957 to 31st July 1959 at Rs. 25/-per 100 square yards and were called upon to pay the amount of Rs. 1708/-between the 1st and 10th January every year. Being aggrieved by that order, the petitioners exhausted the remedies available to them including the revisional application which was heard by the Revenue Minister on 21st October 1966 and decided by him by his order dated 12th November 1966 upholding the assessment levied. The petitioners were served with a further levy and collection order dated 4th October 1960 issued by the Additional District Deputy Collector, B. S. D. Andheri, calling upon the petitioners to pay the non-agricultural assessment at the annual rate of Rs. 1708/- for a further period from 1st August 1959 to 31st July 1960. The petitioners thereafter exhausted the remedies available to them by way of appeal and revision to the appropriate authorities, but in vain. The 2nd respondent issued a collection order for recovery of non-agricultural a''ssessment in the sum of Rs. 1708/- for one year ending 31st July 1961. By his order dated 21st April 1962, the 2nd respondent called upon the petitioners to pay N. A. assessment at Rs. 1708 per year from 1st August 1961 till 31st July 1964. The Additional District Deputy Collector, B. S. D. Andheri, issued another levy and collection order dated 18th February 1965 retrospectively levying a sum of Rs. 8,288.53 as N. A. assessment for the earlier period from 1st March 1962 till 7th January 1957 (erroneously mentioned as 31st July 1957 in the petition) at the annual rate of Rs. 25/- per 100 square yards. Against that order also, the petitioners preferred the requisite appeal which was heard by the Additional Collector, B. S. D. Bombay, on 11th December 1965 who reserved his orders but, according to the petitioners, the same have not been communicated to them. This is not denied in the affidavit-in-reply. By his letter dated 28th April 1967, the 2nd respondent informed the petitioners that the N. A. assessment on the petitioners'' land was levied till 31st July 1964 under collection

order dated 2Ist April 1962 and that the same assessment continued till 31st July 1967. On 19th December 1969, a notice of demand was Issued by the 3rd respondent for the payment of Rs. 1708/- as dues in respect of the non-agricultural assessment.

7. It is to challenge the legality and validity of the order dated 20th November 1957 issued by the then District Deputy Collector and the subsequent orders and notices of demand that the petitioners have filed the present petition.

8. Mr. Deshpande, the learned Counsel appearing on behalf of the petitioners, challenged the impugned orders and notice on three grounds. He urged that no rules are framed u/s 11 of the Salsette Estate (Land Revenue Exemption Abolition) Act, 1951, with the result that the Land Revenue Rules, 1921, are without authority of law. However, Mr. Deshpande did not ultimately press this contention. The second ground urged by Mr. Deshpande was that the Collector could not. in the facts and circumstances of this case, invoke his powers under Rule 81 (3) of the Land Revenue Rules, 1921, and that even assuming he could, his order levying enhanced assessment is not in compliance with the requirements of that rule. Mr. Deshpande finally urged that assessment could not be levied with retrospective effect.

9. In order to appreciate these contentions urged on behalf of the petitioners and before going straightway to the provisions of Rule 81 (3), it would be appropriate to refer to certain provisions of the Bombay Land Revenue Code, 1879. Section 45 provides that all land is liable to the payment of land revenue to Government unless specially exempt. Section 52 provides for the fixation of the assessment by the Collector and reads as under:--

"52. (1) On all lands which are not wholly exempt from the payment of land revenue, and on which the assessment has not been fixed under the provisions of Chapter VIII-A, the assessment of the amount to be paid as land revenue shall, subject to rules made in this behalf u/s 214, be fixed at the discretion of the Collector, for such period not exceeding ninety-nine years as he may, be authorised to prescribe, and the amounts due according to such assessment shall be levied on all such lands:

X X X X X

(2) After the expiry of the period for which the assessment of any land is fixed under Sub-section (I), the Collector may, from time to time, revise the same in accordance with the rules made In this behalf by the State Government The assessment so revised shall be fixed each time for such period not exceeding ninety-nine years as the State Government may, by general or special order, specify".

Section 214 empowers the State Government to make Rules to carry out tha purpose and objects of the Act. In exercise of this power, the Land Revenue Rules, 1921 (referred to hereafter as "the Rules") were framed.

10. Chapter XIV of the Rules (viz. from Rules 80 to Rule 91), pertains to the imposition and revision of non-agricultural assessment and alteration of assessment in the case of unalienated land. Rule 80-B provides when land held or used for any non-agricultural purpose, is assessed u/s 52, such assessment shall be fixed and revised by the Collector from time to time in accordance with the rules contained in Chapter XIV. Rule 81 provides for ordinary rates of non-agricultural assessment. Sub-rule (1) empowers the Collector to divide the villages, towns and cities in his district (to which a standard rate under Rule 82 has not been extended) into two classes. Sub-rule (2) empowers the Collector to fix the rate of assessment in his discretion subject to general or special orders of the Government, within certain limits, the maximum being 2 pips per square yard in the case of Class I land and one pie per square yard in the case of Class II land and the minimum being the agricultural assessment. In fixing the rate with the above limits, Sub-rule (2) enjoins the Collector to have due regard to the general level of the value of lands in the locality used for non-agricultural purposes. Sub-rule (3) empowers the Collector, in certain circumstances, to levy on any non-agricultural land assessment at a rate higher than the maximum fixed under Sub-rule (2). Rule 82 deals with special rates of non-agricultural assessment and provides that in any area in which on account of there being a keen demand for building sites or for any other special purpose the State Government may by notification in the official Gazette direct that Rule 82 shall be applied, the rate of non-agricultural assessment shall be determined in accordance with the provisions contained in Rule 82 and not in Rule 81. The area notified by the State Government for the applicability of Rule 82 is commonly known as "standard zone." It is not the case of either party that the area in which the petitioners'' land is situate was a "standard zone" or that the provisions of Rule 82 were attracted. The controversy between the parties revolves round the construction and applicability of Sub-rule (3) of Rule 81 as it is not in dispute that it was under Rule 81 (3) that the Collector acted in levying enhanced assessment by his impugned order.
Rule 81 (3) reads as under:--

"The Collector may for special reasons to be recorded in writing, levy on any land non-agricultural assessment at a rate higher than the maximum fixed under Sub-rule (2) in respect of any Village, town or city in which such land is situated, in cases where the land is either situated in an exceptionally favorable postion, or where it is used temporarily for a non-agricultural purpose or where the purpose for which it is used is of a special kind. Such higher rate shall not, however, exceed 50 per cent of the estimated annual rental value of the land when put to non-agricultural use in question. The Collector shall forthwith forward to the Divisional Officer a copy of the order levying the higher rate with the reasons recorded by him."

Thus Rule 81 (3) empowers the Collector to fix a higher rate (i) where the land is situated in an exceptionally favorable position or (ii) where it is used temporarily for a N. A. purpose or (iii) where the purpose for which it is used is of a special kind. For any of these special reasons, the Collector can fix a higher rate. In this case, conditions (ii) and (iii) do not appear and it is nobody''s case that they do.

11. By his impugned order, the Additional District Deputy Collector has stated that no standard rates of non-agricultural assessment had been fixed so far under Rule 22 (presumably Rule 82) of the Rules for the village of Kurla. He proceeds to state that--

"This village is situated in the Bombay Suburban District which is a fast developing District being very close to the City of Bombay".

Pausing here for a moment, this passage refers to the development potentiality of the entire District in which this village is situate. Such a consideration cannot be attracted to bring it within the phraseology. "Where the land is situated in an exceptionally favorable position". It can be seen that in this phraseology in Rule 81 (3) the emphasis is not on the development potentiality of the entire village in which the land in question is situate.

12. The Collector then adverts to the fact that Kurla village is classified in Clause I by the Collector, Bombay Suburban District, under Notification No. LND 2549 dated 11th January 1954 and that the maximum rate of non-agricultural assessment is fixed at 2 pies per square yard. He proceeds to state--

"This site of Kurla is mainly used for industrial/residential purposes and is fast developing site. The non-agricultural rate of Re. 0-0-2 per square yard seems to me to be too low. As no non-agricultural rates have been fixed so far under Rule 82 of the Land Revenue Rules 1921, for this village, it is desirable that Rule 81 (3) of the Land Revenue Rules, 1921 should be resorted (to) in this case".

Again pausing here for a moment, the emphasis in this passage is to the entire village and the present and potential development of the village as a whole. This passage also reveals the prime consideration and indisputable reason which motivated the Collector to levy enhanced assessment, viz. that the N. A. assessment at Re. 0-0-2 per square yard appeared to be too low as Kurla which is a fast developing district (as stated by him earlier) is mainly used for residential/industrial purposes and because no non-agricultural rates were fixed under Rule 82. There are not the factors or considerations which can be attracted to invoke the provisions of Rule 81 (3). These considerations taken into account by the Collector clearly reveal that he has traversed beyond the jurisdiction vested in him and that in his attempt to invoke the provisions of Rule 81 (3), he has travelled beyond its scope and has taken into account factors not warranted by the plain reading of Rule 81 (3) itself. These extraneous considerations taken into account by the Collector reveal that he had made up his mind to raise the levy and that, as appearing hereafter, the

ostensible reason given by him, viz. that the land is situate on the Bombay-Agra Road, was merely a stratagem and an attempt at justification and to clothe with a garb of legality his decision already made on untenable and extraneous grounds.

13. The impugned order goes on to state -

"The land in question is situated on Bombay-Agra Road and as such it has got an exceptionally favorable position."

"I, therefore, order that this land admeasuring 6832 sq. yds. should be assessed to non-agricultural assessment at Rs. 25/- per 100 square yards for the present i.e. up to 31st July 1957".

Having therefore already made up his mind to levy enhanced assessment on the extraneous considerations appearing earlier in his order, the passage quoted above reveals this ostensible reason for invoking Rule 81 (3), viz. that the petitioners'' land is in an "exceptionally favorable position" because it is situated on the Bombay-Agra Road, Even this ostensible reason is untenable I do not think that the Collector was right in invoking Rule 81 (3) merely because the petitioners'' land is situate on the Bombay-Agra Road. The words "exceptionally favorable" in Rule 81 (3) must he given their natural meaning and must not be confused or identified with land situated in a favorable or even a very favorable position. The words "exceptionally favorable" denote something that is unusually or extraordinarily favorable or favorable to an unusual or outstanding degree. The words "exceptionally favorable" are the highest and ultimate superlative and as such must be read and construed. Had it been the intention otherwise of the rule-makers, there was no need to have used the word "exceptionally" in Rule 81 (3) if a lesser adverb like "very" or even "high degree" had sufficed. Hence the highest superlative meaning must necessarily be attached to the words "exceptionally favorable" advisedly used in Rule 81 (3). Reading Rule 81 (3), there can be no doubt that there must be something more relating to the petitioners'' land which distinguishes it from other lands situate in a favorable position and renders the petitioners'' land favorable not only to a high degree or a great degree or even an immense degree but to an unusual or extraordinary degree. But that is not all. Merely because the petitioners'' land is situate on Bombay-Agra Road, the Collector automatically classified the petitioners'' land as being situated in an "exceptionally favorable position". Why that should be so, does not appear in the order, for no reason has been given by the Collector. The Collector appears to have misinterpreted the true scope and meaning of the words "exceptionally favorable position" arid appears to have equated the phraseology "exceptionally favorable position" either with "favorable position" or "very favorable position" or a "highly favorable position" which no doubt is the position in which this land is situate. Each and every piece of land on the Bombay-Agra Road need not necessarily be in an "exceptionally favorable, position" and if this was so in the case of the petitioners'' land, surely the Collector should have given his reason for his finding, instead of basing his decision on a generality. Assuming that the Collector

came to his conclusion that the petitioners'' land is in an "exceptionally favorable position" because Bombay-Agra Road is a main road or a busy thoroughfare, even so the approach of the Collector is not correct. Each and every piece of land situate on a main road or a busy thoroughfare, would not by itself automatically make the situation of such land in an exceptionally favorable position. If such had been the intention of the rule-makers, there was nothing to prevent them from so stating in so many words, or by necessary implication, in the rule itself.

14. The "exceptionally favorable position" of the land in respect of which assessment is sought to be enhanced, must be shown to be in respect of and compared with other lands in the same village and not merely because the land is on Bombay-Agra Road or a main road or a busy thoroughfare. This has been completely overlooked or ignored by the Collector. On that ground alone, the Collector''s order is liable to be set aside. There is nothing in his order showing specifically or for that matter even by inference, that he took into consideration other lands and if so, which, in the village, in arriving at his finding that the petitioners'' land is in an exceptionally favorable position. He has done so merely on a bald statement that it is on Bombay-Agra Road, presumably on some assumption that each and every land on Bombay-Agra Road must necessarily be in an exceptionally favorable position and therefore the petitioners'' land is also in an exceptionally favorable position for that reason. There is no doubt that the situation of the petitioners'' land is a favorable or even a very favorable one. But to categorise it as being in an "exceptionally favorable position", merely because it is on Bombay-Agra Road, as done by the Collector and as urged by Mr. Karmali for the respondents, would, to my mind, not be correct.

15. I would like to go a step further. In construing the phraseology "in an exceptionally favorable position", in Rule 81 (3), I think that by implication the purpose for which the land is ordinarily used cannot be entirety ignored. I emphasise the word "ordinarily" in contradistinction to the temporary use for non-agricultural purpose or where the purpose for which it is used is of a special kind, which would attract the second and third condition in Rule 81 (3), which in this case are admittedly not attracted. There can be no controversy, and there was none, that the purpose for which the land is ordinarily used by the petitioners, is for running their rolling and smelting factory, which they have been doing since the past several years. If instead of ordinarily running a rolling and smelting factory, which does not depend upon attracting custom from motorists and passers-by using the Bombay-Agra Road, the petitioners ordinarily used this land, say for running a restaurant or a shop or a petrol pump or a motor repairing garage, then the proximity of the land to Bombay-Agra Road would be an additional factor and might well make the position of the petitioners'' land an exceptionally favorable one in comparison with other lands in the village.

16. Mr. Karmali urged that the petitioners'' land is in an exceptionally favorable position because the petitioner-factory has a direct access to the Bombay-Agra Road. This contention does not take into account that primarily and essentially the favorable position of the land in question must be shown in respect of or compared with other lands in the same village. Even assuming what Mr. Karmali says is correct. It would, at best make the position of the land favorable or even very favorable. But on the ground of easy access to Bombay-Agra Road to say that it is in an "exceptionally favorable position", would not be correct and has rightly not even been stated by the Collector himself.

17. As stated earlier, the predominant motivation and prime consideration on the part of the Collector in resorting to Rule 81 (3) was for the reasons set out in the earlier part of his order, and the subsequent classification of the petitioners'' land as having an "exceptionally favorable position" as it is on Bombay-Agra Road, appears to be merely an attempt to levy enhanced assessment by attracting willy-nilly the provisions of that rule.

18. This is not all. By the impugned order, the assessment has been fixed at Rs. 25/- per 100 square yards. There is not the remotest indication in this order (as to) the basis on which this particular figure was arrived at. That has been left to conjecture, speculative reasoning and imagination. Where a power is given to an assessing authority to increase an assessment, as in this case under Rule 81 (3), it is incumbent upon him to indicate the basis on which he has arrived at the increased figure of assessment, as in this case for enhancing the assessment to Rs. 25/- per 100 square yards. This is a salutary safeguard not only in public interest, but also that the assesses must know that the increase is based on sound principles and in accordance with law and not on discrimination, capriciousness, arbitrariness or even a genuine mistake on the part of the concerned authority. This principle is all the more salutary because under Rule 81 (3), the Collector is empowered to depart from the general rules. Hence in the present case, where the Collector increased the assessment to Rs. 25/- per 100 square yards, it was incumbent upon him to indicate the basis on which that particular figure was arrived at by him and on what calculations. Nothing of the kind has been done by the present order in which the Collector has contented himself by making a bare statement that the assessment is enhanced to Rs. 25/- per 100 square yards. This is yet another ground on which the Collector''s order is liable to be set aside.

19. Mr. Deshpande''s contention that in the circumstances of the case it was not open to the Collector to invoke his power under Rule 81 (3) is answered by the Division Bench of the Gujarat High Court in Anil Starch Products Ltd. v. State, (1969) 10 Guj LR 907, where it was held that it is the Collector who is the assessing authority and it is for the Collector to decide in exercise of his jurisdiction questions which arise in the case of assessment, one of such questions being whether the land is situate in an exceptionally favorable position. If the Collector comes to the

conclusion that the condition that the land is situate in an exceptionally favorable position has been satisfied, he can levy enhanced assessment. However, whether the condition is satisfied or not, is a matter left to the determination of the Collector in exercise of his jurisdiction, u/s 52. It is therefore a fact in issue and not a jurisdictional fact and whether it exists or not is not justiciable in a court of law. It was further held in that case that the only ground on which the determination of the Collector as regards the existence of this fact can be challenged is that the Collector has not directed himself properly in law or applied the wrong test to the facts found or failed to call his attention to matters which he was bound to consider or took into consideration matters which are irrelevant to what he had to consider.

20. Mr. Deshpande relied on a judgment delivered on 14th November 1967 by the Division Bench of this Court in Appeal No. 1 of 1966 where it was observed as under:--

"In our opinion, it is clear that ''the exceptionally favorable position'' must be that of the very land which is the subject of assessment under Sub-rule (3) and its favorable position should be shown to be in respect of other land in the same village, Unless that condition is first fulfilled we do not think that the authorities would have jurisdiction to deal with the assessment of the land under Rule 81 (3)."

On the other hand, Mr. Karmali urged that I am not bound by that judgment as by reason of an arrangement arrived at by the parties in that case, the Supreme Court passed an order that the judgment of the Division Bench and the judgment of the learned Single Judge against whose judgment Appeal No. 1 of 1966 had been preferred, were no longer operative as a result of the withdrawal of the appeal before it and the pendency of the appeals before the revenue authorities. I think Mr. Karmali is correct when he says that in view of the order passed by the Supreme Court the judgment of the Division Bench does not stand. In any event, it is unnecessary to enter into this controversy because the distinguishing feature between the Division Bench judgment and the matter before me, is that in the former ease, the Collector''s reasoning for levying enhanced assessment which gave rise to the earlier quoted observations relied on by Mr. Deshpande is not the same as that in the matter before me. In these circumstances also, I follow the finding of the Gujarat High Court on the jurisdictional aspect of the matter and come to a finding against the petitioners on this point.

21. Mr. Deshpande urged that it was not permissible to levy the assessment retrospectively from 1st August 1952. Mr. Deshpande urged that the special enhanced rate leviable in individual case by specific order for reasons to be recorded in writing is leviable only from the date of such order and not retrospectively as has been done by the order dated 18th February 1965. Mr. Deshpande thus urged that while the order enhancing the assessment was passed on 20th November 1957, retrospective effect was illegally sought to be given from 1st Aug. 1952. Mr. Deshpande relied on the decision in Shapurji Jivanji v. Collector of

Bombay ILR (1885) 9 Bom 483 , where it was held that the plaintiff was only liable to the enhanced rate of assessment from the time at which it was actually made by the Collector. That decision was approved by the Division Bench of this Court in The Ahmedabad Ginning and Manufacturing Company Ltd. Vs. The Secretary of State for India in Council, where it was held that under the Bombay Land Revenue Code 1879, the Collector has no power to levy revised assessment retrospectively. Thus so far Mr. Deshpande is correct but for a later decision of the Division Bench of this Court to the contrary in The State of Maharashtra Vs. Narayan Shankar Hasabnis and Others, , where it was held that the levying of full assessment retrospectively was legal and valid under the second proviso to Sub-section (1) of Section 52 of the Land Revenue Code. However, the retrospective aspect of the matter now becomes academic in view of my holding that the impugned assessment order is liable to be set aside.

22. The main brunt of Mr. Karmati''s attack was on the ground of delay and laches and misjoinder of causes of action. Mr. Karmali urged that in this matter, there had been inordinate delay inasmuch as the impugned order was passed, by the Additional District Deputy Collector as far back as 20th November 1957, whereafter other orders had been passed and notices given, and that, it was only as late as 6th February 1970, that the petitioners filed the present petition, without giving any reason in the petition for this delay. At first flush, this contention of Mr. Karmali appears to be attractive. However, it does not bear the test of a closer scrutiny. Here is not the case of a party who has slept over his rights. After the petitioners received the impugned orders and notices, they resorted to the remedy of appeal and revision open to them and it was only after these remedies had been exhausted and had failed that the petitioners filed the present petition. It is true that in the petition there is no specific averment giving reason for the apparent delay. However, the learned draftsman has in his own way by narration of events made out reason for the apparent delay. For instance, in paragraph 8 of the petition, the petitioners had made a pointed grievance that despite the fact that against the order dated 18th Feb. 1965, the appellate authority heard the appeal on 11th December 1965 and reserved his orders, the petitioners are not aware what the final decision of the appellate authority was in the matter. To that, the affidavit-in-reply is curiously silent. If the order of the appellate authority had been communicated to the petitioners, surely that could have been stated in the affidavit-in-reply which would have negatived the petitioners'' grievance that they do not even know the decision of the appellate authority. Furthermore, by the time the petitioners exhausted their remedies by way of appeal and revision in respect of the main order dated 20th Nov. 1957, nearly nine years elapsed because it was on 21st October 1966 that the Revisional Application of the petitioners was disposed of. In these circumstances, it does not behave the respondents to lay undue emphasis on delay and laches on the part of the petitioners. It cannot even be said that any prejudice has been Caused to the respondents. Furthermore, merely on the ground of apparent delay, it would be

harsh and unjust to perpetuate an order where the Collector failed to appreciate or misinterpreted the provisions of Rule 81 (3).

23. The next ground urged by Mr. Karmali was that the petition was bad by reason of misjoinder of causes of action. Mr. Karmali urged that in respect of each and every impugned order, and notice of demand, the petitioners should have filed a separate petition. This technical objection can easily be answered by saying that if the petitioners had done so, it would have resulted in needless multiplicity of proceedings. The impugned order of assessment dated 20th November 1957 is the source and foundation of all subsequent orders and notices of demand. If the main order of 20th November 1957 is set aside, the consequential reliefs must necessarily result in the subsequent orders based on the main impugned order being also set aside. And that is exactly what the petitioners have asked for in this petition.

24. Mr. Karmali urged that only the notice for payment dated 19th December 1969 (Ex. E to the petition) is sought to be set aside in this petition. Mr. Karmali relied on para. 17 of the petition where the petitioners have submitted that the Courts do issue the appropriate writ directing the respondents to withdraw and/or cancel the order dated 19th December 1969 (Ex. E to the petition). Thus Mr. Karmali submitted that the question of setting aside the earlier orders and notice did not arise. This contention of Mr. Karmali is based on a misconception. The petition must be read as a whole and para. 17 read by Mr. Karmali cannot be read dehors the rest of the petition. Reading the petition as a whole inclusive of prayer (a), it is clear that what the petitioners seek is to set aside not only the demand notice (Ex. E to the petition) but the main assessment order and the other orders and notices subsequent thereto as well.

25. Mr. Karmali urged that the petitioners have not taken the recourse to the appeal and revision provisions in respect of the notice for payment dated 19th December 1969 (Ex. E to the petition) and hence no relief should be given to the petitioners in respect of that notice. It has been repeatedly laid down by several High Courts as also the Supreme Court, that if a party rightly feels that the result of exhausting the appeal and revision remedies given to him under a self-contained code is a foregone conclusion, it is not obligatory upon such party to resort to such exercise in futility and waste of time and money before filing the petition. In this case, the previous experience of the petitioners in filing appeals and revisions before the appropriate authorities has resulted in nothing. In fact at least one appellate order was not even communicated to the petitioners. In these circumstances, it is understandable that in respect of the notice for payment dated 19th Dec. 1969, the petitioners did not choose to indulge in the idle formality of appeal and revision. In any event, if the main order dated 20th Nov. 1957 is set aside, all subsequent orders and notices including that of 19th December 1969 must necessarily share the same fate.

26. Mr. Karmali urged that the petitioners having paid a sum of Rs. 27,885.07 from time to time in respect of the non-agricultural assessment at the rate of Rs. 1708/-

per year, the petitioners are not entitled to challenge the main impugned order and the subsequent orders and notices. On the other hand, according to Mr. Deshpande, these amounts were paid under protest, which is denied by Mr. Karmali. Neither party was in a position to produce any covering letter or other evidence to show how this amount was paid. Even assuming ''that this amount was not paid under protest as urged by Mr. Karmali, at the most the petitioners may not be able to recover it and in fact the petitioners themselves have not made any prayer in this petition for refund of this amount. That, however, does not prevent the petitioners from filing the petition for setting aside the impugned orders and notices as prayed for in prayer (a).

27. In the result, the petition is allowed in terms of prayer (a), save and except that the date of the notice of demand erroneously stated as 22nd Dee. 1969 shall be read as 19th Dec. 1969, and the Rule is made absolute accordingly. In the facts and circumstances of the case, there will be no order as to costs. Petitioners shall be at liberty to withdraw the sum of Rs. 1,708/- deposited by them in Court pursuant to the order dated 13th Feb. 1970.

28. Order accordingly.