
(1968) 07 GUJ CK 0014
In the Gujarat High Court

Anil Starch Products Ltd.

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 18-07-1968

Acts Referred:

Land Revenue Rules, 1921 — Rule 81(3), 81(3)

Citation : (1969) 10 GLR 907

Hon'ble Judges : P.N. Bhagwati, C.J;N.K. Vakil, J

Bench : Division Bench

Judgement

P.N. Bhagwati, C.J.—These petitions raise an interesting question of construction of Rule 81(3) of the Land Revenue Rules, 1921. The petitioners are owners in some petitions and lessees in others, of diverse pieces of land situate within the limits of Ahmedabad City. They have put up buildings on these pieces of land and are using them for industrial purposes. One of them, namely, the petitioner in Special Civil Application No. 6 of 1968, has a starch factory while the others have textile mills on the respective pieces of land. Prior to the revision of the assessment impugned in these petitions, N.A. assessment was levied on these pieces of land at the rate of two pies per square yard. Since the period fixed for this assessment expired on different dates the Collector issued notices to the petitioners for revision of the assessment. The revision was sought to be made under Rule 81(3) on the ground that the petitioners' lands were situate in an exceptionally favourable position and the purpose for which they were used was of a special kind. Different rates were proposed for different pieces of land and the petitioners were asked to show cause why the assessment should not be enhanced and levied at those rates. The course of events subsequent to the issue of the show cause notices followed the same pattern in all cases and we will, therefore, state the facts only of one petition, namely, Special Civil Application No. 6 of 1968. The petitioners in this petition, on receipt of the show cause notice, filed their objections against the proposed levy of assessment at enhanced rates. They disputed the applicability of Rule 81(3) and contended that, in any event, assessment should not exceed Rs. 2. 62 per 100 square yards

which was the rate fixed for land held for other textile mills. They also requested the Collector to supply the data on the basis of which he had arrived at the enhanced rates proposed to be levied by him but no such data was supplied to them. The Collector thereafter made an order levying enhanced assessment at the rate of ten naye Paise per square yard under Rule 81(3) for the period upto 31st July 1967. This order was appealed against by the petitioners but the appeal was rejected by the Special Secretary to Government, Revenue Department. Similar orders were also passed in the other cases with this difference that in one case, namely, Special Civil Application No. 123 of 1968, the rate of assessment levied was eight naye Paise per square yard instead of ten naye Paise per square yard. The petitioners thereupon filed the present petitions challenging the validity of the orders levying enhanced assessment (hereinafter referred to as the impugned orders).

2. Since the impugned orders are made under Rule 81(3), the determination of the question as to validity of the impugned orders must obviously depend on a true interpretation of Rule 81(3). But in order to arrive at the right construction of Rule 81(3), it is necessary to look at some of the relevant provisions of the Bombay Land Revenue Code and the Land Revenue Rules as well, for it is well settled that a statutory provision cannot be construed in isolation but it must be construed in its context and setting and its meaning must be gathered in the light of other related provisions. The basic principle underlying the Code is that the State is the owner of all unalienated land and the holder is merely an occupant entitled to its use and occupation on payment of land revenue to the State: all unalienated land is liable to payment of land revenue unless wholly or partially exempt from it. This principle is declared in Section 45 of the Code and Section 52 then proceeds to state:

(1) On all lands which are not wholly exempt from the payment of land revenue, and on which 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;

(2) After the expiry of the period for which the assessment of any land is fixed under Sub-section (1), 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 confers rule-making power on the State Government and in exercise of this power the State Government has made the Land Revenue Rules, 1921.

Chapter XIV of these Rules contains a fasciculus of rules commencing from Rule 80 and ending with Rule 91 relating to imposition and revision of non-agricultural assessment in case of unalienated land. Rule 80B enacts a general rule in conformity with Section 52 that when land which is held or used for any non-agricultural purpose is assessed under the provisions of Section 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 and it reads as follows:

(1) For the purpose of determining generally the rate of non-agricultural assessment leviable, the Collector shall subject to the approval of the Divisional Officer from time to time, by notification published in the Official Gazette, divide the villages, towns and cities in his district (to which a standard rate under Rule 82 has not been extended) into two classes.

(2) The assessment shall then be fixed by the Collector at his discretion subject to the general or special orders of the provincial Government at a sum per square yard within the following limits:

Maximum--For Class I land 2 pies.

--For Class II land 1 pie.

Minimum--The agricultural assessment.

In fixing the rate within the above limits due regard shall be had to the general level of the value of lands in the locality used for non-agricultural purposes. (3) 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 favourable position, 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 his order levying the higher rate with the reasons recorded by him". Rule 82 deals with special rates of assessment and says 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 under Rule 81. The area notified by the State Government for the applicability of Rule 82 is commonly known as standard zone since the rate of non-agricultural assessment determined under Rule 82 is described in clause III of that Rule as standard rate. It was common ground between the parties that the area in which the land of the petitioners is situate was not a standard zone and Rule 82 was accordingly not applicable. Non-agricultural assessment of the petitioners land was consequently made under Rule 81 and the Collector acted

under Rule 81(3) in levying enhanced assessment at the rate of eight or ten naye Paise per square yard which was a rate higher than the maximum provided under Rule 81(2). The question is whether, on the facts of each case, the Collector was entitled to act under Rule 81(3) and if he was so entitled, whether the impugned orders levying enhanced assessment were made in compliance with the requirements of Rule 81(3).

3. The first contention of the petitioners was that the Collector was not entitled to act under rule 81(3) since the condition which gave him power to do so was not fulfilled. Rule 81(3), submitted the petitioners, conferred power on the Collector to levy enhanced assessment exceeding the maximum prescribed under Rule 81(2) but this power was subject to the condition that the land is situate in an exceptionally favourable position or is used temporarily for a non-agricultural purpose or the purpose for which it is used is of a special kind. This condition as to the nature of the land or purpose was a condition precedent to the existence of the power, under Rule 81(3) and the Collector had no power to levy enhanced assessment under Rule 81(3) unless it was fulfilled. The argument of the petitioners was that this condition precedent was not fulfilled in any of its branches and there was, therefore, no power in the Collector to levy enhanced assessment under Rule 81(3). This argument proceeded on the assumption that the condition precedent related to a jurisdictional fact on the existence of which depended the jurisdiction of the Collector to act under Rule 81(3) and it was therefore open to the Court to examine whether in fact it was fulfilled or not. But if we look at Rule 81(3) in the context of Section 52 and Rule 81(2), it is clear that this assumption is not correct. The nature of the land or purpose whether it falls within the specified category or not is a fact in Issue and not a jurisdictional fact. Section 52 confers jurisdiction on the Collector to levy assessment and in exercise of this jurisdiction the Collector has to act in accordance with the rules made u/s 214. One of the rules made u/s 214 is Rule 81 and therefore wherever that rule is applicable, the Collector has to comply with that rule in levying assessment in exercise of his jurisdiction u/s 52. Now the general rule embodied in Rule 81(2) is that the Collector must fix the rate of assessment within certain limits, the maximum being two pies 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 and in fixing the rate, he must have due regard to the general level of the value of land in the locality used for non-agricultural purposes. The Collector cannot fix a rate higher than the maximum: that is a limitation which he has to observe in exercising his jurisdiction u/s 52. But a departure from this general rule is permitted under Rule 81(3). Where land is situate in an exceptionally favourable position or is used temporarily for a non-agricultural purpose or the purpose for which it is used is of a special kind, the Collector may, for special reasons to be recorded in writing, levy assessment at a rate higher than the maximum. The Collector has, therefore, to find for the purpose of levying assessment whether the land is situate in an exceptionally favourable position or is used temporarily for a non-agricultural purpose or the

purpose for which it is used is of a special kind These are facts to be determined by the Collector in the process of assessment. The Collector is the assessing authority and it is for him to decide in exercise of his jurisdiction all questions which arise in the course of assessment and one of such questions is whether the land is situate in an exceptionally favourable position or is used temporarily for a non-agricultural purpose or the purpose for which it is used is of a special kind. It is no doubt true that the Collector can levy enhanced assessment only where the condition is satisfied that the land is situate in an exceptionally favourable position or is used temporarily for a non-agricultural purpose or the purpose for which it is used is of a special kind but whether the condition is satisfied or not is a matter left to the determination of the Collector In exercise of his jurisdiction to levy assessment 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. 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 taken into consideration matters which are irrelevant to what he had to consider. If the determination of the Collector is so unreasonable that no reasonable authority could ever have come to it, then also, the Court can interfere. All these would be instances of non-application of mind or unreasonable exercise of power attracting exercise of the corrective jurisdiction of this Court. It therefore becomes necessary to examine whether the determination of the Collector in the present case suffers from any of these infirmities.

4. It is apparent from the impugned orders in each case that the finding on which the Collector held he was entitled to levy enhanced assessment under Rule 81(3) was that the petitioners' land was situate in an exceptionally favourable position and the purpose for which the land was used was of a special kind. The question is whether this finding is liable to be set aside on any of the grounds discussed above. Taking up the first part of the finding, namely, that the petitioners' land is situate in an exceptionally favourable position, the only facts found by the Collector on which this determination is based are: (1) that the land is situate on the main road in the locality, and (2) that the land is used for a starch factory or a textile mill, as the case may be. It is impossible to see how these facts can possibly lend themselves to the inference that the land is situate in an exceptionally favourable position. It may be noted that the words used are not "favourable position" simpliciter, but "exceptionally favourable position". The word "exceptionally" is a strong word and when used as an adverb qualifying an adjective it signifies possession of the particular characteristic in an extraordinary or unusual measure. "Exceptional" according to Webster's Dictionary, means "unusual, uncommon, extraordinary". The situation of the land must therefore be not just favourable but unusually or extrajudicially favourable: something out of the ordinary: favourable in an unusual or outstanding degree. There must be a distinctiveness or uncommonness about the favourability of the situation which

distinguishes it from other lands situate in a favourable position. Moreover, the quality of being situate in an exceptionally favourable position is not an absolute quality unrelated to the use of the land. Whether the land is situate in exceptionally favourable position would necessarily have to take into account the use of the land. What may be exceptionally favourable position for a starch factory may not be so for office premises and what may be exceptionally favourable position for office premises may not be so for a residential building. The question has always to be determined from the point of view of the use to which the land is put or intended to be put and that is also borne out from the context of Rule 81(3) which contemplates determination of the question with reference to "non-agricultural use in question". It may also be noted that diverse considerations would enter into the determination of this question for it is a factor of various determinants. To illustrate, nearness of railway station, proximity of marketing centre, facilities of water supply, etc., are some of the determinants which would bear upon the question whether the land is situate in an exceptionally favourable position. The Collector in the present cases has however completely misapprehended the true scope and meaning of the expression "exceptionally favourable position". He has failed to give due effect to the word "exceptionally" and equated "exceptionally favourable position" with "favourable position" simpliciter. He has also failed to take into account various relevant considerations. The only consideration he has taken into account is that the land is situate on the main road in the locality. It is extremely debatable whether for a starch factory or a textile mill which does not depend on attracting custom from retail buyers, being on the main road can at all be regarded as a favourable position-as indeed it would be for a restaurant or a cloth shop or a provision store or a commercial establishment but even if we grant that it is a favourable position, it certainly cannot be said to be "exceptionally" favourable position. It is common knowledge that there are many factories and mills in this city situate on some main road or the other and to say that all factories and mills situate on the main road are situate in an exceptionally favourable position would be to deny full meaning and force to the word "exceptional" and to treat it as non-existent. The test to be applied is whether the position of the land unusually or extraordinarily favourable from the point of view of use for a starch factory or a textile mill and being on the main road, without more, clearly does not satisfy this test. There must be something more-some characteristics or features relating to the land which distinguish the land from other lands situate in a favourable position and render the position of the land favourable in an extraordinary or unusual degree. No such characteristics or features are found by the Collector to exist in the present cases. The only ground on which the Collector has held the petitioners' land to be situate in an exceptionally favourable position is that it is situate on the main road in the locality and in doing so, the Collector has clearly applied a wrong test to the facts found: he has ignored the word "exceptional" and failed to give due effect to it. Moreover, his determination is in any event so unreasonable that, on the facts found, without anything more, no reasonable authority could ever have come to such a

determination. We must, therefore, hold that the determination of the Collector on this point is bad and the petitioners' land in each case, on the facts found, cannot be said to be situate in an exceptionally favourable position.

5. Turning to the second part of the finding, namely, that the purpose for which the petitioners' land is used, is of a special kind, the question arises: what is the true meaning of the words "purpose...of a special kind" in the context of Rule 81(3). These words must be construed according to their plain natural sense and so construed, they mean special purpose as distinguished from ordinary or normal purpose. The purpose in order to be a purpose of a special kind must be different from that for which land is ordinarily used in the city: it must be use other than that to which land is normally subjected in the city. The object of the rule-making authority seems to be that if land is subjected to a special use as distinguished from ordinary or normal use, the occupant must bear a higher impost for making such special use of the land. Now evidently, what is a purpose of a special kind is a relative concept. What is a special use in one area or locality may be an ordinary or normal use in another, depending on the state of development in the area or locality. The question whether the purpose for which the petitioners' land is used is a purpose of a special kind must, therefore, be determined having regard to the fact that the petitioners' land is situate in a city like Ahmedabad. The city of Ahmedabad is admittedly a highly industrial city and in such a city, it is not possible to regard industrial use of land as a special kind of use. In a modern industrial city, Industrial use is as much an ordinary or normal use of land as residential or commercial use. The purpose for which the petitioners' land is used, namely, starch factory or textile mill, cannot, therefore, possibly be regarded as a purpose of a special kind within the meaning of Rule 81(3). It is a normal or ordinary purpose for which land is used in any modern flourishing industrial town. The determination of the Collector to the contrary is clearly unreasonable and such that, on the facts found, no reasonable authority could have ever come to it. The Collector has on a misapprehension of the true meaning and significance of the expression "purpose...of a special kind", applied a wrong test for determining what is a purpose of a special kind and failed to take into account the fact that the petitioners' land is situate in a highly industrial city like Ahmedabad. The determination of the Collector on this point is, therefore, bad and it must be held, on the facts found, that the purpose for which the petitioners' land is used is not a purpose of a special kind within the meaning of Rule 81(3).

6. We therefore reach the conclusion that the condition as regards the nature of the land or purpose set out in Rule 81(3) was not fulfilled in the present cases and the Collector was, not entitled to levy enhanced assessment under Rule 81(3). This conclusion would be sufficient to dispose of the present petitions, rendering It unnecessary to consider the other contentions urged on behalf of the petitioners, but since the other contentions were argued before us in some detail, we shall briefly deal with them. One contention urged on behalf of the petitioners was that it was a mandatory requirement of Rule 81(3) that the

Collector must have special reasons for levying assessment at a rate higher than the maximum and he must record such reasons in writing and this mandatory requirement was not satisfied in the case of the impugned orders. The respondents did not dispute the requirement that there must be special reasons recorded in writing where the Collector levies assessment at a rate higher than the maximum under Rule 81(3) but their argument was that this requirement was satisfied inasmuch as special reasons for levying assessment at a rate higher than the maximum were recorded in the impugned orders. Now the reasons given in the impugned orders are compressed in a rather cryptic expression, namely, "considering all the above facts" and we are therefore referred to the facts stated in the impugned orders. These facts, according to the contention of the respondents, are four-fold, namely, (1) the petitioners' land is not in a standard zone; (2) it is situated on the main road in the locality; (3) it is used for a starch factory or a textile mill, as the case may be, and (4) so far as Special Civil Application No. 6 of 1963 is concerned, the petitioner is "one of the biggest starch manufacturing companies in the whole of Gujarat. "Can these facts be said to constitute special reasons within the meaning of rule 81(3)? That raises a question as to what is the precise scope and content of the requirement as to special reasons contained in Rule 81(3).

7. Now, as pointed out above, the general rule in regard to fixation of the rate of assessment is that the Collector cannot levy assessment at a rate higher than the maximum prescribed under Rule 81(2). But Rule 81(3) permits him to depart from the general rule where the land or purpose falls within the particular category specified in that Rule. Where the Collector finds that the land or purpose falls within the specified category, he can levy assessment at a higher rate: the fetter on his power is removed. But it is not in all cases where the fetter is removed and he can fix a higher rate of assessment that he would necessarily do so. He would have to ask himself in each case: "Here the land or purpose falls within the specified category and I am therefore at liberty to levy assessment at a higher rate if I so choose but shall I do so in this case?" Now Rule 81(3) says that he may do so provided he has "special reasons to be recorded in writing." He would therefore have to put a further question to himself, "Have I special reasons why I should levy assessment at a higher rate in this case." "Special reasons" must obviously be reasons peculiar to the facts of the particular case and they cannot be equated with the fulfilment of the condition that the land or purpose should fall within the specified category. That the land or purpose should fall within the specified category is a basic condition which has to be satisfied in all cases where the power to levy assessment at a higher rate is sought to be exercised but there must be special reasons why in a particular case where the condition is satisfied, the power should be exercised and assessment levied at a higher rate. "Special reasons" must therefore necessarily be reasons other than the fulfilment of the condition: they must be reasons peculiar to the particular case. Or else the words "special reasons" would cease to have meaning and effect. The rule making authority has deliberately and advisedly used the words

"special reasons" instead of "reasons" simpliciter and we would be denying full effect to these words-to the adjective "special"-if we regard the fulfilment of the condition as to the nature of the land or purpose as a special reason. There is nothing special about such reason for it is a reason generally applicable in all cases under Rule 81(3).

8. These is also one other aspect of this question which requires to be noticed. What Rule 81(3) on a plain natural construction of its language requires is that special reasons must be given for levying assessment at a rate higher than the maximum. If, therefore, a particular rate higher than the maximum is fixed, special reasons would have to be given for levying assessment at such higher rate. The exercise of the power to levy assessment carries with it the determination of the rate and therefore when the law requires that special reasons must be given for levying assessment at a rate higher than the maximum, the special reasons must go to the justification of the particular higher rate. The process is one integrated process and it cannot be split up by saying that special reasons must be given for exceeding the maximum but not for fixing of a particular higher rate. There must be special reasons for fixing a particular higher rate and those special reasons would necessarily be based on the peculiar facts of each case. The respondents however urged that this construction should not be accepted, the fixing of a particular higher rate would always be a matter of judgment and discretion and reasons can possibly be given for justifying a particular higher rate. But this argument, if valid, would frustrate the very object of the requirement that special reasons must be given. Special reasons are insisted upon by the rule making authority because the Collector is given the power to depart from the general rule and wherever he departs from the general rule, he is required to give special reasons so that the citizen knows what are the reasons special to his case for which he has been treated differently and there is also a check against arbitrariness and discrimination on the part of the Collector. If the requirement of special reasons is held inapplicable to the fixation of a particular higher rate, it would open the door to arbitrariness and discrimination and the citizen would not know why in his case the Collector has fixed a particular higher rate while in another the Collector has fixed a different higher rate. Without special reasons in regard to fixation of a particular higher rate, the appellate or supervisory jurisdiction of the superior officer would also be stultified and it would not be possible for the superior officer to effectively exercise his appellate or supervisory jurisdiction in so far as fixation of particular higher rate is concerned. There is no reason why we should read the plain and unambiguous language of the Rule in such a narrow and constricted manner so as to absolve the Collector from the obligation to give special reasons why he is fixing a particular higher rate in the case before him. We also do not see any practical difficulty in insisting upon this requirement. When the Collector fixes a particular higher rate, he obviously cannot fix it arbitrarily, for in no case does the law allow arbitrary exercise of discretion. He would have to exercise his discretion in fixing a particular higher rate according to certain policy and

principle and this policy and principle which, in the light of the facts of the particular case, guides him to reach the decision to fix a particular higher rate would constitute special reasons for fixing the particular higher rate. The Collector must, therefore, give special reasons for fixing a particular higher rate when he is acting under Rule 81(3).

9. Let us examine in the light of this discussion whether the facts relied upon by the respondents constitute special reasons within the meaning of Rule 81(3). Of the facts stated in the impugned orders, the first appears to have been mentioned only for the limited purpose of showing how "a question has arisen for fixing of N.A. Assessment as per Rule 81(3). " The Collector for the purpose of levying assessment had first to determine under which provision-Rule 82 or Rule 81-he should proceed and he therefore considered that question at the outset and held that since the petitioners' land is not situate in the standard zone. Rule 82 would not apply and assessment would have to be made under Rule 81(3). This fact was relied upon by the Collector for the purpose of determining whether he should proceed under Rule 82 or Rule 81 and not for the purpose of levying assessment at a rate higher than the maximum. The second and the third facts relate to the fulfilment of the condition as to the nature of the land or purpose and they obviously could not, for reasons already discussed, constitute special reasons. The fourth fact is peculiar only to Special Civil Application No. 6 of 1968 and it cannot avail the respondents in the other petitions. It is therefore evident that so far as the petitions other than Special Civil Application No. 6 of 1968 are concerned, there are no special reasons given in the impugned orders for levying assessment at a rate higher than the maximum. The fourth fact can perhaps be "relied upon as a special reason in Special Civil Application No. 6 of 1968 but even that cannot help the respondents, for it does not afford any reason for fixing a particular higher rate, namely, eight naye Paise per square yard. There are in fact no special reasons given in the impugned order in any of the petitions for fixing a particular higher rate. The facts stated in the impugned orders have no nexus to the particular higher rate: there is no co-relation between them. There are no reasons, much less special reasons, to show why the rate of eight naye Paise per square yard is fixed in Special Civil Application No. 6 of 1968 and the rate of ten naye Paise per square yard in the other petitions. There is clearly a breach of the mandatory requirement of Rule 81(3) and the impugned orders must therefore be held to be bad on the further ground that they are not in compliance with Rule 81(3).

10. The next contention urged on behalf of the petitioners was that the fixation of the rate of assessment in the impugned orders was bad inasmuch as the said rates exceeded the maximum limit prescribed by Rule 81(3). Rule 81(3), argued the petitioners, provided that the higher rate of assessment fixed under that provision should not exceed fifty per cent of the annual estimated rental value of the land "when put to non-agricultural use in question". The argument of the petitioners was that the rate of assessment fixed under the impugned orders exceeded fifty per cent of the estimated annual rental value of the land

calculated as at the date when it was first put to use for a starch factory or a textile mill and there was therefore violation of the maximum limit fixed under Rule 81(3). This argument was based on the premise that the expression "when put to non-agricultural use in question" was intended to indicate the point of time at which the estimated annual rental value of the land should be calculated for the purpose of determining the maximum limit. But this argument is based upon a misconception of the expression "when put to non-agricultural use in question". The expression "when put to non-agricultural use in question" does not indicate the time at which the estimated annual rental value of land is to be calculated but it merely describes the basis on which the estimated annual rental value of the land is to be determined. It is an adverbial clause which prescribes condition and not time. On a proper construction of this clause, the annual rental value of the land is to be calculated at the date of assessment on the basis that it is put to the non-agricultural use in question and not that it is to be calculated as at the date when the land were first put to the non-agricultural use in question. The latter construction would clearly break down in a case where the land is sought to be put to non-agricultural use for the first time. The maximum limit is therefore to be determined by applying fifty per cent to the annual rental value of the land calculated at the date of assessment on the basis that the land is put to the non-agricultural use in question and the higher rate of assessment fixed under Rule 81(3) should not exceed such maximum limit. If this be the right construction as we hold it is, it was not disputed on behalf of the petitioners that the rate of assessment fixed under the impugned order did not exceed the maximum limit prescribed under Rule 81(3)" This contention of the petitioners therefore fails and is rejected.

11. What we have said above applies as much to the impugned orders made in appeal by the Special Secretary as to the impugned orders made by the Collector for the former do not contain any additional or different reasons than those contained in latter. The same infirmities also vitiate the impugned orders made in appeal by the Special Secretary.

12. We may add that besides the contentions discussed above, two or three other contentions were also raised on behalf of the petitioners but we are not dealing with them since the conclusion reached by us in regard to the above contentions is sufficient to dispose of the petitions.

13. We, therefore, allow the petitions and make the rule in each petition absolute by issuing a writ of mandamus quashing and setting aside the orders made by the Collector and confirmed in appeal by the Special Secretary levying enhanced assessment on the petitioners' lands under Rule 81(3). The respondents will pay the costs of the petitioners in each petition.