

**(1978) 03 CAL CK 0009**

**In the Calcutta High Court**

**Case No : F.M.A. No's. 959 of 1976 and 300 of 1977**

Prosad Kumar Mondal

APPELLANT

Vs

Commissioners of Krishnagore Municipality

RESPONDENT

**Date of Decision : 03-03-1978**

**Acts Referred:**

Bengal Municipal Act, 1932 — Section 123(1), 128(1), 128(2), 133, 134  
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 1 Rule 10, Order 1 Rule 2,  
Order 1 Rule 3, Order 1 Rule 4  
Constitution of India, 1950 — Article 226  
West Bengal Estates Acquisition Act, 1953 — Section 5A

**Citation : (1978) 1 CALLT 242 : 82 CWN 457 : (1978) 1 ILR (Cal) 348**

**Hon'ble Judges : B.C. Chakrabarti, J; Anil K. Sen, J**

**Bench : Division Bench**

**Advocate :** Saktinath Mukherjee, Bidyut Kumar Mukherjee and Bhaskar Ghose, in F.M.A. 959 of 1976, Dipankar Ghosh and Harinarayan Das, in F.M.A. 300 of 1977 and Bimal Kumar Chatterjee, for the Appellant; Saktinath Mukherjee, Bidyut Kumar Mukherjee and Bhaskar Ghose, in F.M.A. 300 of 1977, Dipankar Ghosh and Harinarayan Das for Respondent No. 13 in F.M.A. 959 of 1976, A.P. Sarkar and Pradipta Roy for Respondent No. 3 in F.M.A. 959 of 1976 and State in F.M.A. 300 of 1977 and Harinarayan Mukherjee, for Respondents Nos. 14-15, for the Respondent

**Final Decision : Dismissed**

## Judgement

Anil K. Sen, J.—These are the two appeals under Clause 15 of the Letters Patent directed against the same judgment and order dated May 12, 1976, passed by a learned single Judge of this Court in Civil Rule No. 6243(W) of 1972 which was issued on a writ petition. As the writ petition was allowed in part, some of the Petitioners therein have preferred F.M.A. 959 of 1976 making a grievance that the learned Judge should have allowed the entire relief claimed therein. The Municipal Commissioners of Krishnanagore who were the first Respondents to that writ petition, on the other hand, felt aggrieved by the order in so far as thereby a part of the claim made in the writ petition was allowed and have

preferred F.M.A. 300 of 1977 on a grievance that the writ petition should have been dismissed. As the two appeals arise out of the same proceeding and is directed against the same judgment and order, we have heard them together.

2. In the writ petition 41 rate payers of Krishnanagore Municipality challenged the quinquennial municipal assessment which was to take its effect from the first quarter of 1972-73 and the consequential demands made on the basis thereof. It was so challenged by them representing the other rate payers on a leave under Order 1, Rule 8 of the CPC being obtained from the Court. The principal ground on which they challenged such assessment was that the assessment was not based on any bona fide valuation made by the assessor in accordance with law. It was claimed that the assessor appointed was old and physically infirm, he had neither the physical capacity nor did he actually discharge the statutory duties in supporting to revise the valuation, in most of the cases the assessor did not issue any notice or call for any return u/s 134 of the Bengal Municipal Act and even in a few cases where such returns were called for, they were not verified, cols. 15 and 16 were not filled up in any bona fide manner; the assessor did not inspect any holding, did not visit any locality and did not compare the different localities and different holdings for determining the valuation in respect of different or any of the holdings and as a matter of fact made no enquiry whatsoever as required of him by the statute in revising the valuations. According to the Petitioners, the valuations were revised by the assessor in an arbitrary manner; in the matter of formation of his opinion and in comparing the different holdings and different areas or localities the assessor did not perform his statutory duties and proceeded entirely without any basis or material; the assessor failed to record any reason or justification for enhancing the valuations of different holdings in disproportionate and discriminatory manner not based on any common standard or basis. The report submitted by the assessor is neither bona fide nor a lawful report and the entire assessment based on such a valuation is clearly illegal and without jurisdiction. As such the assessment is liable to be set aside and rates, as are being demanded on the basis thereof, being illegally levied are not sustainable in law.

3. The writ petition was contested by the first Respondent only. Though the gravamen of accusation was against, the assessor and he was made a party-Respondent, he did not appear either to contest the Rule or to controvert the specific allegations made against him. An affidavit-in-opposition and two supplementary affidavits sworn by a law clerk of the Municipality were filed on behalf of the first Respondent wherein the various allegations made as against the assessor and in particular the allegation of assessor having failed to discharge his statutory duties could not be met except so far as it could be on the basis of the records made over by the assessor. The various allegations made in the different paragraphs of the writ petition were broadly dealt with in the affidavit-in-opposition and the denials were mostly vague in nature. An objection, however, was taken that since some amongst the Petitioners had challenged their respective assessments by preferring review applications u/s 148 of the Act and

had obtained relief in such proceedings they were not entitled to any relief. In a supplementary affidavit, some entries from certain field books were disclosed to show how the individual valuations in respect of the Petitioners were determined and in this affidavit it was stated that the assessor while assessing the annual value of the holdings had taken into account the existing rent fetched by the holdings or any part thereof where the monthly rental was available at hand otherwise he had to ascertain the reasonable rent. The Petitioners, however, strongly disputed the so called field books and they claimed that entries therein were not made by the assessor.

4. On the materials, as aforesaid, the learned Judge found that in determining the valuation the assessor had failed to comply with the mandatory provisions of Rules 8 and 9 of the Rules for assessment when the assessor failed to call for returns from the owners of the different holdings in Form B prescribed by such Rules, failed to indicate the basis of his assessment by filling up cols. 15 and 16 in case where such returns were called for and when he failed to determine the valuation on the rental basis in the manner prescribed by the Rules. The learned Judge concluded that "the Respondent has failed to carry out the statutory provision of the Municipal Act in the matter of assessment of rates and taxes." Notwithstanding such a finding the learned Judge refused to set aside the assessment as a whole even though it was a representative action by the Petitioners on behalf of other rate-payers. The learned Judge directed that the benefit of his order would be available to only such of the rate-payers as were before him and excluded therefrom again those who had filed review applications u/s 148 of the Act. The Rule was, accordingly, made absolute in part to the limited extent, as aforesaid. Thirty two out of the Petitioners have preferred an appeal being F.M.A. 959 of 1976 wherein it is claimed that when the learned Judge in the trial Court found that the assessment itself was not made in compliance with the statutory provisions, the entire assessment should have been set aside; it being a representative action it was not necessary for all the ratepayers to be actually added as parties to the proceeding to be entitled to the relief claimed on behalf of all in the writ petition. They, further, claim that the learned Judge should not have excluded such of the Petitioners as had preferred review applications from the relief because the assessment as a whole being ultra vires there could be no review and any order made on such review is of no consequence since an assessment made de hors the statute can never be validated by any order of review in respect thereof. The Municipal Commissioners, on the other hand, have preferred an independent appeal being F.M.A. 300 of 1977 wherein it is claimed that leave under Order 1, Rule 8 was wrongly given because in the facts no representative action is maintainable since there exists no community of interest amongst the different rate-payers; they could only challenge their respective assessment individually but had no locus standi to bring in a representative action. It is, further, claimed that since the statute itself provides a remedy and on the finding of the learned Judge those who have gone for such remedy are not entitled to any relief, the joint petition

should have been thrown out as a whole and the learned Judge could not have granted relief to a few only amongst the Petitioners. In this appeal, the Municipal Commissioners have, further, assailed the finding of the learned Judge that in making the assessment the Respondents had failed to carry out the statutory provisions of the Municipal Act. It is claimed that assessment was made in substantial compliance with provisions of the Act and the Rules; the learned Judge went wrong in holding that Rule 8 had not been complied with when infringement thereof was not pleaded by the Petitioners; they, further, claim that the learned Judge was not correct in holding that Rule 9 and not been complied with when such a finding is based on an erroneous assumption that in law it was necessary to call for returns from each individual owner or occupier. We shall deal with the different contentions specifically raised in the respective two appeals by the respective counsel more in detail hereinafter when we deal with the specific points.

5. Though a number of objections have been raised by Mr. Ghosh appearing on behalf of the Municipal Commissioners to the frame and maintainability of the writ petition and admissibility of the relief claimed, the principal point of importance which requires our consideration and which is common to both the appeals is as to whether the impugned assessment suffers any such illegality as would render it liable to be set aside. In our view, the principal point should first be decided because the scope of maintainability of other objections raised by Mr. Ghosh would depend upon the nature of the illegality in the assessment that may be found. As we have pointed out hereinbefore the principal objection raised by the Petitioners in the writ petition is that the entire assessment must fail as the same is not based on any bona fide valuation made by the assessor in accordance with law.

6. Their specific case is that the assessment as a whole is ultra vires being entirely based on a valuation made by the assessor not in conformity with law and such an assessment is liable to be set aside by issue of an appropriate writ.

7. It would be convenient at this stage to refer to the material provisions under the Act and the Rules framed thereunder. Section 123(1) authorises the Commissioners to impose certain rates on the annual value of the holdings within the limits of the Municipality subject to other provisions of the Act. Section 128(1) prescribes that the annual value of a holding shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let. Sub-section (2) of this section prescribes an alternative mode of determination of the annual value on the cost of construction basis in case "the gross annual rental cannot, in the opinion of the assessor, be easily ascertained. Since the disputed assessment had been made on the basis of gross annual rental Sub-section (2) is not material for our purposes. Section 133 provides that when it has been decided to impose any rate to be assessed on the annual value of all holdings, the assessor, after making such enquiries as may be necessary shall determine the annual value of all holdings within the Municipality in the manner provided in

that chapter and shall enter such value in a valuation list. Section 134 is on the following terms:

The assessor, in order to prepare the valuation list, may, whenever he thinks fit by notice require the owners and occupiers of all holdings to furnish him within one week with true and correct returns of the rent or the annual value thereof and the true and correct description of the holdings containing such particulars as the assessor may direct and the assessor, or any person authorised by him in writing in that behalf, may enter, inspect and measure any such building at any time between sun-rise and sun-set provided that at least 24 hours previous notice of the intention to enter, inspect and measure any holding shall be given to the occupier thereof unless he waives his right to such notice.

8. Section 135 provides for determination of the percentage of the rate on holdings by the Commissioners. Section 136 then provides that as soon as possible after the percentage at which the rate or rates shall be levied has been determined under s 135, the Commissioners shall cause to be prepared an assessment list which shall contain the particulars set out in the said provision including the annual value of the holding and the amount of rate payable. Section 147 provides that once the assessment list is prepared the Chairman shall sign the same and cause it to be deposited in the office of the Commissioners and shall give public notice of the place where the list may be inspected and in cases where any property is being assessed for the first time or the assessment is increased individual notices are to be given to the owner and the occupier of that property if known. Section 148 provides for a remedy by way of review of the individual assessment or valuation at the instance of any person who is dissatisfied with the amount assessed or with the valuation or assessment of any holding or who disputes his occupation of any holding or his liability to be assessed. An objection raised u/s 148 is to be disposed of either by a review committee as prescribed by Section 149 or by a municipal assessment tribunal as prescribed by Section 149A. Section 150 provides that an assessment or valuation is to be questioned only in the manner prescribed by the Act and not in any Court. On the provisions of Section 137 of the Act the above procedure is to be followed in every case where quinquennial assessment is made.

9. Rules framed u/s 215 of the Act prescribes the procedure to be followed by the assessor. Rule 1 prescribes when the assessor is to commence his work and Rule 2 provides for the office of the assessor. Rule 3 prescribes that the Chairman should make available all relevant documents and papers to the assessor. Rule 4 provides that the, assessor shall obtain from the Chairman copies of the current assessment registers and all information as to new holdings and it further provides that the assessor may issue notices u/s 134 of the Act in Form A attached to the Rules requiring the owners or occupiers to submit true and correct returns of rent or annual value thereof and true and correct descriptions of the holdings in Form B annexed to such Rules. The prescribed Form B contains 16 columns, 14 out of which are to be filled up by the owner or

occupier who is to file the return but cols. 15 and 16 are to be filled up by the assessor. Column 16 is prescribed to contain:

Assessor's remarks showing the annual value determined and the basis of determination thereof together with brief reasons why the valuation differs if it does from the valuation of similar property in the same area, street or part of the street. Rule 6 provides that the assessor shall verify each of such returns when submitted and Rule 7 prescribes the manner of service of notice of inspection. Rule 8(a) has an important bearing on the present case and as such, set out hereunder:

8(a). For the purpose of ascertaining the gross annual rental at which a holding may reasonably be expected to let comparison may be made with rents of similar holdings in the vicinity. Regard may also be had to the rent which might reasonably be expected in an average year or taking one year with another and not in any particular year. The rental of the holding in the past or in the future is immaterial and the hypothetical tenant shall be assumed to use the property in the same way as the actual occupier and to have the same facility for deriving profit from it, no more or no less.

10. Rule 9 prescribes that when the annual value of a holding has been determined by the assessor he shall fill up cols. 15 and 16 of Form B and shall enter such value in the valuation list prepared by him. It, further, prescribes that when the valuation list is ready, the assessor shall endorse on it a certificate over his signature as to the correctness of entries therein and shall then make it over to the Chairman who shall give the assessor a dated receipt. Rule 10 has also an important bearing in the present case and is set out hereunder:

10. The valuation list prepared by the assessor shall be submitted with a brief report to the Commissioners showing the basis on which he has prepared the list, e.g., he should compare different areas and streets or even parts of a street and show why properties in them differ in value. Further each actual valuation shall be accompanied by a note showing how he has arrived at it comparing the property in question with other similar property and explaining why the other differs, if it does.

Rest of the Rules are not relevant for our purpose in this case.

11. Reading the provisions of the Act and the Rules, as aforesaid, it is well established that the assessor is required to determine the annual value of each holding on the basis of gross annual rental at which the holding may reasonably be expected to let unless in his opinion such a rental cannot easily be ascertained in which case he is to proceed on the cost of construction basis. Again, when he proceeds to determine the annual value on the gross annual rental basis that rental is to be individually determined as a positive act of determination by comparison with rents of similar holdings in the vicinity. But in ascertaining the gross annual rental, the assessor is to have regard for the rent which might reasonably be expected in an average year irrespective of any actual rent being

paid at a particular time or in a particular year. That the assessor is to ascertain the gross annual rental in each case in a positive manner is inherent in the scheme and is well indicated by what he is required to record in col. 16 of Form B read with Rule 9 and Rule 10 of the said Rules.

12. In the present case, the grievance made out by the Petitioners in the writ petition is that the assessor never did what was required of him to do under the Act and the Rules. In para. 14 the Petitioners made out a positive case that, the assessor did not inspect any holding personally and did not visit any locality within the local limits of the Municipality in connection with the said assessment. In para. 22 they asserted that in most of the cases the assessor did not issue any notice or call for any return in Form B u/s 134 of the Act and at the utmost such notices were issued in respect of about 200 holdings out of 13,000 and odd holdings in the Municipality. Their, further, case is that even where such returns were called for they were not verified by the assessor and the assessor failed to fill up cols. 15 and 16 in any bona fide manner. In para. 23 they clearly asserted that the assessor failed to record any reason for the enhanced valuation--the valuations in most cases being disproportionately increased; that the assessor failed to perform his statutory duties and made the valuation arbitrarily, whimsically and illegally. In annexs. B and C the Petitioners have set out particulars to show how different holdings have been subjected to arbitrary valuations and disproportions increases thereof though in most cases there had been no addition or improvement in such Holdings In para. 25 and in annEx. E they have set out the particulars to show how the assessor positively discriminated the Government buildings in not changing the annual value thereof even where there had been substantial addition or improvement of such buildings while the annual value of other public buildings had been increased. In paras. 26 and 27 and in annEx. F the Petitioners have set out the particulars to show holdings situate in the same locality without any addition or alteration had been arbitrarily subjected to either enhanced or reduced valuation without assigning any reason for either. On these facts, they have clearly asserted that in making the valuation the assessor never proceeded on any common bona fide standard or basis but acted arbitrarily.

13. The most important accusations made by the Petitioners as against the assessor are to be found in paras. 28 to 31 of the writ petition. In para. 28 they clearly asserted that only in a few cases a show of inspection was made through one or other employees of the assessor but in no case he either himself hold the inspection or made any enquiry. Then they state:

It will thus appear that in the matter of formation of his opinion and in comparing the different holdings and different areas or localities the assessor did not perform his statutory duties and proceeded entirely without any basis or material.

Thus, the accusation made is that he failed to perform his duties enjoined by Rule 8(a) of the Rules. In para. 30, the Petitioners asserted that the assessor did

not act according to the Rules, did not fill up col. 16 of Form B either at all or as required by law and did not do the duties enjoined on him by Rule 10 and there exists no rational basis of the present assessment which had been made in an arbitrary, mala fide and capricious manner. In para. 31 the Petitioners clearly asserted that the assessor did not in any case assign any reason whatsoever for increasing or reducing the valuation and that he had not compared different localities and different holdings as required under the law and he has not recorded the result of such comparison either in the returns or elsewhere. Thus, they clearly pleaded non-compliance with the requirements of Rules 9 and 10 of the Rules.

14. As we have stated at the outset the unfortunate position in the present case is that the assessor has not come forward to controvert all these serious allegations made against him. An affidavit-in-opposition sworn by a law clerk of the Municipality was first filed on behalf of the contesting Respondent. It was, however, not possible for the deponent of the said affidavit to deal with or controvert most of the allegations made against the assessor. In para. 9 it was clearly acknowledged that the first Respondent is not aware as to whether any of the municipal holdings was inspected or visited by the assessor and reliance was sought to be placed on an affidavit to be filed by the assessor which was never filed. As for the other allegations the deponent of the said affidavit merely controverted such allegations and craved leave to rely upon the records including the assessor's report and the field books and again on the affidavit to be filed by the assessor which was never filed. The assessor's report had been disclosed by the Petitioners themselves made annexure A to the writ petition. In a supplementary affidavit filed by the same law clerk entries in certain field books in respect of the holdings of the Petitioners were disclosed and such field books were produced before us at the time of hearing of the appeal.

15. On the materials thus placed before the Court let us proceed to consider if the assessor had at all ascertained the gross annual rental of the individual holdings in accordance with the Act and the Rules and had prepared a valuation list on positive exercise of his own judgment. The learned Judge in the trial Court appears to have taken the view that issue of notices u/s 134 and calling for return in Form B are mandatory prerequisite and such notices not having been issued and such, returns not having been called for from most of the owners or the occupiers the valuation as made by the assessor cannot be held to be a lawful valuation. It has, however, been pointed out by Mr. Ghosh appearing on behalf of the Commissioners that Section 134 itself leaves it to the discretion of the assessor where a notice is to be issued and a return is to be called for so that the learned Judge in the trial Court went wrong in assuming that issuing of such notices and calling for returns under the said provision in every case is a mandatory prerequisite. We feel no hesitation in accepting this contention of Mr. Ghosh since on the provisions of Section 134 read with Rule 4 it is entirely within the discretion of the assessor to decide in each case whether the return is to be called for. But once such returns are called for as has been done in respect of

200 holdings it is necessary for the assessor to verify the return and to fill up cols. 15 and 16 of such returns. There is no dispute that what has been entered in col. 16 in such cases is an endorsement "vide assessment list". Column 16, as we have indicated hereinbefore, is to bear the assessor's remarks showing the determination of the annual value and the basis of such determination with brief reasons. It is difficult to appreciate how an assessment list which is to be prepared by the Commissioners after the finalisation of the valuation list should contain the particulars required of the assessor in filling up col. 16. Moreover, we have failed to find even in the assessment list any entry which can be considered to fulfil the requirement of col. 16. Thus, a reasonable doubt arises as to whether the assessor did ever actually verify the returns and it is further established that the assessor failed to discharge his duties prescribed by Rule 9. Moreover, failure on the part of the assessor to record a note showing determination of the annual value and the basis of such determination with brief reason in all the cases where returns were called for lends support to the plea of the Petitioners that the assessor never made the determination in any honest manner.

16. But more serious complaint put forward by Mr. Mukherji appearing on behalf of the Petitioners is that the assessor failed to discharge his duties u/s 133 when he failed to make any enquiry whatsoever in the process whereof he could find the rent of comparable holdings and secure the data for determination of the gross annual rental of different holdings. The Petitioners, as we have indicated hereinbefore, clearly asserted that the assessor never made any such enquiries and never determined annual rental in the manner contemplated by Rule 8(a). The first Respondents in their affidavit could not deny this allegation but wanted to rely upon the affidavit of the assessor which the assessor never filed. The best evidence on the point would have been the valuation list but strangely in the present case the assessor never prepared any independent valuation list though enjoined to do so by Section 133. On the other hand, what was produced before us was an assessment list which is not only signed by the Chairman of the Municipality but bears the counter-signature of the assessor certifying as to the correctness of the entries, made therein. The fact remains, therefore, that the assessor failed to prepare the statutory document, namely, the valuation list. Further, the assessment list that was produced before us merely contains entries in figures the annual value but in no case does it record anything to show how did he determine the individual valuations or the gross annual rental. This document, therefore, does not help us in any manner to assure ourselves that the assessor did determine the gross annual rental in terms of Rule 8(a) in individual cases as a positive act of determination on comparison with rents of similar holdings in the vicinity.

17. Strong reliance was placed by Mr. Ghosh on the field books. These books bear neither any endorsement nor any signature of the assessor. It appears to us that these books were prepared and entries therein were made by the assessor's agents whose names can be found endorsed in these books. These books, further, indicate that area wise certain particulars about holdings were set out in

black ink which obviously were made with reference to the entries as they were in the previous assessment register. Next we find certain pencil entries only in respect of the particulars of the buildings as they are found obviously on inspection. These pencil entries further go to show working out of the gross annual rental by multiplying 12 in a few cases to a figure described as existing rent of the holding and in most cases to a figure described as reasonable rent. Each such gross annual rental is to be found in red ink re-written obviously indicating that the same had been verified in regard to the calculation. There is no material before us to show what part the assessor played in preparing these field books or in proceeding on the basis thereof. Circumstances, on the other hand, go to show that all these entries in these books were made not by the assessor but only by his agents. Two serious objections have been raised by Mr. Mukherji to the procedure so adopted. In the first place, it has been contended by Mr. Mukherji that even if we accept these field books to show the basis for the determination of the valuation there is nothing in these books to show that the valuation rests on any ascertainment of gross annual rental in accordance with Rule 8(a). He points out that the assessor's agent accepts the existing rent in all cases as rent reasonably expected from the holding contrary to the provision of Rule 8(a) and in other cases where he sets out a figure as reasonable rent he does not indicate how the said figure is determined or that it was so determined on comparison with rents of comparable holdings in the vicinity. The second objection raised by Mr. Mukherji is that when the Act and the Rules vest the duty of determination of the annual value in the assessor himself he could not have delegated the said duty to his agent and adopt whatever the agent does. In our view, there is considerable merit in these two contentions raised by Mr. Mukherji. We have carefully examined these field books to see if we can assure ourselves that in determining the gross annual rental it had been so done in the manner prescribed by Rule 8(a) but we have been unable to assure ourselves on the point on the materials borne out by these documents. It had been rightly pointed out by Mr. Mukherji that these agents of the assessor took the existing rent in every case to be the rent which could reasonably be expected of the holding in spite of the clear mandate of law that regard must be had to the rent which might reasonably be expected in an average year or taking a year with another and not in any particular year and that such rent should be the rent payable by a hypothetical tenant assumed to use the property in the same way as the actual occupier and to have the same facility for deriving profit from it. To that extent the basis adopted is erroneous in law. That apart, in most of the cases, the gross annual rental had been fixed up with reference to a figure described as reasonable rent giving no idea as to how such a figure had been arrived at. Had the reasonable rents been fixed up with reference to rents of comparable holdings in the vicinity we would have expected some entries in these books to indicate the comparative figures but nothing of the kind could be found. Nor is there anything in these books from which it can be said that these figures shown as reasonable rent were so determined on comparison with any rent prevailing in the locality. Such being the position, we feel no hesitation in coming to the

conclusion that the gross annual rentals in respect of individual holdings were not determined in accordance with Rule 8(a) by these agents of the assessor. So far as the assessor is concerned, as we have indicated hereinbefore he has not prepared any valuation list and he has not filled up even col. 16 of the returns called for u/s 134. Looking at the entries in the assessment list counter-signed by the assessor with reference to these field books it appears to us that the assessor adopted all that was done by these agents. He did not ascertain the gross annual rental nor determine the valuation in respect of different holdings on his own judgment. He has not filed any affidavit to show that he himself made any enquiries to find out the basis for the determination of the gross annual rental. Mr. Mukherji has rightly pointed out that the statute distinguishes enquiries contemplated by Section 133 from inspections contemplated by Section 134. Though law permits the assessor to cause inspection to be made through the agents for verification of returns called for and collect other particulars in respect of holdings to be valued yet it requires the assessor himself make the necessary enquiries for ascertaining the gross annual rental on comparison with rents of comparable holdings because the law contemplates that the determination of the annual valuation based as is on such gross annual rental must be the act of the assessor. It is quite apparent that the assessor can never fulfil the duty cast on him by Section 133 read with the Rules.

18. To repel this contention Mr. Ghosh urged two points. In the first place he contended that the Petitioners should not be allowed to raise such an objection when they had not alleged any infringement of Rule 8 in their petition. We, however, find no merit in this contention of Mr. Ghosh. It is true that no reference by number had been made to this Rule in the writ petition but as we have indicated hereinbefore the Petitioners had clearly pleaded infringement of this Rule with reference to its substance. Their principal grievance in the writ petition is that the assessor never made the valuation having regard to the requirements as are specified in Rule 8(a). Such being their pleading mere failure to set out the number of the Rule in their petition makes no difference. The learned Judge in the trial Court, in our opinion, was not, therefore, wrong in holding that the assessor had failed to comply with the mandatory provision of Rule 8. Mr. Ghosh next relied strongly on the assessor's report in contending that the said report well establishes the position that it was the assessor who himself determined the values and further that such determination was made in accordance with law. We have read this report very carefully but in our view this report does not establish any such thing. The report is an annexure to the writ petition and contains 4 paragraphs. Paragraph 3 purports to set out the basis of assessment. In Clause (a) of para. 3 the assessor merely refers to the rates fixed by the Commissioner. Clause (b) thereof quotes word for word Rule 8(a) except for addition of a sentence which, however, does not derogate from the fact that it is a mechanical reproduction of the words of the Rule. Clause (c) is in following terms:

Accordingly, in most of the holdings annual rental value has been fixed on a monthly rental basis for 12 months prescribed by Section 128(1) of the B.M. Act,

1932. At the time of local verification of holding I made all enquiries and took the age of the existing condition of the holdings, description, approximate dimensions of the room, materials used, the area of covered accommodation, environment, road facility, commercial opportunities, sanitary condition, water supply facility, the distance from schools and markets, the present value of land and all amenities and convenience.

Paragraph 4 sets out the total existing annual value at Rs. 24,62,351, the revised total annual value at Rs. 36,44,165 and then sets out the difference with a note that main reason of this increase may be said to be due to increase in addition, improved condition of holdings. This report, in our view, is of no help to Mr. Ghosh because by reciting a Rule or by referring to certain generalities the assessor has not improved the position. As in the field books so in this report there is nothing to show any factual basis for determination of annual value in respect of individual holdings. This report is not in compliance with Rule 10. Rule 10 speaks of two requirements. In the first place it requires the assessor to show the basis on which he has prepared the list and the term "basis" has been explained with reference to the illustration, namely, the assessor should compare different areas and streets or even parts of a street and show why properties in them differ in value. This requirement will not be fulfilled by merely stating in the report that the annual values had been determined either on the rental basis or on the cost of construction basis as suggested by Mr. Ghosh. The assessor has to state something with regard to factual basis whereon he had determined the values. He has to furnish particulars about the comparison made and explain for the differences. The second requirement is more important. Each of the actual valuations has to be accompanied by a note of the assessor showing how he has arrived at it comparing the property in question with other similar property and explaining why the valuation differs, if it does. Obviously, this note is to be incorporated in the valuation list which is to be submitted along with this report. These are mandatory requirements and fulfilment whereof only ensures the position that the assessor has prepared the valuation list in a bona fide manner and that again in accordance with law. The report, in the present case, relied on by Mr. Ghosh, does not fulfil either of these two requirements. Nor is there anything in this report from which we can assure ourselves that the assessor did determine the individual valuations in the manner prescribed by Rule 8(a), namely, by ascertaining the gross annual rental on the basis of comparison with rents of comparable holdings in the vicinity and having regard to the elements specified in that Rule. In para. 3(c) of the report which we have quoted above the assessor spoke about the enquiries being made by him at the time of local verification. What he really meant is inspection for effecting verification and those were all held by his agents and not by him. Moreover, the assessor does not say that such enquiries were ever made to ascertain the gross annual rental with reference to comparable holdings in the vicinity. Therefore, this report does not persuade us to hold that the assessor did determine the annual values in accordance with Rule 8(a). On the findings as above we, therefore, come to the

conclusion that the Petitioners in the present case have well established their claim that the assessor in determining the annual values did not comply with the provisions of Rules 8(a), 9 and 10 of the said Rules. Such non-compliance renders the valuation made by the assessor ultra vires. See *Tollygunj Club Ltd. v. The Corporation of Calcutta* 1963 C.L.J. 10. The fact that the assessor had failed to make any bona fide determination is further corroborated by other allegations of the Petitioners which stand really uncontroverted. In paras. 25 and 26 read with annexs. B and F they have set out particulars to show how different holdings had been subjected to either enhanced or reduced valuation without any reason, how valuation of the holdings held by the State Government had not been altered in any case even when some of them had additions and alterations effected thereon betraying the position that the valuations had never been determined on any common bona fide standard or basis.

19. That apart on the facts of the present case we find ample substance in the other objection raised by Mr. Mukherji to the effect that the assessor himself never discharged his statutory obligation of determining the annual values in his own judgment and instead thereof delegated the said function to his agents whose determination he mechanically adopted. As we have found hereinbefore, the annual values in respect of individual holdings were fixed up by the different agents who incorporated the same in their respective field books; the assessor in his turn adopted such valuations and incorporated the same in the assessment book. Assessor has not come up before us to say that he determined the valuation in respect of individual holdings in his own judgment in spite of clear assertion by the Petitioners that he never did so. Nor do the existing records establish the same. Such being the position it must be held that he had delegated his statutory duty to his agents which he could not have done. Under the provisions of the Act and the Rules, he could have had the individual holdings inspected by his agents for verification of returns and securing information or particulars like alteration or improvement of existing buildings or measurements thereof or procure other necessary data, but the law enjoins that so far as determination of the annual values is concerned that the assessor is to make in accordance with Rule 8(a). This is the essential duty which the statute has entrusted only to the assessor and he could never have delegated the same to his agents. So that when he did delegate such a duty to his agents--as in the present case--it is no longer his determination but only that of his agents which the law does not recognise. In *R. v. Board of Assessment of Rates and Taxes of the City of St. John, ex parte Stevenson and Company Ltd* (1965) 49 D.L.R. (2d) 156 an assessment made by a Canadian Tax Assessment Board was set aside when it was found that what the Board did was merely to adopt the valuations made by its appraisers. The principles laid down by the Supreme Court in the cases of *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, and *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, support the same conclusion.

20. These infirmities are, in our opinion, very substantial in nature and touch the

very assessment and render the same ultra vires as a whole Firstly, the valuations had not been made by the assessor and secondly, there had been infringement of a very material provision like Rule 8(a) of the Rules when neither the assessor nor his agent determined the valuation in terms thereof. So, in reality there had been no determination of the annual value in respect of individual holdings in the manner specified by law. In such a case it can well be said that the assessment is no assessment in law. Such an assessment is liable to be set aside by any civil court including this Court in its writ jurisdiction". As was observed by Sir Asutosh Mookherji in the case of *Chairman of Giridhi Municipality v. Suresh* (1908) 12 C.W.N. 709 when he said:

The essence of the matter is that the action of the Municipality is in its nature quasi judicial and is not subject to collateral attack except upon the ground of fraud, actual or constructive or on the ground of exercise of power not conferred by the statute. If errors or irregularities are committed they must be corrected in the mode pointed by the statute and if not so corrected, they become conclusive, for courts have not the power to control the quasi-judicial authority in a matter of discretion. But when the assessment proceeding is in clear violation of the provision of the statute the court has jurisdiction to afford relief.

The same view was taken by this Court in the cases of *Corporation of Calcutta v. Royal Calcutta Golf Club* (1963) 68 C.W.N. 877 and *Tollygunj Club Ltd.* (Supra) and this view finds its support from the decisions of the Supreme Court in the case of *Lokmanya Mills v. Barsi Borough Municipality* AIR 1961 S.C. 4358, *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, and *N.M.C.S. and New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others*, . The infirmities affecting the assessment as a whole and rendering the same ultra vires we are unable to accept the contention of Mr. Ghosh that the Petitioners could only challenge their individual assessments and not the assessment as a whole. Where, as in the present case, the Petitioners have successfully established the fact that the assessment as a whole is not founded upon any lawful determination of annual values of the different holdings and when the assessor fails in his duty to prepare a valuation list in accordance with law they can certainly challenge the consequent assessment as a whole and not their individual assessments only. In the case of *Amulya Ratan Karmakar and Others Vs. The Commissioner of Basirhat Municipality and Others*, preparation of an electrical roll as a whole being challenged, an objection similar in nature as raised by Mr. Ghosh was overruled and it was held that the case is not one of objecting to individual entries but of enforcing preparations of the Roll in accordance with the Act and the Rules and an application under Article 226 of the Constitution for such a relief is maintainable.

21. At this stage it would be convenient to consider the other objection raised by Mr. Ghosh that the remedy for the Petitioners lay in filing review applications u/s 148 and since many of the Petitioners had preferred such review applications

some of which had already been disposed of, the present writ petition could not have been entertained. We are unable to accept such a contention. We agree with Mr. Mukherji that the remedy u/s 148 of the Act is contemplated in cases where there being a bona fide assessment in accordance with law and in substantial compliance with the requirements thereof there arises errors, irregularities or illegalities in regard to individual cases. Where, as in the present case, there had been no assessment in true sense of the term or where the assessment as a whole is ultra vires, remedy contemplated by Section 148 is no remedy. Such was the view expressed by Supreme Court in the case of N.M.C.S. and W. Mills (Supra). For the very same reason, the mere fact that some or other of the Petitioners had preferred review applications u/s 148 of the Act does not alter the position because an assessment which is found to be ultra vires and void cannot be rendered valid by an order made on such a review petition. In the case of Municipal Council, Khurai and Another Vs. Kamal Kumar and Another, the Supreme Court expressly overruled a similar objection. Such being the position, we must necessarily accept the contention of Mr. Mukherji that the learned Judge in the trial Court was in error in refusing the relief claimed to the Petitioners who had preferred review applications u/s 148 of the Act. In our view, their preferring any such review application or any order made thereon would not change the position in any manner when upon the finding of the learned Judge and on our own finding the assessment itself was not based on any valid or lawful valuation made in accordance with law.

22. At this stage we may dispose of another objection raised by Mr. Ghosh in this appeal to the effect that when a joint application fails in respect of some of the Petitioners it should fail as a whole and the learned trial Judge could not have allowed it in part in respect of some of the Petitioners. In our view, such a question does not arise in the present case because all the Petitioners were equally entitled to get the relief claimed in the petition and the learned Judge went wrong in thinking that such of the Petitioners who had preferred review applications u/s 148 were not entitled to any relief.

23. We would, now, proceed to consider the most serious objection raised by Mr. Ghosh challenging the right of the Petitioners to maintain a representative action. According to Mr. Ghosh, such an action is not maintainable on the facts of the present case and the leave under Order 1, Rule 8 of the CPC was erroneously given. He contends that there is no community of interest amongst the Petitioners who were really and in substance challenging their respective assessments though the ground of such challenge may be identical. Moreover, according to Mr. Ghosh, it cannot be presumed that all the rate-payers are equally aggrieved and had suffered any common grievance because of the impugned assessment, inasmuch as, some or many of them may not have been prejudicially affected by the assessment at all. Strong reliance is placed by Mr. Ghosh on the decision of this Court in the case of Bimal Behari Sarkar v. State of West Bengal (1962) 66 C.W.N. 912 and Smith v. Cardiff Corporation (1963) (2) A.E.R. 1973. Mr. Mukherji, however, disputes the validity of the objection thus

raised by Mr. Ghosh. According to Mr. Mukherji the dispute as raised is not the sum total of individual disputes. The Petitioners have not challenged their individual assessments. They have challenged the assessment as a whole on the ground that such an assessment is not based on a valuation list lawfully prepared by the assessor discharging mandatory obligations cast upon him by law in the matter of preparation of such a list. Mr. Mukherji has, further, contended that on the provision of Rules 8(a) and 10 of the Rules it is quite evident that, the valuations in respect of individual holdings are inter-dependent and where as in the present case the assessor has not made any of the valuations in a lawful manner, no individual valuation or individual assessment can at all be profitably challenged. What can be challenged in such a case is the valuation as a whole and the entire assessment based thereon. That exactly, according to Mr. Mukherji, has been done in the present case by the Petitioners and in such a challenge there exists a community of interest of all the rate-payers because only a valid and lawful assessment can furnish the authority for realisation of rates by the Municipality. Mr. Mukherji has, further, contended that notices being issued under Order 1, Rule 8 of the Code one or more of the rate-payers may not join hands with the Petitioners in challenging the assessment but that by itself will not take the case out of Order 1, Rule 8 and the leave prayed for therein could not have been refused. According to him, all the rate-payers cannot but have a common interest to see that the whole assessment is based on a valid and lawful valuation list bona fide prepared by the assessor in accordance with law. Mere fact that absence of such a valuation list may have ensured to the benefit of some of the rate-payers is no consideration for holding that the case does not come within Order 1, Rule 8 of the Code. Mr. Mukherji has relied on the decisions in the case of *Kumarvelu Chettiar v. Ramaswami Ayyar* L.R. 60 IndAp 278 *Gurushiddappa Gurubasappa Bhusanur Vs. Gurushiddappa Chenavirappa Chetni*, and *John v. Rees* 1963 (2) A.E.R. 274.

24. We have carefully considered the rival contentions on the point and in our considered opinion it is difficult to uphold the contention raised by Mr. Ghosh. Rule permitting such representative action is one which rests on convenience. It is an exception to the general rule that all persons interested in a suit ought to be made parties thereto. But there may be cases where it may not practically be possible or feasible to make all the innumerable persons having a community of interest amongst the parties to an action and convenient demands that in such cases a few amongst the many may be permitted to represent the others having the same interest. Mr. Ghosh in his fairness has conceded that there may be cases where the assessment as a whole made by the Commissioners may be successfully challenged as in a case where the assessment is made on a wrong or unauthorised basis. There can be no doubt, in our view, that in such cases the rate-payers would have a common interest in challenging the assessment. On our findings made hereinbefore, the position is not different in the present case, They have challenged the entire assessment as an ultra vires one not having been made in conformity with law. Their grievance is not in respect of any

illegality or irregularity with reference to any individual assessment. Their grievance, on the other hand, is that there is no valid assessment in law at all and any attempt to realise rates from any of the rate-payers on the basis of such assessment would be without authority of law. Based on a common grievance they have a community of interest and in our opinion, it stands the test laid down in the leading case of *Duke of Bedford v. Ellis* 1901 (1) A.C. 1 where it was laid down:

Given a common interest and a common grievance a representative suit was in order if the relief sought was in its nature beneficial to all whom the Plaintiff proposed to represent.

Nothing inconsistent with the view we take was laid down in *Bimal Behari Sarkar's* case (Supra) where the Petitioners sought to vindicate their individual grievances arising out of adverse orders passed individually against each u/s 5A of the West Bengal Estates Acquisition Act and sought to maintain a representative action only on the ground that all of them had challenged the constitutional validity of Section 5A and this Court held that there was no community of interest in the action initiated. The decision in the case of *Smith v. Cardiff Corporation* (Supra) is clearly distinguishable. There some of the tenants brought an action challenging a particular scheme in a representative capacity on behalf of all the tenants of the Corporation though the scheme was so framed as to increase rent of some to subsidise the rent of others whose rents are not to be altered. It was held that when on the scheme itself there were two classes of tenants whose interests are in conflict, a representative action on behalf of all is not maintainable. Such, however, is not the position here. It may be true as suggested by Mr. Ghosh that some of the ratepayers may have derived benefit out of the impugned assessment and they might not feel interested in challenging the assessment. But that, in our view, cannot stand in the way of a representative action being taken on behalf of all. In a representative action, all whom the Plaintiffs or the Defendants acting in representative capacity propose to represent need not necessarily support those who propose to represent. Where there is a community of interest amongst numerous persons, a representative action is maintainable and if some amongst those numerous persons claim any adverse interest, they can well come and add themselves as parties opponents and they would certainly not in that event be represented by those who have brought the representative action. In an action of the present nature there cannot but be a community of interest because all the rate-payers can have the only common interest of ensuring that the assessment as a whole is made in accordance with law. If someone deriving any benefit from the illegality in such assessment wants to support the assessment instead of challenging the same he can easily do so by applying for being added as a party Respondent along with the Commissioners. This was the view expressed in the case of *John v. Rees* (Supra) relied on by Mr. Mukherji. The true test, in our view, in the present case is to consider whether the Petitioners could have challenged the entire assessment in the absence of all the rate-payers and if not, all such

rate-payers are required to be made parties to the proceeding either individually or in a representative manner. On our finding when the assessment as a whole was being challenged there was no other alternative open to the Petitioners in the present case and hence the representative action that they brought was quite in accordance with law. In this view, we overrule this objection raised by Mr. Ghosh.

25. Before we conclude it is necessary for us to dispose of another objection raised by Mr. Ghosh to the maintainability of the present appeal with regard to its constitution. According to Mr. Ghosh, this is an appeal arising out of a representative action. If in the trial Court 42 Petitioners were given leave to represent the rate-payers all of them together could have preferred the appeal and not 32 of them because leave was not granted to them individually or in the group of 32. There is no dispute that the appeal in the present case was preferred by 32 of the Petitioners the balance being made parties Respondents to this appeal. All of them are before the Court. According to Mr. Mukherji, those others could not join in the memorandum as at the time when the appeal was presented they were not available at hand. In our opinion, it is not necessary to decide the validity or otherwise of this objection of Mr Ghosh since it cannot be disputed that those thirty two Petitioners could have preferred the appeal on a fresh leave obtained from this Court and that such leave can even now be granted to them, so that where on our findings they are entitled to the relief claimed this technical objection cannot stand in their way of getting the relief claimed.

26. This leads us to consider the relief which is admissible on the writ petition. There can be no doubt that in view of our findings made hereinbefore the assessment as a whole must fail and when such an assessment was challenged by the Petitioners in a representative action, the learned Judge could not have limited the relief only to the Petitioners before him. Leave having been granted under Order 1, Rule 8 of the Code the application could succeed either as such or not. The learned Judge never revoked the leave and assigned no reason why he thought that the relief would be admissible only to some amongst the Petitioners and not to all the ratepayers. Such being the position, in our considered opinion, the Petitioners were entitled to have the entire assessment set aside. In the result, F.M.A. 300 of 1977 preferred by the Municipal Commissioners fails and is dismissed while F.M.A. 959 of 1976 preferred by the Petitioners succeeds and is allowed. The judgment and order passed by the learned Judge in the trial Court is set aside to the extent he had refused the relief claimed in the writ petition except in respect of a few of the Petitioners. The writ petition succeeds as a whole and the Rule issued thereon is made absolute. The impugned assessment by the Municipal Commissioners of Krishnanagore is set aside and a writ in the nature of certiorari do issue accordingly. Parties do bear their respective costs in these two appeals.

27. Let the operation of this order remain stayed for a period of six weeks from

this date.

28. The application dated November 26, 1976, for addition of parties filed at the appellate stage is dismissed since we do not think it necessary to add them as parties.

B.C. Chakrabarti, J.

28. I agree.