(1970) 01 BOM CK 0031

Bombay High Court

Case No: First Appeal No''s. 546, 547 to 675, 710 to 794 and 680 to 682 of 1965

Godrej and Boyce Mfg. Co. Pvt. Ltd.		APPELLANT
	Vs	
The Municipal Commissioner		RESPONDENT

Date of Decision: Jan. 9, 1970

Acts Referred:

- Bombay Municipal Corporation Act, 1888 - Section 218D

Citation: (1970) 72 BOMLR 747

Hon'ble Judges: Vaidya, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vaidya, J.

The above 173 appeals arc filed u/s 218D of the Bombay Municipal Corporation Act against an order dated June 5, 1964, passed by the Chief Judge, Court of Small Causes at Bombay, dismissing] 99 municipal appeals filed before him u/s 217 of the said Act. The appellants in all these appeals have been called upon by the Bombay Municipal Corporation to pay halalkhor tax at 3| per cent, of the rateable value of their respective properties. The appellants filed the respective appeals before the Chief Judge u/s 217 of the Act challenging the validity of the demands made on behalf of the Bombay Municipal Corporation. In most of the appeals the bills which were sent by the Municipal Corporation related to the period from April 1, 1963 to September 30, 1963. It is not necessary to refer to the period of the bills in the other appeals which are mentioned in detail in the judgment of the learned Chief Judge. The appellants in the aforesaid appeals raised in their appeals before me two important common points about the proper construction of the relevant provisions in the Act relating to the levy and collection of halalkhor tax, viz.,

(1) that the halalkhor tax could not be levied on the respective properties of the appellants u/s 142(1)(a) because the appellants had constructed in their respective properties water closets and septic tanks and these were different from "privies, urinals and cesspools" in respect- of which alone halalkhor tax could be levied,

(2) that the said tax could not be levied in law by the Corporation until the Corporation had undertaken measures for rendering halalkhor service with effect from April 1, 1963 or with effect from the date from which the tax was demanded and, in any esrent, the Corporation could not levy the tax as no halalkhor services were rendered to the properties of the appellants.

2. In support of the first contention it was further urged that the water-closets and septic tanks erected on their properties did not require the collection, removal or disposal of any excrementitious or polluted matter from, them as the contents were disintegrated by bacterial action. In a few appeals a further ground of objection to the levy and collection of the tax that was urged was that public notices issued by the Commissioner were not legal and proper. It is not necessary for the disposal of these appeals to refer to or deal with some other grounds which were urged before the Chief Judge in some of the appeals as they are not relied upon on behalf of the appellants before me and they were overruled by the learned Chief Judge of the Court of Small Causes.

3. The appeals were resisted before the Chief Judge on behalf of the Municipal Corporation firstly on the ground that public notices as required u/s 142(1)(a) were issued by the Municipal Commissioner on January ''22, 1951, February 24, 1958, and February 19, 1960 stating that the Municipal Corporation will undertake the collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cesspools in the areas mentioned in the said notices which will be presently referred to and in which the appellants'' properties were situated and the said notices were duly published and were legal; secondly on the ground that once these public notices were issued, it, was competent for the Corporation to impose halalkhor taxes on these properties u/s 142(1)(a) of the Act; and thirdly on the ground that even though the Municipal Corporation had not levied the halalkhor tax in the case of properties having septic tanks not connected to Municipal drains as no halalkhor service was rendered to them, a public notice was further issued on March 16, 1963 proposing to render halalkhor service to the said properties and to levy halalkhor tax at 8  per cent, of the rateable value of the property with effect from April 1, 1963. Besides, a preliminary point was raised before the Chief Judge, at the hearing of the appeals, on behalf of the Corporation contending that the Chief Judge of the Small Causes Court had no power to consider the validity of the halalkhor tax imposed by the Corporation in appeals u/s 217 of the Act.

4. The parties agreed that the appeals should be heard together by the Chief Judge and evidence on behalf of some of the appellants was led of witnesses mainly with regard to the absence of halalkhor services rendered by the Municipal Corporation

and the nature of the water-closets and septic tanks. Thus Wasudeo Govind Vaze, one of the joint owners of a property situated in the areas covered by the public notices; Sam Phiroze Rao, a partner of Messrs Poonakar Billimoria & Co., Architects (witness for Godrej Boyce & Mfg. Co. Ltd., one of the appellants); Tarachand Manilal Shah, Construction Engineer in the Premier Automobiles Ltd. (witness on behalf of the appellants Premier Automobiles Ltd.); Wasudeo Govind Pendharkar, owner of a property situated in Jogeshwari; Kalidas Murarji Bhakta, Manager of one of the appellants; Minoo Phirozeshah Daruwalla, a Civil Engineer of the appellants Burman Shell Refinery ; Vasco Fernandez, Divisional Head of Design Engineering in Esso Standard Refinery; Ganesh Anandrao Rackvi, an Assistant Accountant of the appellant company Mukund Iron & Steel Ltd.; and Mandayam Krishnakumar Parthasarathi Iyengar, Civil Engineer in the service of Tata Hydro Electric Works, were examined to give evidence in support of the appellants'' contentions.

5. On behalf of the Municipal Corporation Raghunath Maruti Adsul, Senior Officer, Conservency Branch, Mulund; Anant Narayan Panditrao, Supervisor, Conservency Branch, P Ward; Namdeo Anant Goday, Supervisor, Conservency Branch, K Ward; Krishnaji Vishnu Kanvinde, Supervisor, Conservency Branch, L and M Wards; Esufkhan Yakubkhan, Senior Overseer, Conservency Branch, M Ward, Chembur; Shamrao Anant Waknis, Surveillance Inspector, National Malaria Eradication Programme; John Arnauld Fernandes, Senior Overseer, Conservency Branch, II Ward; Janardan Ramchandra Patwardhan, Executive Engineer, Bombay Municipal Corporation; Madhukar Prabhakar Gadkari, Acting Assistant Head Supervisor, Range A, Conservency Branch, City Engineer''s Department; and Surajlal Nanabhai Naik, Assistant Head Supervisor, Range B, Conservency Branch, were examined to establish that the halalkhor services were required even in respect of water-closets and septic tanks and to explain their working and in particular the process of disintegration by anaerobic bacteria. Besides, one Madhukar Bhikaji Tatke, a clerk in the Assessment and Collection Department (Suburbs), and Surajlal Nanubhai Naik working in the said Department were examined to produce the public notices and other notices and correspondence.

6. The most important evidence on behalf of the Municipal Corporation was the evidence of the aforesaid Janardan Ramchandra Patwardhan, Executive Engineer who was holding the degrees of B. E. (Civil) of Poona University and the degree of Master of Engineering in Public; Health of Calcutta University and who had secured a gold medal in M. E. Examination. He gave evidence with reference to several authoritative books like "Water Supply and Waste Water Disposal" by Gorden Fair and John Geyer; "American Sewarage" by Metkalf and Eddy; "Municipal and Rural Sanitation" by Victor Entlers and Earnest Steel; "The Practical Plumber and Sanitary Engineer" by W. J. Woolgar; "Plumbing" by Harold Babbit; and "Microbiology" by William Saraes, passages from some of which were put to him in cross examination with regard to his evidence on the nature and working of water-closets and septic tanks and particularly regarding the two functions of sewage treatment in the septic

tank, first, of settling of settable organic solids and human excrementitious matter and second, the function of digestion of settled organic solids. He referred to the following passage at page 767 of "Water Supply and Waste Water Disposal" by Gorden Fair and John Geyer :

The, utilization of sewage sludge is circumscribed by the hygienic hazards involved. Pathogenic bacteria, viruses, protozoa (cysts), and worms (eggs) can survive sewage treatment, and be included in this sludge. There, they will persist for long times and cannot be fully destroyed by digestion or air drying. Although the numbers of surviving organisms decrease appreciably in the normal course of events., only heat-dried sludge can be considered fully safe.

He, therefore, referred to the necessity for cleaning the septic tanks from time to time and also the harmful effects of undigested sludge in the septic tanks in the process of cleaning the septic tanks. According to him, there were various types of privies such as basket privy, pit privy, bucket privy, bore hole privy acqua privy, privy on intermediate system and water-closet. He was cross-examined at great length with regard to the treatment of the sludge in the septic tanks and other aspects of the working of the septietanks.

7. The learned Chief Judge considered the above contentions and the evidence and recorded findings on the aforesaid contentions which survive in these appeals before me, which may be summarised as follows :

(1) As the appeals principally raised the question of the validity of the halalkhor tax imposed on the appellants'' properties and the appellants had neither challenged the rateable value or the amount of halalkhor tax, the question of the legality of the halalkhor tax could not be decided in appeals filed u/s 217 of the Act. In arriving at this conclusion, the learned Chief Judge referred to and relied on the decisions of this Court under the different past and present municipal legislations in the State, viz. Ankleshtvar Municipality v. Chhotalal (1954) 57 Bom. L.R. 547 (a case relating to the scope of an appeal u/s 86 of the Bombay District Municipal Act, 1901); Gopal Mills Co. Lid. v. Broach Bor. Mun. (1955) 58 Bom. L.R. 300 (a case relating to the scope of an appeal u/s 110 of the Bombay Municipal Boroughs Act, 1925); and Balkrishna v. Poona Municipal Corporation (1962) 65 Bom. L.R. 119 (a case relating to the scope of an appeal u/s 406 of the Bombay Provincial Municipal Corporation Act, 1949). The learned Chief Judge considered that the provisions for appeal and the scope of appeal in the several Acts relating to the Municipal bodies in the State were in pari materia and in view of the aforesaid decisions, the question of the legality or validity of the tax or competency of the Municipal Corporation to levy the tax could not be gone into in an appeal u/s 217 of the Bombay Municipal Corporation Act.

(2) Assuming that the above view taken by the learned Chief Judge was wrong, the learned Chief Judge proceeded to record his findings on the remaining issues

because of the evidence led before him and found that a privy was not the same as the water-closet as there were several provisions in the Act which made a distinction between, a privy and a water-closet including Section 142 itself and, therefore, water-closets connected with septic tanks could not fall within the phrase "privies, urinals and cesspools" in Section 142(1)(a) of the Act.

(3) Having regard to the evidence before him regarding the decomposition and purification of the sludge which takes place in the septic tank, the effluent or sludge which comes out of the septic tank after undergoing biochemical action or decomposition was not the same as excrementitious or polluted water contemplated by Section 142(1)(a) of the Act.

(4) There was no collection, removal or disposal required to be done day to day or frequently of excrementitious or polluted matter from such septic tanks.

(5) In view of his said findings 2, 3 and 4, the Municipal Corporation was not authorised to levy the halalkhor tax u/s 142(1)(a) in respect of the properties of the appellants wherein water-closets and septic tanks were ejected.

(6) Even assuming that the Corporation could levy the halalkhor tax in respect of the said properties, it could not, in any event, do so from April 1, 1963 because no effective halalkhor service was made available by the Municipal Corporation in respect of these properties.

(7) Public notices affecting the properties were duly and lawfully published as required by Section 142(1)(a) of the Act.

But in view of his finding (1) as above that he had no jurisdiction to consider the legality of the levy of halalkhor tax in the present case, the learned Chief Judge dismissed all the appeals with no order as to costs.

8. The above first appeals are filed against the said order. The Municipal Corporation has filed cross-objections challenging the propriety of the findings 2 to 5 recorded by the learned Chief Judge. The finding that the public notices were served is not challenged before me. But it is strenuously urged, on behalf of the appellants, that in view of the findings (2), (3), (4) and (5) as summarised above, the learned Judge erred in law in holding that he could not consider the legality of the tax demanded from the appellants.

9. Mr. Banaji, the learned Counsel for the Municipal Corporation, has opposed these appeals on a ground which, he conceded, was not properly urged before the Chief Judge of the Small Causes Court but which, according to him, goes to the root of the matter and makes it unnecessary for this Court to go into the question with regard to the scope of the appeal u/s 217 and the propriety of the findings (2), (3), (4) and (5) as recorded by the Chief Judge. For this purpose Mr. Banaji has relied on the plain meaning of the relevant provisions contained in the Bombay Municipal Corporation Act relating to the levy and collection of halalkhor tax.

10. The said provisions are as follows :

189. For the purposes of this Act, taxation shall be imposed as follows, namely :-

(1) property taxes;...

140. The following taxes shall be levied on buildings and lands in Greater Bombay and shall be called ''property taxes'', namely :-

(a) ...

(b) a halalkhor-tax of so many per centum, not exceeding five of their rateable value as will, in the opinion of the Corporation, suffice to provide, for the collection, removal and disposal, by municipal agency, of all excrementitious and polluted matter from privies, urinals, and cesspools and for efficiently maintaining and repairing tile municipal drains constructed or used for the reception or conveyance of such matter, subject however, to the provisos that the minimum amount of such tax to be levied in respect of any one separate holding of land, or of any one building or of any one portion of a building which is let as a separate holding, shall be six annas per month, and that the amount of such tax to be levied in respect of hotel, club or other large premises may be specifically fixed u/s 172;

(c) ...

142. (1) The halalkhor-tax shall be levied only in respect of premises-

(a) situated in any portion of Greater Bombay in which public notice has been given by the Commissioner that the collection, removal and disposal of all excrementitious and polluted matter from privies, urinals and cesspools will be undertaken by municipal agency; or

(b) in which wherever situate, there is a privy, water-closet, cesspool, urinal, bathing place or cooking place connected by a drain with a municipal drain :

(2) Provided that the said tax shall not be levied in respect of any premises situated in any portion of Greater Bombay specified in Clause (a), in or upon which, in the opinion of the Commissioner, no such matter as aforesaid accumulates or is deposited.

(3) If the Commissioner directs, under Sub-section (2) or (3) of section 248, that a separate water-closet, privy or urinal need not be required for any promises the halalkhor-tax shall nevertheless be levied in respect of the said premises, if but for such directions, the same would be leviable in respect thereof.

172. (1) The Commissioner may, whenever he thinks fit, fix the halalkhor-tax to be paid in respect of any hotel, club or other large premises at such special rate as shall be approved by the standing committee in this behalf, either generally or in any particular case, whether the service in respect of which such tax is leviable be performed by halalkhors or by substituted means or appliances.

(2) In the case of premises in respect of which the halalkhor-tax is payable by the Government or by the Trustees of the Port of Bombay, the Commissioner shall fix the said tax at a special rate approved as aforesaid.

(3) In any such case the amount of the halalkhor-tax shall be fixed with reference to the cost or probable cost of the collection, removal and disposal, by the agency of municipal halalkhors, of excrementitious and polluted matter from the premises.

248. (1) Where any premises are without a water-closet, or privy, or urinal, or bathing or washing place, or if the Commissioner is of opinion that the existing water-closet, or privy, or urinal, or bathing or washing place accommodation available for the persons occupying or employed in any premises is insufficient, inefficient, or on any sanitary grounds objectionable, the Commissioner may, with the previous approval, of the standing committee, by written notice, require the owner of such premises-

(a) to provide such, or such additional, water-closet, privy, urinal, or bathing or washing place accommodation as he prescribes;

(b) to make such structural or other alterations in the existing water-closet, privy, urinal, or bathing or washing place accommodation as he prescribes; or

(c) to substitute water-closet accommodation for any privy accommodation.

(2) Provided that where the water-closet, privy, urinal, or bathing or washing place accommodation of any premises-

(a) has been, and is being, used in common by the persons occupying or employed in such premises and any one or more other premises, or

(b) is in the opinion of the Commissioner likely to be so used,

the Commissioner may, if he is of opinion that such accommodation is sufficient to admit of the same being used by all the persons occupying or employed in all such premises, direct in writing that separate water-closet, privy, urinal or bathing or washing place accommodation need not be provided on or for each of such other premises.

(3) Provided also that the Commissioner may, if he is of opinion that there is sufficient municipal latrine accommodation available for all the persons occupying or employed in any premises, direct that separate water-closet, privy or urinal accommodation need not be provided for such premises.

(4) ...

Section 200 lays down that when any property tax shall have become due, the Commissioner shall, with the least practicable delay, cause to be served upon the person liable for the payment thereof bill for the sum due and prescribes the contents of the said bill. Section 217 lays down the provisions for appeal against the

bill to the Chief Judge of the Small Causes Court which has to be filed within 15 days after the accrual of the cause of complaint. Section 218D provides for an appeal to the High Court from any decision of the Chief Judge relating to property tax upon a question of law or usage having the force of law or the construction of a document.

11. Mr. Banaji submitted that even assuming that the contentions raised by the appellants before the Chief Judge of the Small Causes Court could be considered by the Chief Judge of the Small Causes Court, on a plain reading of the aforesaid provisions contained in Sections 139, 140, 142, 146 and 172 relating to the levy and collection of halalkhor tax, the contentions raised by the appellants are untenable. According to him, Section 140 (6) is the section which defines halalkhor tax as a tax of so much per cent, of the rateable value not exceeding five as will, in the opinion of the Corporation, suffice to provide for the collection, removal and disposal by municipal agency of all excrementitious and polluted matter from privies, urinals and cesspools and for efficient maintaining and repairing the municipal drains constructed or used for the reception or conveyance of such matter. The plain intention of this section is to give power to the Municipal Corporation to levy halalkhor tax. That tax has t o be a certain per cent, below 5 per cent, of the rateable value. The percentage must, in the opinion of the Corporation, suffice to provide for halalkhor services undertaken by the Municipal Corporation. The halalkhor services consist of collection, removal and disposal by municipal agency of all excrementitious and polluted matter. The said matter must be from privies, urinals and cesspools. The ordinary and plain meaning of privy is wide enough to include all kinds of privies, modern and ancient, and particularly privies which were in contemplation of the Legislature when the Bombay Municipal Corporation Act was enacted in 1888, when water-closets with septic tanks were not known. Privy is any kind of a private place to case and must include a water-closet with septic tank which was a later invention. The defining section refers, therefore, not merely to any particular kind of latrines but all kinds of latrines including the generic word ''privy'' used for evacuation of the bowels and bladder of human beings. Civilisation has brought many improvements in this amenity, one of which is water-closet with septic tank, but that is nonetheless a kind of a privy. If any authority were necessary in support of such a proposition reference may be made to the observation of Denman J. in Burton v. Aclon (1887) 51 J.P. 566,:

This kind of closet [a tub-closet] seems to be nothing but the old privy in another form, the tub being a part capable of being removed and emptied from time to time. I think that in every point of view this closet comes within the description of a privy." See "Words and Phrases" by Roland Burrows, Vol. 4 page 347.

12. Mr. Banaji pointed out that although the defining section referred to all kinds of privies, urinals and cesspools, Section 142 which is the charging section divided them into two classes for purposes of imposing the tax. Section 142(1)(a) dealt with privies, urinals and cesspools not connected by a drain with the municipal drain and

Section 142(1)(b) dealt with the class of privies, cesspools and urinals as well as water-closets, bathing places and cooking places connected by a drain with the municipal drain. Mr. Banaji strongly urged that the basis of the contention of the appellants is that because the word ''water-closet'' is used in el. (b), water-closets with septic tanks should be considered as excluded from Clause (a) and this basis is contrary to the plain terms of the section and the scheme of Section 140 (b) and 142. What is excluded from Section 142 (1) {a) is the water-closet connected by a drain with the municipal drain and not water-closets unconnected by a drain with the municipal drain as in the present cases in which the appellants'' properties have water-closets with septic tanks. In my judgment, Mr. Banaji''s contention must be upheld because Section 142(1)(a) was clearly intended to apply to all kinds of privies unconnected by a drain with the municipal drains including water-closets with septic tanks.

13. Mr. Banaji further argues that if that is the correct position in law with regard to the proper meaning of the word ''privy'', then all that is required to levy halalkhor tax u/s 142(1)(a) is

(1) that public notice has to be given in any portion of Greater Bombay by the Commissioner, and

(2) that the said public notice shall declare that the collection, removal and disposal of all excrementitious and polluted matter from privies, urinals and cesspools would be undertaken by municipal agency.

14. Once this requirement is fulfilled, all properties situated in the said area in which the notice is published, are liable to be assessed to halalkhor tax u/s 142(1)(a). Mr. Banaji, therefore, submits that the plain and fair reading of Section 142(i)(a) throws the appellants out of Court with their contention that their properties are not assessable to halalkhor tax because in their properties, they have erected water-closets with septic tanks. He relics for that purpose on the public notices issued by the Commissioner. The first of these notices is at exh. 7 and reads as under :-

BOMBAY MUNICIPAL CORPORATION

Notice under Clause (a) of Sub-section 1 of Section 142 of the Bombay Municipal Corporation Act.

Notice is hereby given under Clause (a) of Sub-Suction 1 of Section 142 of the Bombay Municipal Corporation Act, that the collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cesspools in all portions of the area under the jurisdiction of the defunct Bandra Borough Municipality, Parle-Andheri Borough Municipality, Kettle Borough Municipality, Ghatkopar-Kirol Borough Municipality, Juhu District Municipality, Chembur Village Panchayat, Versova Beach Village Panchayat and Bhandup Village Panchayat will be

undertaken by the Bombay Municipal Corporation.

Sd.

Suburban Central
Office, Bandra,
22-1-1951.

Municipal Commissioner
for Greater Bombay.

Mr. Banaji relies on the finding of the learned Chief Judge (which is not challenged before me) that this notice was duly published as required by law because it was advertised in the newspapers like Indian Express, Lokmanya, Bombay Chronicle, Mumbai Samachar and The Times of India as well as in the Government Gazette Part-II dated January 26, 1051. This notice clearly indicated that the collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cesspools in all the portions of areas mentioned in the said notice would be undertaken by the Bombay Municipal Corporation as required by Section 142(1)(a).

15. Similarly, the notice exh. 11 dated February 11, 1958 which was also held by the learned Chief Judge to be duly published ran as under :

BOMBAY MUNICIPAL CORPORATION

Notice under Clause (a) of sub-section 1 of section 142 of the Bombay Municipal Corporation Act.

Notice is hereby given under Clause (") of sub-section 1 of section 142 of the Bombay Municipal Corporation Act, that the collection removal and disposal of excrementitious and polluted matter from privies, urinals and cesspools in all portions of the area under the jurisdictions of the defunct Malad Municipality, Kandivli Municipality, Mulund Municipality, Borivli Municipality, Goregaon Village Panchayat and Dahisar Village Panchayat will be undertaken by the Bombay Municipal Corporation.

Municipal Offices,
Bombay 24-2-1058.

Sd. V. L. Gidwani.
Municipal Commissioner for
Bombay.

A third notice exh. 12 was given on February 19, 1960 and also published as required by law and ran as follows :-

BOMBAY MUNICIPAL CORPORATION

Notice under Clause (a) of Sub-section (1) of section 142 of the Bombay Municipal Corporation Act.

Notice is hereby given under Clause (a) of Sub-section (i) of section 142 of the Bombay Municipal Corporation Act, that the collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cesspools in all

portions of the following villages specified in Lists I and II of Schedule FF to the Bombay Municipal Corporation Act and the following villages of the Extended Suburbs will be undertaken by the Bombay Municipal Corporation with effect from the 1st April I960:-

Names of the Villages-List I.

1. Borle.

2. Chakala

3. Deonar

4. Hariali-Portion lying west of the Central Railway lane.

5. Kondivate (Bamanpuri)

6. Majas

7. Marol

8. Oshivra

9. Versova, Village (Vesava)

10. Vikroli-Portion lying west of the Central Railway Line.

11. In the village of Chembur and Vadawli (Part so far excluded).

Villages-List II

1. Ambivali (excluding the portion included in the former Parle Andheri Borough Municipality).

2. Bandivali (excluding the portion included in the former Parle-Andheri Borough Municipality).

3. Bhandup-Portion lying East of the Central Railway Line.

4. Brahmanwada.

5. Hariali-Portion lying East of the Central Railway Line.

6. Kanjur-Portion lying East of the Central Railway Line.

7. Kirol-Khalal.

8. Kole-Kalyan (excluding the portion included in the former Bandra Borough Municipality and Aerodrome Area.).

9. Mahul.

10. Mandala.

11. Mankhurd.

12. Maiavli.

13. Sahar.

14. Vadawli (excluding the area included in List I).

15. Vikroli-Portion lying East of the Central Railway Line.

Villages of the Extended Suburbs

1. Akse	9. Goregaon	17. Mulund
2. Akruli	10. Kaneri	18. Nahur
3. Borivoli	11. Kandivli	19. Pahadi
4. Charkop	12. Malad	20. Poisar
5. Chinchavali	13. Malavni	21. Chimpoll
6. Dahisar	14. Mandapeshwar	22. Valnai
7. Eksar	15. Manori	23. Yerangal.
8. Gorai	16. Marve	

The area of some of these villages in the Extended Suburbs either wholly or partly formed the part of the area under the jurisdiction of the Ex-Look Bodies of ''Malad Municipality; Kandivli Municipality; Mulund Municipality; Borivli Municipality; Goregaon Village Panchayat; Dahisar Village Panchayat", and the service is already being rendered in the said areas as per the public notice issued on 24th February 1958.

Sd. V.L. Gidwani

Municipal Offices,
Bombay, Dated 19th February 1960. Municipal Commissio
for Greater Bombay.

According to Mr. Banaji, as the appellants'' properties were situated within the areas mentioned in these public notices, immediately after publication of the said notices, the properties became liable to be assessed for halalkhor tax u/s 142(1)(a) notwithstanding that in these properties, the privies consisted of water-closets with septic tanks and irrespective of any services being actually rendered in the areas mentioned in the notices, because all that Section 142(1)(a) required was giving of the said public notices and once the notices were given, the halalkhor tax could be levied on these properties as the Commissioner had undertaken to collect, remove and dispose of all excrementitious and polluted matter from privies, urinals, cesspools from the notified areas. That is the manifest effect of the section and in view of this, the contentions of the appellants that their properties were not liable for halalkhor tax merely because they were using water-closets with septic tanks or because no services were actually rendered by the Municipal Corporation become

wholly untenable. In my opinion, this argument of Mr. Banaji is unassailable in view of the clear meaning of Section 142(1)(a).

16. Mr. Bhabha, the learned Counsel for the appellants, has, however, advanced seven grounds to persuade me not to accept the contention of Mr. Banaji. The first ground that he urged was that Section 142 being a taxing enactment must be strictly construed and since the word "water-closet" was not used in Section 142(1)(a), it would be stretching the language of the said sub-section to hold that the word ''privy'' in Section 142(1)(a) included a water-closet with septic tank. In support of this argument Mr. Bhabha relied on the provisions contained in Section 142(1)(b) and the other provisions in the Act which made a distinction between water-closet and privies such as Section 248 which is already quoted. Section 142(1)(b) undoubtedly makes a distinction between water-closet and privy, and so do Sections 251 and 251A. But that distinction has a bearing on the context in which the distinction has been made. Section 142(1)(b) deals with the water-closet connected by a drain with the municipal drain and not with a water-closet with a septic tank. It is true that on the interpretation of the word ''privy'' as indicated above, it would have been enough for the purposes of enacting Clause (b) to mention the word ''privy'' without reference to a water-closet. But if the Legislature ex abundanti cautela mentioned water-closet connected by a drain because such water-closets appear to have been in existence at the time when the legislation was enacted after the generic word ''privy'', it would be unreasonable to hold that all other kinds of water-closets such as water-closets with septic tanks would not fall within the word ''privy'' as mentioned in Section 142(1)(a). At the time when the legislation was enacted, water-closet meant a closet or small room fitted up to serve as a privy and furnished with water supply to flush the pan and discharge its contents into a waste-pipe below. It appears that the Legislature did not contemplate the later invention of water closets with septic tanks. It is well settled that the language of a statute is generally extended to new things which were not known and could not have been contemplated when the Act was passed, when the Act deals with a genus and the thing which afterwards comes into existence was a species of it. See Maxwell on Interpretation of Statutes, 12th ed., page 102.

17. Similarly, Clause (3) of Section 142 refers to the provisions of Section 248 which undoubtedly confers on the Commissioner powers in certain circumstances to require the owners of properties to provide water-closet, privy, urinal, bathing or washing place. That does not, however, take away the generic sense of the word ''privy'', especially because when Section 248 was enacted, as stated above, it must have been assumed that water-closets had to be connected with the municipal drain. It may be noticed that in the Oxford English Dictionary it is stated that "sometimes the word ''water closet'' is applied to the pan and the connected apparatus or flushing and discharge, also, loosely, to any kind of privy." In my opinion, merely because the Legislature has placed in juxtaposition the words ''water-closet'' and ''privy'' in some of the sections, it is not open to the appellants to

contend that the word ''privy '' in Section 142(1)(a) cannot include a water-closet with the septic tank. The learned Chief Judge of the Small Causes Court was, therefore, wrong in holding that the water-closets with septic tanks were not included within the expression "privy" in Section 142 (1)(a).

18. The second argument of Mr. Bhabha is that even assuming that water-closets with septic tanks were included in the word ''privy'', the Municipal Corporation had no authority to levy halalkhor tax unless it actually rendered halalkhor services. He submitted that the basis of the tax is halalkhor services to be rendered by the Municipal Corporation to the properties subjected to the tax relying on the provisions contained in Sections 140,142(i)(a) and (b) and Section 172 and the finding of the learned Chief Judge of the Small Causes Court on the evidence before him that no halalkhor services were actually rendered in the areas in which the appellants'' properties were situated for the period for which the taxes were demanded from the respective appellants. His argument is that u/s 140 (b) the halalkhor tax has to be such a per centum of the rateable value as will, in the opinion of the Corporation, suffice to provide for the halalkhor services and for maintaining and repairing the municipal drains constructed and used for these services and unless the services are actually rendered, the Municipal Corporation has no right to demand the tax. This, according to him, is made clear by the fact that the charging Section 142 makes all properties liable, wherever situate, if the privies, water-closets, cesspools, urinals, bathing place or cooking place are connected with the municipal drain, u/s 142(1)(b) which shows that the said properties are receiving the halalkhor services. So far as the other properties mentioned in Section 142(1)(a) are concerned, according to Mr. Bhabha, it is only when the municipal agency has undertaken to do the halalkhor services and not merely when a public; notice is given that the tax can be levied on the properties.

19. This contention must be rejected as it is against the plain terms of the charging section, Section 142, and the defining section, Section 140(fr). In my opinion, the defining section 140 {b) lays down the rule with regard to the determination of the quantum of halalkhor tax and refers in this connection to the opinion of the Corporation regarding the probable cost of rendering halalkhor services and nothing more; and the charging section 142(1)(a), however, lays down that the tax shall be levied immediately after the public notice has been given by the Commissioner stating that the collection, removal and disposal of all excrementitious and polluted matter from privies, urinals and cesspools "will be undertaken" by the Municipal agency. The words "will be undertaken" manifestly mean "will be undertaken in future." The halalkhor tax is a tax for which there cannot be by its very nature quid pro quo. We have to look to the section to find out when the tax is levied and it is, to my mind, very clear that once the public notice as required by Section 142(1)(a) is given, the properties in the area mentioned in the said notice become liable to be assessed to halalkhor tax irrespective of the kind of services, the quantum of services, the time of services which may have to be

rendered by the Municipal Corporation for collection, removal and disposal of all excrementitious and polluted matter,

20. Mr. Bhabha has further relied on the finding of the Chief Judge that no such services are required in respect of water-closets with septic tanks and hence Section 142(1)(a) cannot be attracted. The finding of the learned Judge, in my opinion, is wholly wrong once it is held that water-closets with septic tanks arc privies. The learned Chief Judge appears to have taken the view on considering the evidence led before him as follows : -

54. It now remains to be seen how de-composition and purification takes place in a, septic tank. The Respondent''s witness Mr. Patwardhan has given a. detailed description of the biochemical action undergone by excrementitious end polluted matter discharged in a septic tank as follows, A septic tank is required to carry two functions of sewage treatment. The first function is settling of settable organic and inorganic solids. The second function is digestion of settled organic solids. In a septic tank there arc no separate compartments. Nationally in the upper compartments the function carried out is settling of settable organic and inorganic solids. In the middle part the function of digesting settled organic solids takes place. Digestion means anaerobic decomposition of organic matter.]n the process of decomposition the complex molecules of organic matter are broken down by means of biochemical action into simpler mineral substance. 90% of the sludge is digested and the rest of 10% would take indefinite time for digestion, which may be about two years. For ail technical purposes, according to Mr. Patwardhun, digestion is taken as complete, when 90% of the sludge is digested. In the process of digestion gases are produced which escape in the atmosphere. Part of the organic matter is converted into mineral matter which is stable i. e. which does not undergo further decomposition and part of the organic matter is converted into simpler organic substance. 90% of the sludge which is digested is completely innocuous. As regards the rest of 10% Mr. Patwardhan says that is not harmless for the reason that it contains pathogenic bacteria which cause contagious diseases. He then says that by the process of digestion excrementitious matter which was originally harmful is reduced to a harmless matter subject to the percentage given above. If this is so, shut remains after 00% digestion, which is technically taken as complete digestion, is certainly not the same as excrement Lions and polluted matter in Its original form when collected at source from privies, urinals and cesspools as indicated in Section 142(1)(a).

This view of the learned Judge is based on a misunderstanding of the evidence of Mr. Patwardhan who appears to be an expert in public hygiene. The; misunderstanding is based on not appreciating the technical meaning of the word "digestion". It is common knowledge that even where septic tanks are provided, polluted air and polluted water outlets have to be provided. If, according to the expert Mr. Patwardhan, 10 per cent, of the sludge remains undigested for a period

of two years and that undigested sludge is of excrementitious matter and polluted matter and if this 10 per cent, undigested sludge is to be found in thousands of properties situated in a vast area like the suburbs of Bombay, it is difficult to understand why Mr. Patwardhan''s view that it is not harmless should not be accepted. Even in a water-closet with septic tank, normally, the excrementitious and polluted matter is deposited. Ninety per cent, of it is destroyed, by a biochemical process. The sludge that remains, the gases that come out and the water that is effluent are nevertheless polluted, according to the ordinary sense of the term, and they are polluted because of the excrementitiously matter with which they have come into contact, which was deposited in the water-closet. It cannot, therefore, be said scientifically or according to the ordinary notions of in a kind that halalkhor services are not required for water-closets with septic tanks.

21. Again Clause (b) of Section 142 shows that the rendering of services is not a nine qua non of the levy of the tax because that clause lays down that whenever the Commissioner directs, under Sub-section (2) or (3) of Section 248, that a separate water-closet, privy or urinal need not be required for any premises, the halalkhor tax shall nevertheless be levied in respect of the said premises, if but for such direction, the same would be leviable in respect thereof. Mr. Bhabha has, however, relied on that clause and contended that that clause shows that whenever the Legislature intended to impose the halalkhor tax, despite no services being rendered to the property, the Legislature insisted that there should be special directions by the Commissioner u/s 248 and hence the tax could not be levied irrespective of the rendering of services by the municipal agency. This contention is without any substance because Section 142(1)(a) levies the tax only in respect of the properties in which there are privies, urinals and cesspols. Section 142(1)(b) levies the tax in respect of privies, water-closets, urinals, bathing place or cooking place connected by a drain with a municipal drain. Clause (3) imposes the taxes in certain circumstances only mentioned therein even on properties in which there are no privies or urinals. That clause cannot, therefore, control the plain meaning of Section 142(i)(a) which imposes a tax immediately after a notice is given as required by that section, irrespective of the actual rendering of services by the municipal agency, on the mere undertaking of the municipal agency to render services.

22. Similarly, Section 172 relied on by Mr. Bhabha has devised a special method of fixing special rate of halalkhor tax in respect of any hotel, club or other large premises, whether the service in respect of which such tax is leviable be performed by halalkhors or by substituted means or appliances, Merely because the special rate is to be regulated in the special case of hotels, clubs and other large premises, it cannot be argued that the same rule should apply to other premises which are not covered by Section 172. On the contrary, the very fact that the Legislature has made the special provision in Section 172 indicates that in respect of premises other than hotel, club or other large premises mentioned in Section 172, there need not be any equation between the halalkhor services rendered and the halalkhor tax collected in

respect of the properties. Hence the contention of the appellants that the Municipal Corporation was not authorised to levy the halalkhor tax without actually rendering halalkhor services must be rejected.

23. Thirdly, it was strenuously urged by Mr. Bhabha that inspite of the giving of the notices-exh. 7 in 1951, exh. 11 in 1958 and exh. 12 in 1960,-the Corporation had not recovered the Halalkhor tax for years because although it was stated in the notices that these halalkhor services would be undertaken by the Municipal Corporation, no such services were actually undertaken and further because the Municipal Corporation had exempted the properties having septic tanks not connected to municipal drains. For this purpose he relied on the latest notice of the Municipal Corporation exh. 3 which ran as follows :-

BOMBAY MUNICIPAL CORPORATION
NOTICE

As per the notices given under Clause (a) of Sub-section (1) of section 142 of the Bombay Municipal Corporation Act, on 22-1-1951, 24-2-1958 and 19-2-1960, the work of collection, removal and disposal of all excrementitious and polluted matter from privies, urinals and cesspools in the areas of Suburbs and Extended Suburbs of Greater Bombay has been undertaken by the Municipal Agency and Halalkhor Tax is being levied in respect of all lands and buildings falling in the said areas. However, in tin case of properties having septic tanks not connected to Municipal drains, Halalkhor Tax was not being levied so far under powers vested in the Municipal Commissioner as no Halalkhor service is at present being rendered to these properties. It is now proposed to render Halalkhor service to these properties and to levy Halalkhor Tax at 3% of their rateable value with effect from 1 -4-1963 which the property owners concerned will note and pay Halalkhor tax in respect of their properties charged in the Municipal property tax bill from Ist April 1963,

Municipal Offices, A.U. SHAIKH
Bombay. Municipal Commissioner
16th March, 1963. Greater Bombay.

He also relied on a circular which was sent to the property holders including the appellants along with the bills of halalkhor tax. That circular exh. C-2 is undated, unsigned and does not purport to have been issued by the Municipal Commissioner, but it is admitted in evidence as the Municipal Corporation did not deny that it was sent along with the bills. That circular reads as follows :

BOMBAY MUNICIPAL CORPORATION
Assessment & Collector Department (Suburbs and Extended Suburbs)
Sub : Levy of Halalkhor tax tax in respect of properties equipped with
septic tanks not connected to Municipal drains.

Under the provisions of section 142(1)(a) of the B. M. C. Act properties in the Suburbs and the Extended Suburbs are liable to the levy of halalkhor tax. However, the properties having septic tanks which were not connected to Municipal drains were hitherto exempted from the levy of Halalkhor tax under the discretionary powers of M.C. u/s 142 (2) of the Act. M.C. has now decided to levy Halalkhor tax in respect of these properties also with effect from 1-4-1968 as necessary Halalkhor services are now available through the Municipal Agency.

Relying on the said circular and the said notice, Mr. Bhabha contended that the Municipal Commissioner could have exempted the properties of the appellants from halalkhor tax only u/s 142 (2), although he did not say so anywhere, and once such an exemption was granted, it could not be withdrawn arbitrarily at any subsequent time because the exemption was based on the fact that the appellants'' properties had septic tanks which were not connected to municipal drains.

23. This contention of Mr. Bhabha again is contrary to the plain wording of Clause (2) of Section 142. That clause is a proviso to the main section. That proviso is attracted only if the Commissioner forms an opinion that no excrementitious and polluted matter from privies, urinals and cesspools accumulates or is deposited in certain areas. No such opinion has been expressed by the Commissioner in the notice exh. 8 or in the circular exh. C-2. The notice exh. 8 merely recites a fact that halalkhor tax was not being levied on the properties having septic tanks not connected to municipal drains as no halalkhor service was being rendered to those properties. That does not amount to saying that no excrementitious or polluted matter from privies, urinals or cesspools accumulated or was deposited in water-closets with septic tanks. Even the circular exh. C-2 cannot be relied upon by the appellants because there is nothing therein or in the evidence led before the Chief Judge of the Small Causes Court to show that the contents of the circular were approved by the Municipal Commissioner or any one exercising the powers of the Municipal Commissioner. It is true that that circular exh. C-2 recites that the properties having septic tanks which were not connected to municipal drains were exempted from the levy of halalkhor tax under the discretionary powers of the Municipal Commissioner u/s 142 (2) of the Act and the circular purports to have been issued by the Assessment and Collector Department, Suburbs and Extended Suburbs of the Bombay Municipal Corporation, Even assuming that such a circular has some binding effect on the Municipal Commissioner, all that can be said about it is that some wrong reason is given as to why the taxes were not collected till the bills were sent by some officials of the Assessment and Collector Department because there is nothing before me to show that the Municipal Commissioner had formed an opinion as required u/s 142 (2) of the Act. It may be noted that Clause (2) requires an opinion to be formed that no excrementitious and polluted matter from privies, urinals and cesspools accumulates or is deposited. It is doubtful whether any such opinion can be formed with respect to water-closets and septic tanks which are obviously intended for accumulating and/or depositing such matter as

well as for destroying the same by a biochemical process. I do not, however, wish to express any final opinion on this question in the absence of anything to show before me that an opinion of the kind which is envisaged under Clause (,2) of Section 142 is formed by the Municipal Commissioner.

24. The fourth argument of Mr. Bhabha is that even assuming that halalkhor tax could be levied in respect of properties having water-closets and septic tanks, in view of Clause (2) of Section 142, it was incumbent on the Municipal Commissioner to form an opinion as to whether the excrementitious or polluted matter from privies, urinals and cesspools accumulated or deposited within the meaning of that clause and if he has not done so, no tax could be collected under Clause (1)(a) of Section 142 because the section must be read as a whole notwithstanding that Clause (2) lays down only a proviso to the enacting section. He submitted that in certain circumstances, the rules of interpretation of statutes require a proviso to be construed as an independent provision and the proviso in Clause (2) of Section 142 is mandatory in form inasmuch as it says that no tax shall be recovered in respect of properties with respect to which the Commissioner forms an opinion as stated therein.

25. Now, these rules of interpretation of a proviso are well-known and stated as follows in Maxwell on Interpretation of Statutes, 12th ed. (pp. 189-190) :

Difficulties sometimes arise in construing'' provisos. It will, however, generally be found that inconsistencies can be avoided by applying the general rule that the words of a proviso are not to be taken ''absolutely in their strict literal sense,'' but that a proviso is ''of necessity.... limited in its operation to the ambit of the section which it qualifies.'' And, so far as that section itself is concerned, the proviso again receives a restricted construction: where the section confers powers, ''it would be contrary to the ordinary operation of a proviso to give it an effect which would cut down those powers beyond what compliance with the proviso renders necessary.

The function of the proviso is discussed in great detail in Craies on Statute Law, 6th ed., pages 217 to 224. But it will be enough to refer to the discussion of the rule of construction based on the observations of Romilly, M.R. Per Romilly J. in Preety v. Solly (1859) 26 Beav. 606 and De Winton Brecon, (1859) 28 L.J. Ch. 598 which were as follows:

....''The general rules'',....''which are applicable to particular and general enactments in statutes are very clear; the only difficulty is in their application. The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.'' ''For instance,''....''if there is an authority in an Act of Parliament to a corporation to sell a particular piece of land, and there is also a general clause at the

end that nothing in the Act contained shall authorise the corporation to sell any land that would not control the particular enactment, but the particular enactment would take effect notwithstanding that it was. not clearly expressed and distinct and the insertion of the exception in the general clause would be supplied. If the court finds a positive inconsistency and repugnancy, it may be difficult to deal with it, but so far as it can, it must, give effect to the whole of the Act of Parliament.

I find no such repugnancy or inconsistency between the proviso in Clause (2) and the enacting part in Section 142(1)(a). It cannot be said that the general enacting part overrules the proviso contained in Clause (2). On the contrary, the proviso carves out an exception from out of the premises on which the halalkhor tax could be levied u/s 142(1)(a) and that exception consists of those premises in respect of which the Municipal Commissioner forms an opinion that no excrementitious or polluted matter from privies, urinals and cesspools is accumulated or deposited in the said premises. There is nothing which prevents the Court from giving effect to the entire section in a proper case where the Municipal Commissioner forms such an opinion. In the present cases, no such opinion is formed and it is, therefore, impossible to accept the contention of Mr. Bhabha that the proviso should be interpreted independently of the enacting section or that the proviso compels the Municipal Commissioner in every case where halalkhor tax is levied u/s 142(1)(a) to form an opinion before levying the tax u/s 142(1)(a).

26. The rules of interpretation referred to above relating to the proper construction of a proviso have been considered by the Supreme Court in many cases. It will be enough to refer to the following observations made by Shah J. speaking for himself and Wanchoo J. in Ishverlal Thakorelal Almaula Vs. Motibhai Nagjibhai, while dealing with the proviso which was put in Section 43C of the Bombay Tenancy and Agricultural Lands Act :

The proper function of a proviso is to except or qualify something enacted in the substantive clause, which but for the proviso would be within that clause. It may ordinarily be presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject-matter if the proviso. But the question is one of the interpretation of the proviso: and there is no rule that the proviso must always be restricted to the ambit of the main enactment. Occasionally in a statute a proviso is unrelated to the subject-matter of the preceding section, or contains matters extraneous to that section, and it may have then to be interpreted as a substantive provision, dealing independently with the matter specified therein, and not as qualifying the main or the preceding section.

Applying the principles so stated by his Lordship to the proviso in the instant case, I find that the proviso Clause (2) of Section 142 must be presumed to have been intended to apply to premises which were obviously included in the main enactment contained in Section 142(2)(a). It cannot, be said that the proviso is unrelated to the subject-matter of Section 142(1)(a). Nor can it be said that the proviso contains

matters extraneous to Section 142(1)(a). I, therefore, reject the contention of Mr. Bhabha that this proviso should be construed independently as imposing a duty on the Municipal Commissioner to form an opinion in every case where the halalkhor tax is levied u/s 142(1)(a) which, as stated above, lays down that the tax is levied the moment a public notice is issued.

27. As, in my judgment, there was no duty cast on the Municipal Commissioner to form an opinion before levying the tax u/s 142(2)(a) as required under the proviso, it is unnecessary to deal with the principles to be followed in exercise of the powers of judicial review over opinions formed by governmental or other authorities which are laid down in The Commissioner of Income Tax, Madras Vs. A. Krishnaswami Mudaliar and Others, , in the context of the provisions of Section 18 of the Income Tax Act, 1922; The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , in the context of Section 237B of the Companies Act; and in Rohtas Industries Vs. S.D. Agarwal and Others, , also a case relating to the said provision of the Companies Act. In my opinion, those cases are distinguishable because in those cases, an opinion was formed and was required to be formed under the relevant provisions of the respective Acts whereas in the instant cases, no such opinion was required to be formed by the Municipal Commissioner before levying the tax u/s 142(1)(a) and no opinion was in fact formed by him under Clause (2) of Section 142.

28. The fifth argument of Mr. Bhabha was a corollary to his argument that the Municipal Commissioner had exempted the properties of the appellants from halalkhor tax prior to the notice exh. 3 dated March 16, 1963 which has been already negatived. That argument is that once the exemption is granted, the exemption is liable to be entered into the assessment book u/s 157 and the exemption could not be revoked without following the procedure required to be followed by the Municipal Commissioner u/s 166. In my opinion, this argument is without any foundation because, as held above, there was no exemption granted by the Municipal Commissioner from the levy of the tax u/s 142(1)(a). It appears that prior to March 16, 1963, although the levy was made, the tax was not collected for reasons extraneous to Section 142 (2), such as the non-availability of halalkhor services in the areas and this fact has been loosely described in the aforesaid circular exh. C-2., as an exemption. In fact it will not be correct to describe the exercise of the power under el. (2) of Section 142 as the power of granting exemption. It is a power to form an opinion with regard to the excrementitious or polluted matter from privies, urinals and cesspools and if and when the Municipal Commissioner forms an opinion that no such matter is accumulated or deposited, then the Legislature itself has enacted that no tax can be recovered from properties in which such privies, urinals and cesspools are situated. It lays down a bar on the Municipal Corporation from levying the tax in respect of certain premises which would be ordinarily included in the premises situated in the area in which the notice is given u/s 142(1)(a). There is nothing in Section 157 which requires the opinion of the Commissioner in respect of particular premises to be entered therein. Even

assuming that Mr. Bhabha is right in his submission that it amounts to an exemption, there is nothing before this Court or before the Chief Judge of the Small Causes Court to show that any such exemption was entered in the assessment book relating to the properties, and hence this contention of Mr. Bhabha also must fail.

29. Sixthly, it is contended by Mr. Bhabha that although there is nothing to show that the Municipal Commissioner had formed an opinion as required under Clause (2) of Section 142, the fact that the appeals filed by the appellants before the Chief Judge, Small Causes Court u/s 217 have been resisted on behalf of the Municipal Commissioner and the Municipal Corporation and the fact that in the circular exh. C-2 and the notice exh, 3, exemption from halalkhor tax is referred to, show that the Municipal Commissioner had formed an opinion prior to March 16, 1963, that no excrementitiously or polluted matter from privies, urinals and cesspools accumulated or deposited in the properties of the appellants and then he changed his opinion on or about March 16, 1963, and hence this change of opinion resulted in the issuing of the notice on March 16,1963 and he could not so change his opinion without applying his mind to the facts and circumstances relating to the water-closets and septic tanks situated in the properties of the appellants. This contention again is based on an assumption, viz., that before March 16,1963, the Municipal Commissioner had formed an opinion that the excrementitiously or polluted matter referred to above did not accumulate or deposit and on or after March 16,1963, the Municipal Commissioner formed an opinion that such matter accumulated or deposited. The Municipal Commissioner is an authority functioning under the provisions of the Bombay Municipal Corporation Act and it is not open to the Courts to attribute to him opinions, which he has not formed, in this fashion. As stated above, there is nothing on the record to show that any opinion was formed by him under the proviso contained in Clause (2) and it is impossible to deal with the matter on the hypothesis of such an opinion being attributed to him because of certain circulars such as exh. 3 or exh. C-2 which nowhere refer to the objectionable matter accumulating or depositing.

30. The seventh contention of Mr. Bhabha is that it was stated by the appellants in their appeal memoranda before the Chief Judge of the Small Causes Court that the excrementitiously matter or polluted matter did not accumulate or was not deposited in any of the properties belonging to the appellants and hence no halalkhor services wore required for these properties. The Municipal Commissioner was a party to the appeal. According to Mr. Bhabha, it was the duty of the Municipal Commissioner to file an affidavit or to state on oath that he had not formed an opinion, particularly because evidence was led on behalf of the several of the appellants to show that water-closets and septic tanks did not result in the accumulation or deposit of excrementitiously or polluted matter. Mr. Bhabha sought reliance on the provisions of Section 508, which confers power to summon witnesses and compel production of documents on the Chief Judge of the Small Causes Court and lays down that in all matters relating to proceedings before the

Chief Judge, the Chief Judge shall be guided generally by the provisions of the Presidency Small Cause Courts Act, 1882 as far as the same were applicable. According to Mr. Bhabha, the burden of proof was on the respondent Municipal Commissioner to show that he had formed an opinion one way or the other on the basis of objective facts such as the accumulation of deposit of excrementitiously or polluted matter from privies, urinals and cesspools and he having not done so, an adverse inference should be drawn against the Municipal Commissioner and it should be held that what was contended by the appellants in their appeal memoranda before the Chief Judge of the Small Causes Court should be considered to have been admitted by the Municipal Commissioner.

31. In raising this contention, in my opinion, Mr. Bhabha forgets that Section 217 of the Bombay Municipal Corporation Act provides for an appeal against the bill presented to the property owner and it is for the property owner to establish the grounds on which he wanted to succeed. Although the appellants produced evidence of opinions of witnesses who claimed to be engineers or architects with regard to the working of the water-closets and septic tanks, they were unable to produce anything to show that the Municipal Commissioner had formed an opinion under el. (2) of Section 142 which alone would entitle them to escape; their liability to pay taxes u/s 142(1)(a). Instead of establishing that the Municipal Commissioner had formed art opinion, they led evidence of the opinion of other persons which, in my opinion, is entirely irrelevant for the purpose of Clause (2) in the context of the facts of the present cases. Perhaps, if the Municipal Commissioner had formed an opinion and the appellants were able to establish that such an opinion was formed, all this evidence might have been relevant. I do not wish to express any final opinion in the matter, but it may be that in an appeal u/s 217, the appellants are entitled to challenge the opinion of the Municipal Commissioner if they are able to prove the existence of that opinion. In the present cases, however, no such opinion has been produced or proved and the opinions of other persons cannot be the basis of deciding the appeal. Even assuming that those opinions are relevant, as indicated above, it is still possible to hold, although I do not wish to express any opinion finally in the matter, that the witnesses produced by the appellants themselves show that the excrementitiously and polluted matter is accumulated and deposited in the water-closets and septic tanks and 90 per cent, of it is destroyed more or less immediately by a biochemical process but 10 per cent, in the course of a period of two years. The fact that it is going to be destroyed in course of time does not prevent the conclusion that excrementitious matter or polluted matter is accumulated or deposited, for however short a time it may be, in the premises belonging to the appellants.

32. It was urged by Mr. Bhabha that the matter should be remanded for ascertaining the opinion of the Municipal Commissioner by summoning him u/s 508 because the ground which is urged by Mr. Banaji in this Court with regard to the interpretation of Section 142(1)(a) was not presented in that form before the Chief

Judge of the Court of Small Causes and hence the appellants were not in a position to know that they would be required to prove that the Municipal Commissioner had formed an opinion as required u/s 142 (2). The jurisdiction of this Court u/s 218D of the Bombay Municipal Corporation Act is limited because Section 218D (l)(b), which is the relevant provision so tar as the present first appeals are concerned, lays down that the appeal lies upon a question of law or usage having the force of law or the construction of a document. As stated above, it was for the appellants to establish that the Commissioner had formed an opinion as required under Clause (2) of Section 142, which they have not done. I, therefore, find no reason to give a second opportunity to the appellants to establish that the Municipal Commissioner had formed an opinion as required by Clause (2). Merely because Mr. Banaji has presented an argument based on the proper construction of Section 142(2)(a) and the other relevant sections relating to halalkhor tax, which argument was an argument of law, it cannot be said that a second opportunity should be given to the appellants in the facts and circumstances of the case.

33. In view of these conclusions, the last contention on behalf of the appellants urged by Mr. Bhabha that the learned Chief Judge erred in law in holding that he had no jurisdiction to consider the validity of the halalkhor tax and other contentions raised by the appellants regarding the legality of the levy of the halalkhor tax, really does not survive. Mr. Bhabha relied on the decision of Mr. Justice Tarkunde and Mr. Justice Gokhale in Miraj Municipality v. American Board (1966) 68 Bom. L.R. 519 in which Mr. Justice Tarkunde speaking for the Court considered the earlier decisions of this Court in Anhleshwar Municipality v. Chhotalal, Gopal Mills Co. Ltd. v. Broach Borough Municipality, Balkrishna v. Poona Municipal Corporation, referred to above, and held that a claim to an exemption from consolidated tax on buildings and lands is within the scope of an appeal u/s 86(1) of the Bombay District Municipal Act, 1901. Mr. Bhabha has relied on that decision contending that the provisions of Section 217 of the Bombay Municipal Corporation Act being in pari materia with Section 86 of the District Municipal Act, the learned Chief Judge erred in holding that the contentions regarding the validity of the halalkhor tax were barred and that he had no jurisdiction to consider the validity of the halalkhor tax. There is considerable force in this argument. The contentions raised by the appellants were in substance contentions claiming exemption of the appellants'' properties from halalkhor tax because of inapplicability of Section 142(1)(a) or under Clause (2) of Section 142. But I have come to the conclusion that the appellants'' properties are assessable u/s 142(1)(a) and that Clause (2) of Section 142 is not attracted in the present case. Hence, it is unnecessary for me to go into the question whether the Chief Judge of the Court of Small Causes had jurisdiction to consider the validity of the tax in an appeal u/s 217.

34. Mr. G.J. Desai, the learned Counsel for Burmah Shell Refineries Ltd., while adopting the arguments of Mr. Bhabha further contended that as the appellant Burmah Shell Refineries Ltd. had received a letter exempting their properties from

halalkhor tax, their properties should be held to be not liable to be assessed for halalkhor tax. Mr. Desai conceded that the letter granting the exemption was not produced by the appellants before the Chief Judge of the Court of Small Causes. He, however, prayed that the matter may be remanded to give an opportunity to the appellants to produce the letter and to contend that the exemption was granted under Clause (2). He also relied on the notice exh. 3 and the circular sent with the bills for showing that the exemption was in fact granted. But, as discussed above, the exemption referred to in exh. 3 and the circular is only relating to the decision not to collect the taxes for some time and it is not really an exemption from which an opinion, as required under Clause (2) of Section 142, can be spelt out. If the appellants wanted to show that it was an opinion as required by Section 142 (2), they should have produced the letter and raised the contention before the Chief Judge of the Court of Small Causes. Justice does not require that they should be given a further opportunity to produce the letter,

35. Mr. Pendharkar, one of the appellants who owned the properties and who appeared in person, adopted all the above contentions raised by Mr. Bhabha and Mr. Desai and further submitted that the notices exhs. 7, 11, 12 and 3 were not notices in accordance with law because Section 142(1)(a) empowered the Commissioner to issue notice only in specific areas and not in large areas as are mentioned in the said notices comprising whole villages. There is no substance in this contention because exh. 7 refers to areas under the jurisdiction of certain municipalities and village panchayats. Exhibit 11 refers to areas of certain other municipalities and village panchayats and those areas are specific areas determined under the Bombay District Municipal Act and the Bombay Village Panchayat Act. Similarly, exh. 12 refers to areas forming certain villages whose areas are also determined under the Bombay Land Revenue Code and hence the areas are specific areas within the meaning of Section 142(1)(a).

36. Hence, all the aforesaid findings of the Chief Judge of the Small Causes Court except the finding regarding the publication of notices and the finding regarding the jurisdiction of the Chief Judge (which, as stated above, I do not think it necessary to decide finally) must stand reversed and the order passed by him dismissing the appeals filed by the appellants must be confirmed, although for different reasons as stated above. All the first appeals are, therefore, dismissed with costs. No order as to costs on the cross-objections filed by the respondents in all the appeals.