
(1974) 09 CAL CK 0003
In the Calcutta High Court

Gauri Nath Shastri and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-09-1974

Acts Referred:

Estate Duty Act, 1953 — Section 57(1)
Succession Act, 1925 — Section 31, 31(4), 317
West Bengal Court Fees Act, 1970 — Section 28, 31, 31(3), 31(4), 31(5)

Citation : 79 CWN 961

Hon'ble Judges : S.K. Roy Chaudhuri, J

Bench : Single Bench

Advocate : Tapas Banerjee and Suresh P. Majumdar, for the Appellant; Ganen Roy, for the Respondent

Judgement

S.K. Roy Chaudhuri, J.—This is a writ petition challenging an order dated 9th of March 1974 and a notice dated the 12th of March, 1974 and two Memos both dated 27th of March, 1974 and the same be quashed and set aside and for other appropriate writs. The Rule was issued on the 25th of April, 1974 and an interim injunction was granted in terms of prayer (c) of the petition. Thereafter directions were given for filing affidavits on the 30th of May, 1974 and the matter came up for hearing before me.

2. The question involved in this case seems to be of considerable public importance, as it falls to be determined and defined the power and jurisdiction of the Collector u/s 19H and Section 19E of the Court Fees Act, 1870 which correspond to section 31 and Sec. 28 of the West Bengal Court Fees Act, 1970.

3. Relevant facts are : One Nitya Gopal Ghose died leaving a Will dated the 22nd of February, 1968. On the 28th May, 1970 Probate of the Will was granted to the petitioner Dr. Gauri Nath Shastri, ex-Vice-Chancellor of the Benaras Sanskrit University and the petitioner No. 2 Sourindranath Datta, a well known Solicitor of this Court and one Bimal Chandra Mitra (since deceased) as executors named in the Will in Testamentary Matter No. 46 of 1970 after making full disclosure and

inventory of the properties of the deceased containing the valuation of the assets and liabilities as required under the Act and the Rules. Copy of the said affidavit of assets as affirmed by the executors is annexed to the petition and marked with the letter "A". It is alleged that the said valuation of the properties in the affidavit of assets were made by a qualified Accountant with the help of a competent valuer and thereafter on the basis of the said valuation and provisional estimate of the assets the Estate duty was paid by the executors u/s 57(1) of the Estate Duty Act, 1953. A certificate granted by the Assistant Controller of the Estate Duty dated the 28th of November, 1969 is also annexed to the petition and marked with the letter "B". It is admitted that due notice of the said application for Probate in this Court in Matter No. 46 of 1970 was duly given by this Court u/s 19H(2) of the Court Fees Act, 1870 to the Board of Revenue, West Bengal, the respondent No. 2 in this petition. It appears that by an ex parte order dated the 9th of March, 1974 where it has been alleged that the respondent No. 1 Dr. Gauri Nath Shastri has refused to appear on several dates mentioned in the said order and the valuation was made ex parte on the basis of available papers before the Probate Duty Collector in the Probate Enquiry Case No. 3 of 1970-71 Estate Nitya Gopal Ghosh and a sum of Rs. 23,859.65 was determined as the deficit stamp duty on the basis of an alleged under estimation of valuation of the properties of the deceased. The said impugned order dated the 9th of March, 1974 is annexure "C" to this petition. Thereafter it is alleged that a notice dated the 12th of March 1974 being Notice No. 471, the respondent No. 4 alleged to have served on the petitioner No. 1 asking him to amend the valuation and pay the said additional stamp duty of Rs. 23,859.65 p. within one week from the receipt of the said notice. The notice also contained a detailed statement of such alleged under estimation of valuation and is annexure "D" to the petition. It appears that the respondent No. 1 made over the said purported notice dated the 12th of March, 1974 to the petitioner No. 2 and the petitioner No. 2 by his letter dated the 29th of March, 1974 challenged the said notice and stated that the said notice was received by the petitioner No. 1 on the 23rd of March, 1974. It was inter alia alleged in the said letter dated the 29th of March, 1974 as written to the respondent No. 4 that order was ex parte, arbitrary and violative of natural justice and also asked for fresh enquiry with notice to the petitioner No. 2 and also the coexecutor petitioner No. 1. Then it appears that the respondent No. 4 purported to serve two impugned notices both dated the 27th of March, 1974 and alleged to have been signed by him on the 26th of March, 1974 and posted on 30th of March, 1974 and received by the petitioner No. 1 on the 2nd of April, 1974. The original postal cover was produced before me at the time of hearing of this petition and it clearly appears from the postal stamps on the said envelope that the said letter was posted after the letter dated the 29th of March, 1974 of the petitioner No. 2 which is annexure "E" to the petition. Thereafter the Solicitor for the petitioners by their letter dated the 4th of April, 1974 written to the respondent No. 4 challenged the said memos and notices dated the 12th of March, 1974 and dated the 27th of March, 1974 on various grounds inter alia that the alleged valuation was ex parte

and violative of natural justice and the orders and notices are illegal, malafide and void. Thereafter the present application was moved on the 25th of April, 1974 and the Rule and the interim injunction were obtained.

4. Dr. Tapas Banerjee with Mr. Suresh Prosad Majumdar appearing for the petitioners drew my attention to the annexures of the petition being the order of the Probate Deputy Collector dated the 9th of March, 1974 and the notices dated the 12th of March, 1974 and the two notices dated the 27th of March, 1974 being the impugned orders and the notices in this Writ application. Dr. Banerjee submitted after producing the envelope which contained the notice dated the 27th of March, 1970 being Memo No. 680 from which it clearly appears that the alleged Memos were posted after the date it bears. On the face of the said Memo it appears to have been signed on the 26th of March, 1974 and the Memo is dated the 27th of March, 1974. It appears from the Postal Seal on the cover that the same was posted on the 30th of March, 1974 and was received by the petitioner No. 1 on the 2nd of April, 1974. It further appears that the purported notice of demand dated the 12th of March, 1974 by which the respondent No. 4 intimated the petitioner No. 1 that he had made an enquiry and formed an opinion u/s 19H(3) of the Court Fees Act, 1870 that the value of the property of the deceased has been under estimated and demanded a sum of Rs. 23,859.65 to be paid within a week from the date of receipt of the notice. The said notice appears to have been received by the petitioner No. 1 on the 23rd of March, 1974. Dr. Banerjee also pointed out that no such notice was served on the petitioner No. 2, the Co-executor. Dr. Banerjee pointed out that by the said notice dated the 12th of March, 1974 the petitioner No. 1 was required to pay the said sum and amend the valuation within a week from the receipt of the notice. But before the time period expired the Memo No. 680 signed by the respondent No. 4 on the 26th of March, 1974 and dated the 27th of March, 1974 was issued u/s 19E of the Court Fees Act, 1870 threatening to impose penalty if the said additional stamp duty alleged to be due from the petitioners and not paid within a week from the date. From these facts Dr. Banerjee rightly submitted that at no point of time any notice of alleged under estimation of the valuation of the property by the petitioners were served as recorded in the said impugned order dated the 9th of March, 1974 being Annexure "C". He also submitted that all the said notices are in violation of and ultra vires the Court Fees Act Section 19H and 19E and as such illegal and void. Dr. Banerjee also submitted that the way in which the alleged service of the Memo dated the 27th of March, 1974 is sought to be made clearly indicates the mala-fide intention of the petitioner No. 4 to avoid statutory provisions of the Court Fees Act 1870 which is now repealed by the West Bengal Court Fees Act, 1970 and the corresponding provision is Section 31 of the new Act. Dr. Banerjee's submission was that the provision of section 19H(3) of the Court Fees Act 1870 makes it obligatory on the respondents to take evidence and hear the petitioners in case the respondents form an opinion that the valuation is under-estimated in the Probate application made by the petitioners. He submitted that the words are

used "may, if he thinks fit" but with reference to the context and the scope and object of the Court Fees Act it is a duty on the part of the respondent Nos. 3 and 4 to take evidence and give opportunity to the petitioners to be heard before the respondent Nos. 3 and 4 can require the petitioners to amend the valuation. He further submitted that it is only the court has power to fix the valuation in case of alleged under-estimation in an application by the respondent No. 3 to the Court under the provisions of Section 19H(5) of the Court Fees Act, 1870 corresponding to Section 31(5) of the West Bengal Court Fees Act, 1970. In support of his proposition Dr. Banerjee referred to two decisions of this Court in *Pritish Kumar Mitra v. Prosanta Kumar Mitra and another*, 74 C.W.N. 272 at 276 where the provision of section 19H of the Court Fees Act has been interpreted and it has been held that the Collector should hold an enquiry if he is of the opinion that the property has been under-estimated and may require the petitioner to amend the valuation and if the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court and when the Court is so moved it shall hold or cause to be held an enquiry and record a finding as to the true valuation. Relying on those observations in the Division Bench judgment of this Court Dr. Banerjee rightly submitted that the obligation of the Collector clearly laid down by the said decision under the provisions of section 19H of the Court Fees Act, 1870 that he should hold an enquiry in case he forms an opinion that the valuation of the property was under-estimated. Dr. Banerjee also referred to two other decisions of this Court in *Nikunja Rani Chowdhurani v. Secretary of State for India in Council*, 20 C.W.N. 504 and also in *the Goods of Stevenson*, 6 C.W.N. 898 for the proposition that it is only the Court which can ultimately ascertain the true valuation of the property in case the Collector on enquiry finds that there is an under-estimation of the valuation of the property and the petitioner failed to amend the valuation to the satisfaction of the Collector. It is then and then only the Collector has a duty to apply to the Court which would hold an enquiry into the true valuation under the provision of the said Act. I may point out that Mr. Ganen Roy appearing for the respondents in his usual fairness has conceded that in this case there is no evidence of service of notices on the petitioner before the order dated the 9th of March, 1974 was made by the respondent No. 4. The materials in the records would not show conclusively that such notices were served as a fact. Mr. Roy further conceded that the Collector or the Deputy Probate Collector has no power to finally ascertain the alleged underestimation of the valuation of the property of the petitioner and it is only the Court which is the ultimate authority and empowered to finally fix the true valuation and ascertain the alleged under-estimation and as such the alleged notice threatening to impose penalty on the petitioner cannot be upheld in law and must be quashed and set aside.

5. Mr. Ganen Roy mainly relied on the provisions of Section 19H(3) of the Court Fees Act, 1870 which corresponds to Section 31(3) of the West Bengal Court Fees Act, 1970 and submitted that after the preliminary enquiry which is to be made ex parte by the Collector it is the absolute discretion of the Collector to

hear the petitioners or not to take evidence. The said sub-section does not impose any duty or obligation on the Collector to hear the petitioners and hold an enquiry. But he submitted that in every case notices were served on the petitioners of the applications for Probates, before they are required to amend the valuation on the ground of under-estimation. Mr. Roy conceded that in the facts of this case the said notices and the order must be set aside as those are not in compliance with the principles of natural justice as the petitioners who are admittedly adversely affected and have been prejudiced by the said ex parte order affecting valuable right to property without being heard. But Mr. Roy submitted that it is not necessary in this application to construe the provision of section 19H(3) of the Court Fees Act, 1870 which corresponds to section 31 (3) of the West Bengal Court Fees Act, 1970, as in all the cases of under-estimation which are found by the respondent No. 4 after preliminary enquiry u/s 19H(3) or u/s 31(3) of the respective Acts it is the practice to serve notice on the petitioners for Probate and give them an opportunity to produce evidence before the Collector and thereafter if the Collector is not satisfied on the evidence and still is of the opinion that there is an underestimation required the petitioners to amend the valuation. Therefore Mr Roy submitted that the orders and notices may be quashed and the respondents may be directed to proceed according to law.

6. Considering the respective contentions very carefully I am of the view that the order dated the 9th of March. 1974 is clearly in violation of the provision of Section 19H(3) of the Court Fees Act, 1870, as it provides for hearing the petitioner for Probate who is alleged to have under-estimated the valuation according to the preliminary enquiry made by the Collector before forming an opinion of the under-estimation and it is only after such hearing and opportunity being given to the petitioner for the Probate application to substantiate his valuation and controvert the alleged opinion of the Collector as to under-estimation and if after such hearing, the Collector is still of opinion that the valuation of the property has been under-estimated then he may require the petitioner to amend the valuation to his satisfaction. In case the petitioner fails to amend the valuation to the satisfaction of the Collector, then the Collector must move the Court in which the application for the Probate was made to hold an enquiry as to the true valuation of the property and such application by the Collector to Court must be made within the time prescribed in proviso to sub-section (4) of section 19H of the Court Fees Act, 1870 which corresponds to sub-section (4) of section 31 of the West Bengal Court Fees Act, 1970. The whole question turns on the interpretation of sub-section 3 of section 31 of the West Bengal Court Fees Act, 1970 which is a reproduction of Section 19H sub-section (3) of the Court Fees Act 1870. It will be convenient to refer to Section 31 of the West Bengal Court Fees Act, 1970 as it is substantial reproduction of the provisions of Section 19H of the Court Fees Act, 1870:

31. Notice of application for probate or letters of administration to be given to Revenue Authority and procedure thereon--(1) Where an application for probate

or letters of administration is made to any Court other than the High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to the High Court, the High Court shall cause notice of the application to be given to the Board of Revenue for the local area in which the High Court is situated.

(3) The Collector within the limits of whose Revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has underestimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been underestimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by section 317 of the Indian Succession Act, 1925.

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an enquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed a party to the inquiry.

(6) For the purposes of such inquiry, the Court or person authorised by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take further evidence as may be produced to prove the true value of the property. The person authorised as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of such inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Board of Revenue of any application u/s 28.

(8) The State Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

7. From the said provisions it appears that sub-section (3) the words used are "may, if he thinks fit". But, in my view, it is well settled that whether or not the word "may" means "may" or it means "shall" would inevitably depend upon the context in which the said word occurs. In other words it would depend on the subject matter to which the phrase is applied. It is true that prima facie the ordinary meaning of "may" is merely permissive and not obligatory but there may, however, be circumstances under which the word "may" may have a compulsive force. Whether the wordings are permissive and enabling or obligatory are to be found out after looking into the object of the statute which vests the particular discretion and the intention of the legislature to find out whether the discretion was coupled with a duty to be exercised in favour of a particular party.

8. Now applying those principles to the interpretation of the relevant provisions of the Act under consideration it is quite clear that it is incumbent on the Collector to hold an enquiry before he requires the petitioner for Probate to amend the valuation on the ground of under-estimation. The subsection (3) of section 31 has three well defined stages. First after the Collector has been served with a notice of the application for probate by the court in which such application was made, it is incumbent on the Collector to hold an enquiry by inspection or otherwise of the properties and records in the said application for probate and if he forms an opinion on the materials examined by him that the petitioner has under-estimated the value of the property of the deceased, then the second stage, is that, in such case he must require the attendance of the petitioner and take evidence and enquire into the matter. At this stage again there are two portions one as to the manner of the enquiry which is left to the discretion of the Collector but a duty is cast on him to hold an enquiry after giving notice to the petitioner for probate. Then the third stage, is that, if after such hearing and enquiry on notice to the petitioner, the Collector is still of opinion that the valuation of the property was under-estimated, he must then require the petitioner to amend the valuation to the satisfaction of the Collector. This Act relates to the collection of revenue and as such it casts a duty on the Collector to make enquiry and also give an opportunity to the petitioner who is undoubtedly prejudicially affected by such formation of opinion of under-estimation of the property by the Collector at the first stage of the enquiry under sub-section (3) of section 31 of the said Act and it is only after such inquiry is held and evidence is taken in the presence of the petitioner, if the Collector still holds the opinion, that the valuation of the property was under-estimated then and then only he must require the petitioner to amend the valuation according to the Collector's satisfaction. Thereafter sub-section (4) of section 31 makes it clear that in case the petitioner fails to amend the valuation to the satisfaction of the Collector then the Collector must move the Court to hold an enquiry into the true value of the property within the specified time. Thereafter the Court under sub-section (5) should hold an enquiry or cause to be held an enquiry on such an application being made by the Collector under sub-section (4) and record a finding as to the

true valuation of the said property of the deceased and the Collector is a party to the said application. Sub-sections (6) and (7) lay down the procedure and the finality of such decision and the finding of court as to the true valuation of the property of the deceased on the application of the Collector under sub-section (4). Therefore, from the scheme of the said-Act which relates to the collection of revenue, complete procedure has been laid down for determination of the true valuation of the property of the deceased in case of under valuation. It seems to me that on the true construction of the provision of sub-section (3) of section 31 it is a duty- cast on the Collector to hear the petitioner for probate who is charged with underestimation and determine the same on evidence. It is really discretion coupled with duty. Sub-section (3) itself makes it clear that it is only after such opportunity of being heard and evidence being produced by the petitioner for probate as to the charge of alleged under-estimation of valuation of the property of the deceased, if the Collector is still of the opinion that the valuation is under-estimated, then and then only he should require the petitioner to amend the valuation. Then again the petitioner is given a right to dispute the valuation estimate made by the Collector on which basis he forms the opinion of under-estimation and thereafter it is the duty of the Collector to apply to court as a party for determination of the true valuation of the property has laid down in the said section 31 (4) which I have set out before. It is no part of the duty of the Collector to assess the true valuation of the property and asked the petitioner for probate to pay the same and imposed penalty on such failure. It is only after the true valuation is determined by the Court on an application of the Collector and it is found by Court on inquiry that there is any under-estimation of the valuation of the property of the deceased by the petitioner for probate, then and then only the question of failure on the part of the petitioner arises and penalty can be imposed on the petitioner who fails to pay the deficit stamp duty as finally ascertained by the Court u/s 31(6) of the West Bengal Court Fees Act, 1970. The provision for penalty is u/s 33 of the said Act. The principles of interpretation whether a statutory provision is merely a discretionary power or a power coupled with a duty upon a public officer or authority does not depend on the use of the words only but it must also depend on the scope and object of the Act with reference to the context and circumstances in which the words are used. Reference may be made to the decisions in *Alcock Ashdown and Co. Ltd. v. Chief Revenue Authority Bombay*, 50 Indian Appeal 227 (235-236), *Dr. Akshaibar Lal and Others Vs. The Vice-chancellor, Banaras Hindu University and Others*, , *State of Mysore and Another Vs. Syed Mahmood and Others*, , *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, , *Rohtas Industries Vs. S.D. Agarwal and Others*, , *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, and to *Craies, On Statute Law*, 7th Edn. page 285-286. There is also another well settled principle that when any order either judicial or quasi-judicial or mere administrative order affects any one prejudicially, it will be clear violation of the principles of natural justice, if such an order is made and notice is issued without notice and hearing of a party so affected. (See *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*,). It is also held by the Supreme Court that

even the use of the word "absolute discretion" is not always intended to invest the authority with arbitrary power so as to destroy the limitation to which it is subject by its inherent nature. (See *State of Gujarat Vs. Krishna Cinema and Others*,).

9. In any event it can hardly be disputed that the petitioner who applied for probate or letters of administration are prejudicially affected in case the Collector after preliminary enquiry u/s 31(3) of the West Bengal Court Fees Act, 1970 comes to an opinion that the petitioner has under-estimated the value of the property of the deceased in the probate application. Therefore, it is all the more reason that sub-section (3) of section 31 of the West Bengal Court Fees Act, 1970 should be interpreted as to cast a duty on the Collector to give an opportunity to the petitioner to produce evidence and be heard by the Collector before he could require the petitioner to amend the valuation, according to the Collector's estimate. Any other interpretation of the said sub-sec. (3) of sec. 31 would lead to unconstitutionality which should be avoided. There is a fundamental principle that a person cannot be condemned unheard and as such the last portion of sub-section (3) of section 31 of the West Bengal Court Fees Act, 1970 makes it clear that even after such enquiry and hearing the petitioner as to the alleged under-estimation of the valuation of the property of the deceased if the Collector still holds the opinion that the property is underestimated by the petitioner, then and then only he can ask the petitioner to amend the valuation. The petitioner may accept such valuation of under estimation and amend accordingly, but he may dispute also such valuation and refuse to amend valuation to the satisfaction of the Collector and in such case sub-section (4) of section 31 of the West Bengal Court Fees Act, 1970 comes into operation and it is the duty of the Collector to move the Court before which the probate application was made to hold an enquiry as to the true valuation of the property and under sub-section (5) of section 31 the Court is the only authority to fix the true valuation of the property of the deceased after being moved by the Collector under sub-section (4) of section 31 of the West Bengal Court Fees Act, 1970 and under sub-section (7) of section 31 such finding of the Court is final. Therefore, in any view of the matter the Collector must give an opportunity to the petitioner for probate before he could issue a notice on the petitioner who has made an application for probate requiring him to amend the valuation according to the Collector's estimate of the under-valuation of the property of the deceased.

10. In the Division Bench decision of this Court in *Nikunja Rani Chowdhurani v. Secretary of State for India in Council*, 20 C.W.N. 504 question arose as to the maintainability of a suit against a petitioner for probate for the recovery of penalty imposed by the Collector on the alleged failure on the part of the petitioner for probate to pay the penalty which was imposed on the alleged failure on the part of the petitioner to state correctly the value of the assets of the deceased in the original probate application. After the probate was granted the collector required the petitioner to amend the valuation under sub-section (3)

of section 19H of the Court Fees Act, 1870. The petitioner disputed the valuation but with a view to avoid expenses and litigation deposited the amount so demanded by the Collector. Thereafter penalty was imposed u/s 19E of the Court Fees Act, 1870 and the petitioner having disputed her liability to pay such penalty a suit was filed for the recovery of the same against the petitioner for probate. It was held that section 19E of the Court Fees Act, 1870 had no application in that case as there was no determination of the valuation by the probate Court. It was also held that, the imposition of the penalty was ultra vires as the same was done without complying with the statutory provisions of the said Act u/s 19H(4) of the Court Fees Act, 1870. The same principle also applies in this case and it must be held that the order dated the 9th of March, 1974 and the impugned notice and memos dated the 12th of March, 1974, 20th March, 1974 are ultra vires, illegal and without jurisdiction as the same have been made and issued in violation of the statutory provisions of section 19H(3) and section 19H(4) of the Court Fees Act, 1870 which correspond to section 31 (3) and 31 (4) of the West Bengal Court Fees Act, 1970. The Collector had no authority or power or jurisdiction, save and except, what is conferred on him by the provisions of section 19H(3) and 19H(4) of the Court Fees Act, 1870. Therefore, in the facts of this case it must be held that the act of the Collector in passing the order dated the 9th of March, 1974 and issuing the purported notice dated the 12th of March, 1974 and two Memos dated the 27th of March, 1974 which are impugned in this writ petition are bad in law, ultra vires and must be quashed and set aside.

11. I may here also note an additional contention raised by Mr. Bikash Sen appearing for the petitioner in the Matter No. 179 of 1974 (Dip Kishore Sen v. The Probate Deputy Collector and another) that the provision of section 31 (4) of the West Bengal Court Fees Act, 1970 makes it clear that the Collector has no jurisdiction to finally ascertain the valuation of the properties which are alleged to be underestimated by the petitioner in the probate application. He submitted that under the said sub-section (4) of section 31 it is only the Court which can hold an enquiry as to the true valuation and under sub-section (5) of section 31 and the Court records a finding as to the true valuation of the property of the deceased at which the same should have been estimated. But, in my view, the said contention is not wholly correct as the Collector has jurisdiction to make his own estimate of the alleged under-estimation of the valuation of the property of the deceased and ask the petitioner to amend the valuation according to the Collector's satisfaction i.e. to the extent of his estimate of under-valuation of the assets of the deceased.

12. Therefore, it is quite dear that the Collector would be satisfied, if the petitioner amends the valuation according to the estimate of the Collector That is the difference between the valuation made by the petitioner in the probate application and the valuation estimate arrived at by the Collector after the preliminary enquiry, subsequent hearing of the petitioner, taking evidence and making inquiry into the matter as envisaged by the second part of sub-section

(3) of section 31 of the West Bengal Court Fees Act, 1970. From the said provisions it is quite clear that the Collector must estimate the deficit Court fees after enquiry and hearing and require the petitioner to amend the valuation according to his satisfaction and it is only on the petitioner's failure to amend the valuation to the satisfaction of the Collector, the Collector must apply to Court for holding an enquiry as to the true valuation and the Court on such application records its finding under sub-section (5) of section 31 of the West Bengal Court Fees Act, 1970. The Court's finding is made final under sub-section (7) of section 31 of the West Bengal Court Fees Act, 1970. In this case the Collector has made the said order dated the 9th of March, 1974 and issued the notices and memos impugned in its writ petition in clear and utter violation of the statutory provisions as I have already held hereinbefore. The said orders, notices and memos are bad in law and must be quashed and set aside. The Collector must proceed, according to the statutory provisions and discharge his duties cast upon him by the Statute.

Therefore, I am making the following order.

The Rule is made absolute. Let appropriate writs be issued for quashing the said order dated the 9th of March, 1974, the notice dated the 12th of March, 1974 and the two Memos both dated the 27th of March, 1974. No order as to costs.