
(1983) 10 GUJ CK 0002
In the Gujarat High Court

The Arvind Mills Ltd. and Another	Vs	APPELLANT
State of Gujarat and Others		RESPONDENT

Date of Decision : 28-10-1983

Acts Referred:

Bombay General Clauses Act, 1904 — Section 24
Bombay Land Revenue Code, 1879 — Section 214
Constitution of India, 1950 — Article 14, 19, 19(1)(g), 265, 31

Citation : (1984) 2 GLR 1140

Hon'ble Judges : R.J. Shah, J;B.K. Mehta, J

Bench : Division Bench

Judgement

B.K. Mehta, J.—By this group of petitions, the petitioners challenge the validity of the Gujarat Land Revenue (Amendment) Rules, 1977, enacted by the State Government by the Government Notification of April 24, 1978 u/s 214 of the Bombay Land Revenue Code with effect from September 1, 1976. The petitioners also challenge the Bombay Land Revenue (Gujarat Amendment and Validation) Act, 1981 by which it, inter alia, sought to amend Section 214 of the Bombay Land Revenue Code (hereinafter referred to as "the Code") so as to empower the State Government to make rules retrospectively and purporting to validate the Amendment Rules so far as they levied non-agricultural assessment retrospectively.

2. Since the Validation Act, the Amendment Rules and the consequent levy as aforesaid have been impugned on almost identical grounds in this group of petitions, except Special Civil Applications Nos. 2249/81 and 1786/80 which are to be disposed of by separate orders, we propose to set out the relevant facts broadly by way of model facts from Special Civil Application No. 583 of 1978 and consider and decide the question raised by this common judgment.

3. Petitioner No. 1 of Special Civil Application No. 583 of 1978 is a public limited company registered under the Companies Act, inter alia for purposes of business of manufacturing textile goods. Petitioner No. 2 is a shareholder of the said

Company. The Petitioner company holds a large parcel of land admeasuring about 2,00,000 sq. meters comprising of as many as 30 different survey numbers situated in Asarwa within the Municipal limits of the Ahmedabad Municipal Corporation. Prior to August 1, 1976, these lands were assessed for purposes of land revenue as Lands used for nonagricultural purposes at the rate of 0-02 paise per sq. metre under Rule 8(2) of the Gujarat Land Revenue Rules, 1972 (hereinafter referred to as the Old Rules") as was in force at the relevant time. The petitioner-company was paying total land revenue in the sum of Rs. 5,853-23 Ps. for non-agricultural use of the aforesaid lands. In addition to the land revenue, the petitioner-company was also paying local fund cess and education cess being 50%) each of the total amount of the land revenue as aforesaid. It appears that the State Government, in exercise of its rule making power u/s 214 of the Code amended some of the provisions of the Old Rules pertaining to levy of non-agricultural assessment retrospectively, that is, with effect from September 1, 1976. Since Section 214 of the Code required prior publication of the Rules, the State Government published a draft notification dated July 21, 1976 in the State Government Gazette (Extraordinary) on July 22, 1976, inviting objections and suggestions to the proposed amendments from persons likely to be affected thereby on or before July 30, 1976. We will deal with the precise nature of the proposal at the appropriate time. Suffice it to say for the present purposes that by the proposed amendment, the State Government sought to empower the Collector for purposes of determining generally the rate of non-agricultural assessment leviable from time to time to Divide the villages, towns and cities into different classes having regard to the population and then to fix the non-agricultural assessment at different rates specified having regard to the nature of the use, namely, residential, industrial, commercial and other uses of the lands in question in these classes. As no objections were received by the State Government to the preliminary notification, the final notification dated July 31, 1976 was published and accordingly the Gujarat Land Revenue (Second Amendment) Rules, 1976 (hereinafter described as "the Amendment Rules, 1976") came into effect retrospectively i.e. from August 1, 1976. As the time for filing the objections against the aforesaid preliminary notification was too short, some of the textile mills and others who were affected thereby challenged the Amendment Rules of 1976 in this Court by petitions, being Special Civil Applications Nos. 209 to 219 and 254 of 1977, inter alia, on the ground that the persons affected had no sufficient opportunity of making representation as required u/s 24 of the Bombay General Clauses Act. On the Counsel for the State Government stating before this Court that the Government would not assess the landowners at the new rates for purposes of non-agricultural assessment, and that the Government would consider the objections and suggestions received upto 15th April 1977 in respect of the preliminary Notification of July 21, 1976 from the affected persons notwithstanding the fact that the time limit stipulated originally was July 31, 1976, the petitioners of those special civil applications agreed to withdraw the petitions without prejudice to their right to challenge the retrospective or

prospective operation of the new rates. In view of this consensus, the Division Bench of this Court consisting of J. B. Mehta, Acting C. J. and D. A. Desai, J. (as they then were) by its order of March 11, 1977 granted permission to withdraw the said petitions to enable the petitioners to avail of fresh opportunity to file their objections in time. Pursuant to the aforesaid order of this Court, the State Government published on June 28, 1977 a Notification cancelling the final Notification of July 31, 1976 but keeping alive the draft Notification dated July 21, 1976 and invited fresh objections and suggestions from the persons affected against the said preliminary Notification. Inadvertently, however, even in this Notification of June 28, 1977 the time specified to file objections and suggestions was 7th July, 1977 and therefore, a corrigendum was issued on July 5, 1977 by the State Government for filing objections and suggestions by 27th July, 1977 instead of 7th July 1977. It is claimed by the petitioners that pursuant to this Notification of June 28, 1977, thousand of persons filed their objections before the State Government on various grounds praying, inter alia, for personal hearing in the matter. The State Government, however, on consideration of these objections, but without granting any personal hearing, to any or all of the affected persons, finalised the proposed amendment and made rules known as "the Gujarat Land Revenue (Amendment) Rules, 1977 (hereinafter described as "the impugned Rules") amending the Old Rules of 1972 and published the same in the Government Gazette of January 24, 1978 by the Notification of the even date (hereinafter described as "the impugned Notification"). The impugned Rules have been made effective retrospectively, i.e. with effect from September 1, 1976. The State Government promulgated Gujarat Ordinance No. 20 of 1980 on December 10, 1980 seeking to amend Section 214 of the Code so as to authorise the State Government to make Rules retrospectively and validating rules already made u/s 214 of the Code before the commencement of the Ordinance as if they had always been validly made in accordance with law and as if the principal Act had been in force as amended by the Ordinance at all material times when such rules were made, and anything done or any action or proceeding taken under such rules shall not be called into question in any Court of Law or before any other officer or the authority on the ground that it was made without any power in that behalf u/s 214 of the Code. The said Ordinance was succeeded by Gujarat Act No. 2 of 1981 known as the Bombay Land Revenue (Gujarat Amendment and Validation) Act, 1981 (hereinafter described as "the impugned Validation Act") and the same was put on the statute book with effect from February 24, 1981 to achieve the same purpose. The net effect of these Rules is, so far as the petitioner-company is concerned, that it is liable to pay non-agricultural assessment at the rate of Rs. 0-10 paise per sq. metre instead of Rs. 0-02 paise per sq. metre with the result that the aggregate amount of land revenue which the petitioner-company would be required to pay would be Rs. 20,452-80 paise and consequently the same amount by way of local fund cess and education cess at the rate of 50% each of the aggregate of the land revenue. The total liability, according to the petitioner-company, has thus increased by about 500%. The petitioners have, therefore, moved this Court for appropriate writs, orders and

directions declaring that the impugned rules are arbitrary, unjust and ultra vires Section 214 of the Code and bad in law and void inasmuch as they are violative of principles of natural justice and Articles 14, 19, 31 and 265 of the Constitution of India, and also for declaring that the Validation Act, 1981 is also bad in law and void inasmuch as it is violative of Article 19(1)(g), 245, 265 and 300-A of the Constitution of India and consequently restraining the State Government from raising any demand or recovering the land revenue under the impugned Rules.

4. The petitioner-company in Special Civil Application No. 583 of 1978 had sought the amendments on four occasions vide (1) Civil Application No. 1624 of 1980 seeking to introduce paras 27-A to 27-D which was granted by this Court by its order of July 21, 1980; (2) Civil Application No. 228 of 1982 seeking to add paras 27-A to 27-G and 30-AA which was granted by this Court by its order of January 22, 1982; (3) memo of proposed amendment of March 30, 1983 seeking to add paras 1.1, 27-H to 27-Q which was granted by the order of this Court of March 30, 1983, and (4) Civil Application No. 2685 of 1983 seeking to insert paras 12-A, 18-A, 22-A, 22-B, 22-C and 27-E (1) which was granted by the order of this Court of July 1, 1983 with specific directions that the paras of the petition should be properly renumbered so as to avoid duplication in the number of the paragraphs for the reasons which were to be pronounced alongwith the judgment and order disposing this group of petitions. We will indicate presently the reasons which, in our opinion, require the leave to be granted for the proposed amendment.

5. It is trite position in law that Court's power to allow amendment under Order 6 Rule 17 of the CPC can be exercised at any stage if the Court feels it necessary for purposes of determining the real questions in controversy between the parties, and it does not work injustice to the other side (see : Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others, The object of the rule is to avoid multiplicity (see : Nichhalbhai Vallabhai and Others Vs. Jaswantlal Zinabhai and Others, More delay and laches in making the application for amendment is no ground for refusal of the amendment (vide : Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, The only limitation on the power of the Court is that no new or inconsistent cause of action can be introduced by amendment nor any vested interest or accrued legal right can be disturbed. No doubt the application for amendment which is mala fide cannot be allowed. The basic test is whether amendment is necessary for purposes of determining the real controversy between the parties. On perusal of the various amendment applications, it is clear that it is with a view to enable the Court to determine the real questions in controversy between the parties that the various amendment applications have been made in order to precisely formulate the various challenges to the impugned Amendment Rules of 1977. It is also clear that the amendments are more in the nature of raising different facets of the same questions which were urged in the original petition. Out of the four occasions on which the amendments have been sought by the petitioners, three

were before the petitions reached for effective hearing. It was only on the 4th occasion when the amendments have been sought for in course of hearing of the petitions. The amendments do not disturb any vested interest or accrued right nor they operate prejudicially to the cause of the State Government which had been permitted to file reply affidavit to the amended petition. It should be recalled that this Court had while allowing the amendments directed the petitioners of Spl. C.A. No. 583 of 1978 to pay Rs. 250/- by way of costs in one set to the State since the amendments which have been sought in all these applications are identical. For the reasons aforesaid the said amendments were permitted.

6. The State Government has opposed this petition including the amended petition on identical grounds in the entire group of petitions. We will, therefore, restrict ourselves to the reply affidavit filed in Spl. C.A. No. 583 of 1978 and the additional affidavit to the amended petition in the same Special Civil Application. Broadly stated, the case of the State Government is that it was not obligatory on the part of the Government to afford opportunity of personal hearing in matter of the kind where the Government was deliberating upon amending a particular rule or rules in exercise of its legislative power, and it was only on the ground of equity and fair play that the State Government conceded in the earlier Spl. C. A. Nos. 209 to 219 & 254 of 1977 that the Government would grant a fresh opportunity of hearing to the affected persons by considering the objections and suggestions received upto 27th July, 1977 in respect of the preliminary notification of 21st July 1976 though the time stipulated originally was 31st July, 1976 only, and it was in pursuance of this concession before the High Court that they had withdrawn the final notification of 31st July, 1976 and invited the objections and suggestions by a fresh notification published on June 28, 1977 from the affected persons against the preliminary notification of 21st July 1976. The State Government was under obligation only to consider the objections submitted in writing and they were duly examined by the Government as required by Section 24 of the General Clause Act since any rules u/s 214 of the Code could be made effective only after prior publication. As regards the objection of the petitioners against the retrospectivity of the impugned Amendment Rules of 1977 which were originally notified to be effective from 1st August, 1976, the State Government contended that the State has a power u/s 214 of the Code as amended by Ordinance No. 20 of 1980 which came into force on and from 10th December 1980 and by Gujarat Act No. 2 of 1981 which came into effect from 24th February, 1981 to enact rules retrospectively, and the impugned Amendment Rules of 1977 made before the Ordinance and the Act and all acts and things done in pursuance thereof including the levy and collection of the non-agricultural assessment were validated; and though they could have been put into effect from 1st August, 1976, as a matter of fact by the impugned amendment Rules of 1977 which were finally notified by the Government Notification of January 24, 1978, they were made effective from 1st September, 1976. The State Government joined issue with the petitioners that the

amendment Rules of 1977 seeking to levy non-agricultural assessment at the enhanced rate were without authority of law and therefore, violative of Articles 31 and 265 of the Constitution inasmuch as the impugned Rules of 1977 were in exercise of the rule making power u/s 214 of the Code which is a law within the meaning of the said term under Article 13 of the Constitution and, therefore, perfectly legal and valid levy of the revenue on lands used for non-agricultural purposes. The challenge of the petitioners to the impugned Amendment Rules of 1977 as violative of Article 14 of the Constitution of India inasmuch as different flat rates have been prescribed with reference to residential, industrial and commercial use of the land in different parts of the State was sought to be repelled by asserting that the classification was perfectly valid and intelligible and it has a reasonable nexus with the object of the Land Revenue Code. In absence of such classification of lands with reference to the use and their location and the different rates in that behalf, the levy was likely to be impugned on the ground of discrimination. The grievance of the petitioners about the excessive and unjust increase in the revenue of the lands for non-agricultural use and consequent burden on the assessee, according to the State Government, was not well-founded as is apparent from the fact that the revenue rates for non-agricultural use of the lands have not been revised during the last two decades notwithstanding the phenomenal rise in the land value in the corresponding period even though the assessment of the land revenue has direct relationship with the land price. The State Government has sought to repel the challenge to Sections 45 and 48 of the Code on the ground of being arbitrary and, therefore, violative of Article 14 and the impugned Amendment Rules of 1977 on the ground of the vice of excessive delegation since Section 45 read with the amended Section 48 of the Code authorised the levy of revenue on the lands wherever situate with reference to the use of the lands for purposes of agriculture, residence, industry, commerce or any other purpose which according to the State Government provided for clear guidelines and left the prescription of the rates and procedure to the State Government under appropriate rules in that behalf. Ordinance No. 20 of 1980 and Act No. 2 of 1981 were justified as perfectly within the legislative domain of the State since there was no usurpation of the judicial power by the Legislature and the purpose of the Ordinance and for that matter the Act was to validate the levy and collection of land revenue on the lands used for non-agricultural purposes at the enhanced rate under the impugned Amendment Rules of 1977 with effect from 1st September 1976, and once the retrospective rule making power was invested in the State Government and the levy and collection of the revenue on lands used for non-agricultural purpose was validated by providing that such retrospective rule making power was in force as if from the inception of the Code, the State Government's action of levying and collecting the land revenue is beyond challenge. The attack of the petitioners against Rule 81 of the Gujarat Land Revenue Rules, 1972 and the impugned Amendment Rules of 1977 as beyond the power and purpose of the Act, particularly Sections 45 and 48 of the Code inasmuch as it permits the levy of revenue on lands with reference to super structure whether it is residential or

commercial, as the case may be, is sought to be repelled by the State Government on the ground that the land includes what is fastened to the land and, therefore, the assessment of the land together with the structure for purposes of the land revenue cannot be said to be ultra vires Section 45 and/or Section 48 of the Code. The challenge to the impugned Amendment Rules of 1977 as being ultra vires Section 52 of the Code inasmuch as the rules divest the authority of the Collector to assess the land revenue of the lands used for non-agricultural purposes since the entire assessment is governed by the rules is, in the submission of the State Government, misconceived since Section 52 invests the power and authority in the Collector to assess the land revenue subject to the rules that may be prescribed in that behalf and, therefore, it cannot be said that the Collector is divested of the power or authority to make assessment. According to the State Government, the present amendment of Section 48 of the Code lays down broad guideline within which the State Government has to frame rules so as to effectuate the purpose and object of the section. Before the amendment of Section 48 of the Code and Rule 81 of the Old Rules, 1972, the Collector was authorised to divide villages, towns and cities in his district into two classes for purposes of determining generally the rate of non-agricultural assessment leviable on the lands and then fix, subject to general or special order of the State Government, the assessment and the rates per square metre within the minimum limits prescribed in the rule. The purpose underlying the amendment of Section 48 of the Code and Rule 81 of the Gujarat Land Revenue Rules, 1972 was to eliminate the arbitrariness in the assessment since the Collector has a very wide discretion in the matter of determining the rate and fixing the assessment. The division of the State into villages, towns and cities under the amended Rule 81 and prescribing the rate of assessment with reference to the use of the lands and their location is with a view to avoid the possible charge of discrimination and acting in an arbitrary manner in the matter of assessment of the land revenue.

7. It is in the context of the above pleadings which have been broadly summarised that we have to determine the following questions which arise on the rival pleadings of the parties:

(1) Whether the impugned Amendment Rules of 1972 are bad in law and void inasmuch as the Government Notification of January 24, 1978 by which the impugned Rules were finalised was without compliance with the previous publication as required u/s 24 of the Bombay General Clauses Act.

(2) Whether the impugned Amendment Rules of 1977 are bad in law and void inasmuch as they are violative of the principles of natural justice.

(3) Whether the impugned Amendment Rules of 1977 are bad in law and void since they seek to levy revenue on the lands used for non-agricultural purposes retrospectively, that is, with effect from 1st September, 1976 without the power or authority to enact the rules retrospectively u/s 214 of the Code at all the relevant times.

(4) Whether the attempt to validate the levy, assessment and collection of the non-agricultural assessment by the Gujarat Ordinance No. 20 of 1980 or for that matter by the Gujarat Act No. 2 of 1981 was for all intents and purposes abortive.

(5) Whether the impugned Amendment Rules, 1977 are ultra vires Section 48 and/or Section 45 and/or Section 52 of the Code.

(6) Whether the impugned Amendment Rules of 1977 are violative of Article 14 of the Constitution of India inasmuch as they are arbitrary, unjust and discriminatory.

(7) In any view of the matter proviso to Rule 81(2) of the impugned Amendment Rules of 1977 enjoining the assessment of the land, with effect from 1-8-1979, situate within the urban agglomerations to which the Urban Land (Ceiling & Regulation) Act, 1976 applies at double the rates prescribed in Table "A" for not putting such land to non-agricultural use for which permission is granted or deemed to be granted is ultra vires Article 14 of the Constitution.

8. We will take up for consideration the first four points simultaneously since they are inter-connected.

Re : Points Nos. 1 to 4:

The argument advanced on behalf of the petitioners in support of these four points runs as under : The preliminary Notification of July 21, 1976 was void ab initio inasmuch as it did not give any reasonable time for filing objections or making suggestions against the proposed amendments, or, in any case, it was exhausted by issuance of the final notification of July 31, 1976 which notification was admittedly withdrawn by the State Government pursuant to the order of this Court of March 11, 1977 in Special Civil Application No. 209 of 1977 and other companion matters where on behalf of the State Government it was stated that the Government would consider all the objections against the preliminary notification that might be received by the date as may be specified by a fresh notice in that behalf notwithstanding the fact that the date specified for filing the objections according to the aforesaid preliminary notification had expired on July 31, 1976. The State Government, therefore, could not have by the notification of June 28, 1977, which is issued pursuant to the order Of this Court in light of the statement made by the Government inviting fresh objections against the preliminary notification latest by July 27, 1976, treated the preliminary notification as alive either because it was bad in law or it was exhausted, and in any case the Notification of June 28, 1976 could not be treated as a draft or a preliminary notification u/s 24 of the Bombay General Clauses Act. The final Notification of January 24, 1978 by which the impugned Amendment Rules of 1977 were published was, therefore, vitiated inasmuch as it was issued without compliance with the obligation of the previous publication as required u/s 214 of the Code. Alternatively it was urged that the impugned Amendment Rules of 1977 were bad in law and void inasmuch as they were issued without compliance with the principles of natural justice and fair play. In any case, at the time when

these impugned Rules were finalised and published, the State Government had no power u/s 214 of the Code to make them effective retrospectively, and in any view of the matter after the amendment of Section 214 of the Code by which the State Government was invested with the power to make rules retrospectively which power was prospective in operation, the State Government could not have validated the rules so made without proper authority in that behalf, and consequently the levy and collection of the non-agricultural assessment in pursuance thereof. The entire attempt of the State Government to validate the levy, assessment and collection of the non-agricultural assessment was abortive since the validation Ordinance and the Act had not removed the defect by amending Section 214 of the Code retrospectively as if the amendment was a part of the Act from its inception. A number of decisions were cited in support of the entire contention.

9. On behalf of the State Government, it was urged that the entire contention is misconceived for the obvious reason that apart from the contention being not raised in the terms in which it has now been sought to be urged in the petition which was amended on not less than four occasions, the basic premise that the preliminary notification was void ab initio or had exhausted itself was not well-founded at all. The Government Notification of June 28, 1977 issued in pursuance of the understanding arrived at between the parties in Special Civil Application No. 209 of 1977 and other companion matters and as incorporated in the order passed therein invited the persons affected to make suggestions in respect of or file their objections against the preliminary Notification of July 21, 1976. In other words, the said preliminary Notification was referred to and incorporated in the Notification of June 28, 1977 so that the persons affected may know that what is precisely the proposal against which they have to file objections or in respect of which they have to make suggestions. In submission of the State Government, even if the prior publication is mandatory, the manner of publication is not mandatory and substantial compliance with the requirement of publication is sufficient since not one petitioner has stated that he was unaware of the contents of the preliminary notification and consequently suffered prejudicially in making his suggestions or filing his objections. As regards the grievance of the petitioners about violation of the principles of natural justice, it was urged on behalf of the State Government that the purpose of the previous publication is to give information and opportunity to all the interested persons so that they may file their objections, if they so desire and once that exercise was being done, it was not necessary for the Government to undertake that exercise afresh and merely because the entire preliminary notification was not published again, it cannot be said that the persons affected had not sufficient opportunity of hearing. As regards the objection of the petitioners that the purpose of the Validation Act is not achieved, it was urged on behalf of the State Government that in the first place what should be the form of the Validation Act is a matter and practice of the legislative drafting and if on reading the Validation Act the Court is satisfied that the defect was removed and all acts and things done have

been validated thereafter, the purpose must be established to have been achieved. It was pointed out on behalf of the State Government that after investing the power to make rules retrospectively by amending Section 214 of the Code the Validating Act has said in so many terms in Section 4 of the Act by providing that the amended provision of Section 214 of the Code was deemed to be in force all along when the impugned Amendment Rules of 1977 were made. It is not necessary, according to the State Government, to make the amended rule a part of the Act from the inception since it would go much beyond the expected objective of removing the defect and validating the impugned acts and things done in respect of such an amended provision. It is in light of these rival contentions that we have to determine the first four points set out above.

10. The first aspect to which we have to address ourselves is whether the impugned Amendment Rules of 1977 are bad in law as they were finalised without previous publication as required u/s 24 of the Bombay General Clauses Act. Section 214(3) of the Code enjoins that the power to make rules under the section is subject to the condition of previous publication. Section 24 of the Bombay General Clauses Act, 1904 as adopted in the State of Gujarat makes provisions applicable to the making of the rules after previous publication. It, inter alia, provides that where by any Gujarat Act a power to make rules is expressed to be given subject to the condition of previous publication, four conditions are to be satisfied, viz. (1) that the rule making authority shall publish a draft of the proposed rules for the information of the persons likely to be affected; (2) that the publication shall be in such a manner as the authority deems it sufficient or in the manner as the Central or the State Government may prescribe if the condition with respect to previous publication so requires; (3) that a notice be published alongwith the draft specifying the date on or after which the draft shall be taken into consideration; and (4) that the rule making authority as well as the authority whose sanction, approval or concurrence is required for enacting the rules shall consider any objections or suggestions received by the rule making authority from any person with respect to the draft before the specified date. It is trite position in law that a rule not complying with the requirement set out in Section 24 of the Bombay General Clauses Act would be void (vide : The Municipal Corporation Bhopal, M.P. Vs. Misbahul Hasan and Others, However, the manner of publication is left to the discretion of the rule making authority unless the statutory condition with respect to the previous publication required it in a particular manner. It may be that in the circumstances of a given case the Court may refuse to treat the publication in the Official Gazette of a rule as conclusive proof that it has been duly made (see : The Automobile Transport Rajasthan (Pr.), Ltd. and Others Vs. The State of Rajasthan and Others, It is difficult, however, to agree with the petitioner that the notice specifying seven days' time for consideration of the draft rules will vitiate the draft notification and make it void ab initio. In Automobile Transport's case (supra) the Rajasthan High Court refused to treat the Rajasthan State Road Transport Services (Development) Rules which were finalised on December 17,

1959 and published in the State Gazette on the next following day as duly made since the notice that the draft rules would be taken into consideration on or after the expiry of seven days from the date of publication was published in the Gazette on December 9, 1959 which, according to the evidence reached the public including the bus operators round about 15th or 16th December, 1959 and, therefore, virtually no time was allowed by State Government for filing the objections and the publication could not be said to be in accordance with this requirement of the situation. We do not think that this decision can be said to be an authority for an absolute proposition that there should be a particular minimum time intervening between the publication of the draft notification and the date for consideration thereof. The reason for our disagreement is that the objective of the publication of the draft of the proposed rules is for the information of the persons likely to be affected thereby. No doubt the information is for the purposes of enabling the affected persons to file their objections or make suggestions to the rule making authority. It should also be borne in mind that the result of the notice providing unreasonably short or inadequate time for consideration of the draft rules is only in the sense that the Court will refuse to treat such prior publication as conclusive proof that the rules have been duly made u/s 24(5) of the Bombay General Clauses Act. It cannot be urged from this provision in Sub-section (5) that the rules are vitiated or that the draft rules are void ab initio. As a matter of fact in the present case before us, the State Government had conceded before this Court that they would withdraw the final notification of July 31, 1976 and issue a notice inviting fresh objections against the preliminary Notification of July 21, 1976. Assuming without conceding that the short notice for filing of the objections against the draft rules is not according to the true spirit and requirement of Sections 24 (1) and (3) of the Bombay General Clauses Act, even then it is the ultimate rule which is vitiated and not the notice publishing the draft rules intimating the date for consideration thereof. The Learned Counsel for the petitioners, therefore, urged alternatively that the preliminary Notification of July 21, 1976 was exhausted when the rules were finalised and published on July 31, 1976 and, therefore, when the final Notification of July 31, 1976 was withdrawn or cancelled by the State Government, the preliminary notification is not revived automatically. In submission of the Learned Counsel, the draft preliminary notification is for all intents and purposes exhausted and, therefore, was not capable of being revived. In support of this contention the Learned Counsel tried to draw upon the analogy from the Land Acquisition Act by urging that if the notification u/s 6 of the Land Acquisition Act is cancelled, or withdrawn, Section 4 notification cannot be relied upon for issuance of Section 6 notification since the purpose of Section 4 notification is exhausted. Reliance was sought to be placed by the Learned Counsel on the decision of this Court in *Dosabhai Ratansha Kerawala v. State of Gujarat* and Ors. 11 G.L.R. 361 in support of his submission. The Learned Counsel also relied on the Government Notification of June 26, 1977 where the State Government has, inter alia, stated that the preliminary Notification of July 21, 1976 was challenged before this Court in Special Civil Application No. 209 of

1977 and other companion matters on the ground that the time limit prescribed for sending the objections and suggestions was very short and one of the conditions in the order allowing the aforesaid special civil applications to be withdrawn was that the State Government should consider whatever objection that would be received by it upto April 16, 1977 and for that purpose it was considered necessary to treat the final Notification of July 31, 1976 as ineffective, and that the Government, therefore, declared that the said final notification be treated as ineffective as if it had never been issued. The Learned Counsel emphasised that this is a clear admission on the part of the State Government that the final Notification of July 31, 1976 was non-est for all purposes. We do not think how this submission of the Learned Counsel can be of any assistance to the cause being advocated before us. It is difficult to agree with him that if the final notification was vitiated and that it was non-est for all intents and purposes, the purpose of the preliminary notification is fulfilled. The very decision in Dosabhai Kerawala's case (supra), though in the context of Sections 4 and 6 notifications under the Land Acquisition Act and on which the Learned Counsel for the petitioners has heavily relied, negatives this submission of his. The Division Bench (Coram : Bhagwati C.J. and Vakil, J, as they then were) ruled in that case that if Section 6 notification is non-est Section 4 notification could not be regarded as exhausted for its purpose would yet be unfulfilled as its purpose could be fulfilled only by issuance of a valid notification u/s 6. Secondly, we find ourselves unable to agree with the Learned Counsel that on the State treating the final Notification of July 31, 1976 as ineffective as if it had never been issued, the State Government would be required to undertake the exercise afresh by issuing a fresh preliminary notification unless by express provision or necessary implication we can read such an obligation in Section 24 of the Bombay General Clauses Act since for effectively enacting a rule u/s 214 of the Code the obligation is of previous publication. Now, we do not find any express provision and we are unable to read any implication in Section 24 of the Bombay General Clauses Act to warrant such an obligation on the Government as contended by the Learned Counsel . If we are permitted to draw an analogy from the Land Acquisition Act, the cancellation of sec 6 notification by the Government suo motu having realised that such a notification is invalid, it cannot be asserted consequently that the Section 4 notification is also withdrawn and would not be operative so as to empower the Government to issue a fresh notification u/s 6 in pursuance thereof. Where notification u/s 6 was incompetent and invalid, and the State Government having realised the invalidity thereof and without waiting for an order of the Court when the persons affected by the said notification had challenged it, cancelled the notification, the Supreme Court held that there is nothing in the Land Acquisition Act which precluded the Government from treating the earlier invalid notification as ineffective and in its place issuing an effective notification u/s 6 (see : Girdharilal Amratlal Shodan and Others Vs. State of Gujarat and Others, There is an additional reason for rejecting this submission of the Learned Counsel for the petitioners. The preliminary Notification of July 21, 1976 was published by

incorporation in the Notification of June 28, 1977 since the State Government has declared after setting out the reasons for inviting the objections afresh to the said notification as under:

NOW, THEREFORE, in exercise of the powers conferred by Sub-section (1) of Section 214 of the Bombay Land Revenue Code 1879 (Bom 1879) and all other powers enabling it in this behalf, the Government of Gujarat hereby declares:

(i) that the above mentioned final Notification dated 31st July 1976 published on pages 360 to 372 of the Gujarat Government Gazette, Extraordinary Part-IV-B dated July 31, 1976 shall be treated as ineffective as if it had been never issued; (ii) the above mentioned preliminary Notification dated 21st July, 1976 published at pages 291 to 302 of the Gujarat Government Gazette, Extraordinary Part-IV-B dated 22nd July 1976 to be alive, subject to the modification that the objections and suggestions to the draft notification published alongwith the said preliminary notification will be received by the Secretary to the Government, Revenue Department, Gandhinagar from any persons likely to be affected thereby till Wednesday the 7th July 1977 (inclusive).

It should be noted that by a Corrigendum issued by the State Government on July 5, 1977 the outer date mentioned in paragraph 2 above, that is, 7th July was corrected so as to read 27th July in place thereof for filing of the objections against the preliminary notification of July 21, 1976. As a matter of fact the Corrigendum was only by way of abundant caution since in paragraph 2 of the said declaration it was notified that the objections or suggestions so received will be considered by the Government on or after the aforesaid date of 27th July 1977. What we are trying to emphasise is that even if the preliminary notification was required to be published again as contended by the Learned Counsel for the petitioners, it has been done so by incorporation in the notification of June 28, 1977. The entire premise of the argument of the Learned Counsel for the petitioners is, therefore, not well-founded.

11. In the second place, though the publication of the draft rules is a mandatory obligation u/s 24(2) of the Bombay General Clauses Act, the manner of publication is left to the discretion of the rule making authority unless the conditions with respect to the previous publication require it in a particular manner as may be prescribed by the concerned Government. In other words, the manner of publication is merely directory and the substantial compliance therewith would be sufficient in the facts and circumstances of the case. If a provision in a statute is mandatory, it is necessary to comply with it strictly before a given measure is made effective. In *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, the majority Court ruled that Section 131(3) of the U. P. Municipalities Act, 1961 in so far as it enjoined for publication of the proposal and draft rules alongwith the notice inviting objections to the proposal of the draft rules so published within a fortnight from the publication of the notice was considered to be mandatory having regard to the language, the purpose, the setting and the intention of the Legislature; while the manner of publication

provided therein was considered merely to be directory and substantial compliance with the manner of publication was considered to be enough for purposes of providing the taxpayers reasonable opportunity of making their objections. In *Municipal Corporation of the City of Rajkot v. Sonik Industries* (1980) 21 G.L.R. 838, the Full Bench of this Court to which one of us (B. K. Mehta, J.) was a party, speaking through Diwan C. J. (as he then was) ruled that the publication of the proposal to levy a particular tax is mandatory but the manner of publication of such a notice is directory and if there is no prescribed mode of publication of the rules, then the test to be applied is whether the rules were made known to the public and the publication was such that any citizen with reasonable diligence could have obtained knowledge of the contents of the sanctioned rules. Applying the test, the Full Bench found that there was a final publication of the rules as well as the notice intimating about the resolution of the Municipality to bring the rules into force with effect from the date specified therein, and the intimation in notice that the rules could be inspected at the office of the Municipality on all days other than holidays during office hours and the copies whereof could be purchased from the municipal office was held to be substantial compliance with the publication of the final rules. We, therefore, do not agree with the Learned Counsel that the preliminary notification of July 21, 1976 should have been published again since the manner of the publication prescribed in Section 24(2) of the Bombay General Clauses Act is not such an imperative mandatory provision the disobedience of which would invalidate or nullify the full proceeding (see : *Shripad Amrit Dange v. Sir Harsiddhbhai V. Divetia* AIR 1948 Bom. 20).

12. The second limb of the argument that impugned Amendment Rules of 1977 are in violation of the principles of natural justice has also no substance obviously for two reasons. In the first place, the rules of natural justice cannot be invoked in the context of the legislative power except to the extent assured under a given statute (see : *Saraswati Industrial Syndicate Ltd. and Others Vs. Union of India (UOI)*, *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*, and *Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra and Others Vs. State of Madhya Pradesh and Others*,

13. This takes us to the third contention that the impugned Amendment Rules of 1977 are bad in law and void inasmuch as they have sought to levy revenue on the lands used for non-agricultural purposes retrospectively without any authority in that behalf u/s 214 of the Code and the Validation Ordinance No. 20 of 1980 and the Gujarat Act No. 2 of 1981 did not achieve the purpose of validating the said rules and consequently the levy and collection of the non-agricultural assessment. It is no doubt true that at the relevant time, namely when the notification of June 28, 1977 was issued by the State Government inviting the persons effected to file their objections against the preliminary notification of July 21, 1976 and also when the rules were finalised by the final notification of January 24, 1978, the State Government had no power or authority u/s 214 of the Code to make rules retrospectively. This lacuna in

Section 214 of the Code was first time removed on December 10, 1980 when Section 214 of the Code was amended so as to authorise the State Government to make the rules retrospectively. The only question which we have, therefore, to consider is whether the Validation Ordinance and for that matter the Validation Act had achieved this purpose or not. The point was debated at the bar at a great length and persuasion but having heard the Learned Counsel , we do not think that this point should detain us for a long and we are not required to deal with the different faces of the problem which were presented before us very forcefully by taking us through a number of decisions of the Supreme Court of India and other High Courts some of which were pressed in service by both the sides. Before we examine. as to whether the Validation Act has acheived this purpose or not, it would be profitable to refer to a few decisions of the Supreme Court which deal with almost similar situation.

14. In *Mohammadbhai Khudabux Chhipa and Another Vs. The State of Gujarat and Another*, the validity of the Bombay Agricultural Produce Markets Act, 1939 as amended by the Bombay & Saurashtra Agricultural Produce Markets (Gujarat Amendment & Validating Provisions) Ordinance, 1961 and the Rules & Bye-laws framed thereunder was challenged. The Validation Ordinance was promulgated as a sequel to the earlier judgment of the Supreme Court in *Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another*, which was delivered on 2nd May, 1961 by which Rule 53 of the Bombay Agricultural Produce Markets Rules authorising levy of fees at a rate specified in the Bye-laws was declared ultra vires Section 11 of the said Act which empowered the Market Committee, inter alia, subject to such maxima as may be prescribed to levy fees on the Agricultural Produce bought and sold by licensees in the market area since no maxima was prescribed under the Rules in that behalf. Similarly Rules 65, 66 & 67 which authorised the Market Committee to grant licence for doing business in any market area were declared ultra vires the powers of the Market Committee u/s 5-A of the said Act since they entrenched on the power of the Commissioner to grant licence for doing business in a market area pending the establishment of market in such area u/s 4-A of the said Act. Section 29 of the Ordinance sought to validate the actions taken and things done before the promulgation of the Ordinance which would otherwise have been invalid. By Sub-section (1) of Section 29-B of the Ordinance it was provided that a market for the market area declared before the commencement of the Ordinance shall be deemed always to have been established for the purposes of the Act with effect from the date on which a market yard for such market area was declared for the first time under the Rules or the Act. Sub-section (2) of Section 29-B provided that any fees levied and collected on Agricultural produce bought and sold in a market area before the commencement of the Ordinance by a Market Committee at the rates specified in its Bye-laws shall be deemed to have been validly levied and collected, and such levy or collection shall not be called in question merely on the ground that no maxima were prescribed as required by Section 11 at the time of such levy and collection. Sub-section (3) provided that all licences issued

to operate in any market area or any part thereof and fees charged therefore before the commencement of the Ordinance by a Market Committee under the Rules and the Bye-laws shall be and shall be deemed always to have been validly and it will not be called in question merely on the ground that when such action was taken or things done the power or the authority was not duly conferred or imposed by the Act on such Market Committee. One of the grounds on which the Validation Ordinance was challenged in *Muhammadbhai Khudabux Chhipa's case* (supra) was that inasmuch as Sections 11 & 5-A of the Act and the rules impugned in that case were not retrospectively amended by the Ordinance, the purpose of the Validating Ordinance was not achieved and it was, therefore, not effective. Repelling this contention, the Supreme Court, speaking through Wanchhoo, J., ruled as under in paragraph 12:

(12) The contention on behalf of the petitioners is that these provisions are insufficient to validate the defects which were noticed in the earlier judgment of this Court inasmuch as the relevant provisions of the Act and the Rules have not been retrospectively amended. We see no force in this argument for the provisions as they stand certainly validate the defects pointed out in the earlier judgment of this Court. It is true that the relevant sections and the Rules have not been retrospectively amended by the Ordinance, but this in our opinion was unnecessary. Retrospective amendment may be necessary when it is desired to change the law; but it seems that so far as Section 11 is concerned the legislature did not intend that the control of the State Government over levy of fees should be done away with for the future also. Therefore, all that was necessary in that respect was to validate the past actions and this is specifically provided for by Sub-sections (2) and (3) of Section 29-B. As for the establishment of market committees an amendment has been made in Section 5-AA of the Act deleting the provision by which a market could be established only if so required by the State Government. This amendment is prospective. It could have been made retrospective also and in that case Sub-section (1) of Section 29-B may not have been necessary. The legislature, however, adopted the method of amending Section 5-AA prospectively and making a separate provision for validating the establishment of markets in Sub-section (1) of Section 20-B. We see no reason why it should be held that the validation made by Sub-section (1) is not sufficient because the legislature has adopted one method rather than the other for carrying out its purpose. We are therefore of opinion that Section 29-B is sufficient to cure the defects pointed out in the earlier judgment of the court and to validate actions taken and things done before the promulgation of the Ordinance which would otherwise have been invalid in view of the earlier judgment of this Court. The contention on this head must also be rejected.

15. In *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, a somewhat similar situation arose. Broach Borough Municipality constituted under the provisions of the Bombay Municipal Boroughs Act, 1925 purporting to act u/s 73 of the said Act and the Rules made thereunder, imposed a rate on land and buildings belonging to Prithvi Cotton Mills at a certain

percentage of the capital value in the assessment years 1961-62 to 1963-64. Section 73 of the Boroughs Act allowed the Municipality to levy a rate on buildings or lands or both situate within a Municipal Borough. The assessment lists were published and the tax was imposed according to the rates calculated on the basis of the capital value of the property of the Mill-company and the bills raising demand were served on the Company which moved this Court for appropriate writs, orders and directions to quash and set aside the assessment under Article 226 of the Constitution. During the pendency of the writ petition, the Gujarat Legislature passed the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963 with the result that the Mill-company amended the writ petition questioning the Validation Act which was also challenged by the Mill-company by a separate substantive application. Both the writ petitions were dismissed by the High Court though a certificate of fitness was granted for appeal to the Supreme Court. The Validation Act was required to be put on the statute book since the Supreme Court in *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, declared that Rule 350-A framed by the Ahmedabad Municipality before it was converted into Corporation u/s 73 of the Bombay Municipal Boroughs Corporation Act, 1925 providing for levy of the rate on the area of the open land at 1 % on the valuation based upon the capital value as ultra vires the Act itself inasmuch as the word "rate" as used in Section 73 had acquired the same sense as the word was understood in English legislative history and practice and also in Indian legislation, meaning thereby a tax local purposes imposed by local authorities on the basis of the annual letting value of the land or building. Section 3 of the Validation Act provided that notwithstanding anything contained in any judgment, decree or order of a Court or Tribunal or any other authority, no tax or rate assessed by a Municipality on the basis of the capital value of "a building or land, or on the basis of a percentage of such capital value, and imposed, collected or recovered by the Municipality before the commencement of the Act shall be deemed to have been invalidly assessed, imposed, collected or recovered by the reason of the assessment being made on the basis of the capital value or percentage thereof and not being based on annual letting value, and the imposition, collection and recovery of such tax or rate shall be valid and shall be deemed always to have been valid and shall not be called in question merely on the ground that the assessment is on the basis of the capital value, and the Municipality shall be entitled to collect or recover any tax or rate so assessed before the commencement of the Act in accordance with the relevant Municipal law and the rules made thereunder. It should, therefore, be noted that the Validation Act, without amending the empowering Section 73 of the Corporation Act and Rule 350-A of the Rule providing the rate of the levy, sought to validate the assessment, imposition, collection and recovery. It is in this context that the Validation Act was challenged. The observations of the Supreme Court, speaking through Hidayatullah, C.J. about the features of the validating statutes in general are instructive. They read as under:

4 Before we examine Section 3 to find out whether it is effective in its purpose or

not we may say a few words about validating statutes in general. When a legislature sets out to validate a tax declared by a Court to be legally collected under ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a Court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only, the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under re-enacted law. Sometimes the legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon Courts. The legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the Court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the Courts had found in existing law and makes adequate provisions in the validating law for a valid imposition of the tax.

After setting out generally about the features of validating statutes, the Supreme Court examined as to whether the Legislature had the power to impose tax. It found that u/s 99 of the Boroughs Act, the Municipality was empowered to impose a tax on buildings situate within the Municipal Borough on the basis of annual letting value or capital value or percentage on capital value thereof. The Supreme Court also noted that Section 99 was perfectly within the State legislative competence in view of entry 49 of List II of the Seventh Schedule to the Constitution providing for taxes on lands and buildings which included a tax on lands or buildings on the basis of capital value. The Supreme Court thereafter noted that Section 73 of the Boroughs Act had authorised the levy of a rate only and not a tax on lands and buildings on the basis of capital value. The Supreme

Court also recalled its earlier decision in *Patel Gordhandas Hargovindas*" case (supra) that the Municipality under the Boroughs Act had no power to fix a rate on the basis of capital value since the word "rate" had acquired a special meaning in the legislative practice. The Supreme Court thereafter observed as under:

6. ...Faced with this situation the legislature exercised its undoubted powers of redefining "rate" so as to equate it to a tax on capital value and convert the tax purported to be collected as a "rate" into a tax on lands and buildings. The legislature in the Validation Act, therefore, provided for the following matters. First, it stated that no tax or rate by whichever name called and laid on the capital value of lands and buildings must be deemed to be invalidly assessed, imposed, collected or recovered simply on the ground that a rate is based on the annual letting value. Next it provided that the tax must be deemed to be validly assessed, imposed, collected or recovered and the imposition must be deemed to be always so authorised. The legislature by this enactment retrospectively imposed the tax on lands and buildings based on their capital value and as the tax was already imposed, levied and collected on that basis, made the imposition, levy, collection and recovery of the tax valid, notwithstanding the declaration by the Court that as "rate" the levy was incompetent. The legislature not only equated the tax collected to a tax on lands and buildings, which it had the power to levy, but also to a rate giving a new meaning to the expression "rate" and while doing so it put out of action the effect of the decisions of the Courts to the contrary. The exercise of power by the legislature was valid because the legislature does not possess the power to levy a tax on lands and buildings based on capital value thereof and in validating the levy on that basis, the implication of the use of the word "rate" could be effectively removed and the tax on lands and buildings imposed instead. The tax therefore, can no longer be questioned on the ground that Section 73 spoke of a rate and the imposition was not a rate as properly understood but a tax on capital value...

16. In *Udai Ram Sharma v. Union of India* AIR 1968 S.C. 1138 the validity of the Land Acquisition (Amendment and Short Title Validation) Act, 1967 was challenged. The Validation Act was required to be made since the Supreme Court in *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, held that there cannot be successive notifications u/s 6 of the Land Acquisition Act with respect to the land in a locality specified in one notification u/s 4(1) of the Land Acquisition Act. In *Udai Ram Sharma's* case (supra) there were several notifications u/s 6 made from time to time in respect of different pieces of land from a large area of land admeasuring 34,070 acres notified for acquisition u/s 4 of the Land Acquisition Act on November 13, 1959. In view of the earlier decision of the Supreme Court in *V.P. Sharma's* case (supra), the validity of the different notifications u/s 6 of the Land Acquisition Act which were under challenge in *Udai Ram's* case (supra), could not have been upheld in a Court of Law. The President of India, therefore, promulgated an Ordinance styled as "Land Acquisition (Amendment and Validation) Ordinance, 1967" seeking to validate the

acquisition by amending Sections 5-A and 6 of the Land Acquisition Act. This Ordinance was followed by an Act passed by Parliament styled as "Land Acquisition (Amendment and Short Title Validation) Act, 1967". By Section 2 of the Act, Section 5-A of the Land Acquisition Act was amended so as to allow the making of more than one report in respect of the land which had been notified u/s 4(1). By Section 3 of the said Validation Act, Section 6 of the Land Acquisition Act was amended by empowering different declarations to be made from time to time in respect of different parcels of land covered by the same notification u/s 4(1) irrespective of whether one report or different reports had been made u/s 5-A. By Section 4 of the said Act, all acquisitions of lands made or purported to have been made before the commencement of the Act were validated. Two-fold contention was urged before the Supreme Court. In the first place, it was said that by the Validation Act the Legislature had sought to encroach upon the domain of the judiciary. Secondly, it was urged that inasmuch as Sections 2 and 3 of the Amending Act had not been given retrospective effect, the Validation sought to be effected by Section 4 with respect to the past transactions was of no avail. The majority Court, speaking through Mitter J., negating both the limbs of the contention held as under:

(25) ...Nor is there any reason to hold that in order to validate action without legislative support the Validating Act must enact provisions to cure the defect for the future and also provide that all actions taken or notifications issued must be deemed to have been taken or issued under the new provisions so as to give them full retrospective effect. No doubt legislatures often resort to such practice but it is not absolutely necessary that they should do so, so as to give full scope and effect to the Validating Acts. By way of illustration reference may be made to the following Acts....

(26) In our opinion the contentions raised about the invalidity of the Amending Act on the ground that Section 3 thereof was not made expressly retrospective or that it encroached upon the domain of the judiciary by seeking to nullify judicial decisions cannot be sustained. The American doctrine of well-defined separation of legislative and judicial powers has no application to India and it cannot be said that an Indian statute which seeks to validate invalid actions is bad if the invalidity has already been pronounced upon by a court of law.

(27) In view of the decisions of the Judicial Committee, the Federal Court and this Court referred to above, it must be held that the absence of a provision in the Amending Act to give retrospective operation to Section 3 of the Act does not affect the validity of Section 4 as contended for. It was open to Parliament to adopt either course e.g. (a) to provide expressly for the retrospective operation of Section 3, or (b) to lay down that no acquisition purporting to have been made and no action taken before the Land Acquisition (Amendment and Validation) Ordinance, 1967 shall be deemed to be invalid or ever to have become invalid because, inter alia, of the making of more than one report u/s 5-A or more than one declaration u/s 6 of the Land Acquisition Act notwithstanding any judgment,

decree or order to the contrary. Parliament was competent to validate such actions and transactions, its power in that behalf being only circumscribed by the appropriate entries in the Lists of the Seventh Schedule and the fundamental rights set forth in Part III of the Constitution. As shown above, there have been instances where the latter course had been adopted by the Indian Parliament in the past.

17. In *Shiv Dutt Rai Fateh Chand v. Union of India* (1983) 53 ST C 289, the Supreme Court was concerned, inter alia, with a similar question as to whether Sub-section (2A) inserted in Section 9 of the Central Sales Tax Act, 1965 by Central Sales Tax (Amendment) Act, 1976 had the effect of making provisions relating to penalties leviable under the General Sales Tax Law of the States applicable to the proceedings under the Act. It should be recalled that Parliament was required to insert Sub-section (2A) in Section 9 of the Principal Act pursuant to the decision of the Supreme Court in *Khemka and Co. (Agencies) Pvt. Ltd. v. State of Maharashtra* (1975) 35 S.T.C. 571 holding that levy of penalty under the Local General Sales Tax Act for delay or default in payment of tax due under the Principal Act was not permissible in absence of any provision in the said Act for imposing penalty for delay or default in payment of the tax due thereunder. This Sub-section (2A) was inserted in Section 9 of the Principal Act by Section 6(c) of the Amending Act No. 103 of 1976. By Section 9 (c) of the said Amending Act it was provided that the provisions of Section 9 of the Principal Act shall have effect and shall be deemed always to have effect in relation to the period commencing on and from 5th day of January 1957 and ending with the date immediately preceding the date of the commencing of the Amending Act as if all the provisions relating to penalties of General Sales Tax Laws of each State shall with necessary modification apply in relation to the assessment, re-assessment, collection and enforcement of any tax required to be collected and paid under the Principal Act in such State, and by Section 9(2) all penalties under the General Sales Tax Laws of any State imposed in pursuance of the provisions of Section 9 of the Principal Act and all acts and things taken or done for that purpose before the commencement of the Amending Act shall for all purposes be deemed to be and to have always been imposed, taken or done as validly and effectively as if the provisions of Sub-section (1) had been in force when such penalties were imposed or proceedings or acts or things were taken or done. One of the contentions urged before the Supreme Court in *Shiv Dutt Rai Fateh Chand's* case (supra) was that the lacuna in the Central Sales Tax Act, as pointed out by the Supreme Court in *Khemka's* case (supra) that there was no specific provision levying penalties in the Act as it stood before the amendment in 1976, remained unfilled up even after the amendment, and hence, no penalties could be recovered by utilising the provisions of the General Sales Tax Laws of the respective States. Negating this contention, Venkataramiah, J., speaking for the Court, held that the entire argument was misconceived and ruled as under:

we do not, therefore, find any lacuna in the language of Sub-section (2A) of Section 9 of the Act which makes the provisions relating to penalties under the

general sales tax laws of the respective States inapplicable even now to the proceedings under the Act. While Sub-section (2A) of Section 9 of the Act makes the provisions relating to both offences and penalties in the general sales tax laws of the States applicable to the proceedings under the Act prospectively, Section 9 of the amending Act makes all the provisions relating to penalties only in the general sales tax laws of the States applicable to the proceedings under the Act retrospectively by adopting the same language appearing in Sub-section (2A) of Section 9 of the Act. This pattern of legislation had to be adopted perhaps because Parliament wished rightly not to give retrospective effect to the provisions relating to offences also which are referred to in Sub-section (2A) of Section 9. Having thus given retrospective effect to Sub-section (2A) of Section 9 with effect from January 5, 1957, insofar as penalties were concerned by enacting Sub-section (1) of Section 9 of the amending Act, Parliament removed the deficiency pointed out in Khemka's case... In view of the retrospective amendment, the basis of the judgment in Khemka's case...was also removed. Consequently the judgment delivered in that case could not stand in the way of realisation of penalties in accordance with the validating provisions of Section 9(2) of the amending Act. We are of the view that Sub-section (2A) of Section 9 of the Act and Section 9 of the amending Act are adequate enough to assess and realise penalties with effect from January 5, 1957 as contemplated therein. We, therefore, hold that there is no substance in this contention of the petitioners.

(emphasis supplied)

18. It is not necessary, therefore, to discuss the other decisions cited at the Bar since the principal objection urged on behalf of the petitioners was that the Validating Act No. 2 of 1981 did not achieve its purpose since no provision was made to the effect that the amendment made in Section 214 of the Code empowering the State Government to make rules retrospectively shall have effect and shall be deemed always to have had the effect as if that amended provision was there in the principal Code from inception and till this infirmity is removed, the State Government could not have validated any rule or anything done or any action or proceeding taken under the rules for assessment and collection of the revenue on the lands used for non-agricultural purposes retrospectively. In other words, the grievance of the petitioners is that unless the basic infirmity in Section 214 of the Code is retrospectively removed the validation provision could not achieve its purpose and has consequently misfired. We are afraid that the contention is not well founded in view of the two decisions of the Supreme Court which we have referred to above, namely, Udai Ram Sharma's case and Muhammadbhai Khudabux Chhipa's case. In Udai Ram's case it has been clearly ruled that it was open to Parliament to adopt either course; as per example, to provide expressly for the retrospective operation of an amending provision or to lay down that no act purporting to have been done and no action taken before the amending and validation Act shall be deemed to be invalid or ever to have become invalid because of the infirmity in the parent Act. Similarly in Muhammadbhai Khudabux Chhipa's case an identical contention

that without amending the relevant substantive provision of the parent Act and the Rules retrospectively, the validation Act could not have achieved its purpose, was raised and the Supreme Court pointed out that the Legislature could have amended the substantive provision in the parent Act, namely, Section 11 of the Bombay Agricultural Produce Markets Act which contained a defect by removing the same retrospectively. The Legislature could, however, achieve the same purpose by making a separate provision for validating the levy and collection of any fees on agricultural produce bought and sold in the market area before the commencement of the validating Ordinance by a Market Committee at a rate specified in its Bye-laws as if they had been validly levied and collected and such levy and collection could not be questioned since the maxima were not prescribed as required by the Act. The Supreme Court said that there was no reason why it should be held that the validation was not sufficient because the Legislature has adopted one method rather than other for carrying out its purpose. In *Prithvi Cotton Mills*" case (supra) in precisely similar situation the Supreme Court upheld the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963 which validated the levy, imposition and collection of rates on the basis of capital value retrospectively without amending the definition of "rate" in the charging Section 73 of the Bombay Municipal Boroughs Act, 1925. The Supreme Court pointed out that in order to validate a tax which is illegally collected under an ineffective or invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively and the most important condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. If there is a legislative competence, the Legislature can effectively validate the invalid action if the grounds of illegality or invalidity are capable of being removed and are in fact removed. This is sometimes done by providing for jurisdiction where the jurisdiction had not been properly invested before, and sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. The Legislature may sometimes give its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts, and the Legislature may follow any one method or all of them for purposes of neutralising the earlier decision of a Court which becomes ineffective after the change of law. It is, however, necessary that whichever method is adopted it must be within the competence of the Legislature. In the opinion of the Supreme Court, the validity of a validating law depends upon (1) the legislative competence over the subject-matter, (2) the removal of the defect found by the Court in the existing law, and (3) making adequate provision in the validating law for the validation.

19. In light of the above settled legal principles, let us examine as to whether the Validation Act No. 2 of 1981 achieved the purpose or has proved abortive. It is no doubt true that the petitioners have challenged the impugned Amendment Rules of 1977 by the present group of petitions filed on 24th March 1978, inter

alia, on the ground that the impugned Amendment Rules which were brought into effect retrospectively, that is, with effect from 1st September, 1976, were ultra vires the powers of the State Government u/s 214 of the Code. Pending the petitions, the State Government by Ordinance No. 20 of 1980 promulgated on December 10, 1980 and by the Gujarat Act No. 2 of 1981 which came into force retrospectively from 10th December, 1980, amended Section 214 of the Code so as to empower the State Government to make rules retrospectively. This amendment was necessitated having regard to the settled position of law that if the rule making authority is not invested with the power to make rules with retrospective effect any such rule enacted retrospectively is ultra vires the powers (see : The Cannanore Spinning and Weaving Mills Ltd. Vs. Collector of Customs and Central Excise Cochin and Others, and Regional Transport Officer, Chittoor and Others Vs. Associated Transport Madras (P) Ltd. and Others, and Hukam Chand etc. Vs. Union of India (UOI) and Others, The petitioners, therefore, were required to amend the petitions which they did and also filed a separate substantive petition challenging, inter alia, Validation Act. By Section 2 of the Validation Act, Section 214 of the Code was amended by substituting the words, "make, whether prospectively or retrospectively, rules" for the words, "make rules". Section 4 should be set out in extenso to see whether adequate validating provisions were made. It reads as under:

4. Any rule made retrospectively u/s 214 of the principal Act, before the commencement of this Act shall be and shall be deemed always to have been validly made in accordance with law, as if the principal Act had been in force as amended, by this Act at all material times when such rule was made and any such rule or anything done or action or proceeding taken or purported to have been done or taken under such rule, shall not be called in question in any court or before any officer or authority whatsoever merely on the ground that such rule was made retrospectively without power to do so or that such thing was done or action or proceeding was taken or purported to have been done or taken under such rule.

The Legislature has, therefore, in the first place, filled in the lacuna; viz. the want of the power in the State Government to make rules retrospectively. It cannot be gainsaid that the State has a legislative power to enact a legislation including the subordinate legislation retrospectively. It has also a power to tax retrospectively. There is, therefore, no question of want of legislative competence. The two conditions, namely, legislative competence and removal of the defect having been satisfied, the Legislature proceeded to validate all acts and things done during the period when there was no legal support for such actions. The Legislature has taken special care in providing in Section 4 that any rule made retrospectively u/s 214 of the Code before the commencement of the amending Act shall be and shall be deemed always to have been validly made in accordance with law as if the principal Act had been in force as amended by the validation Act at all material times when such rule was made, and that such rule or anything done or action or proceeding taken under such rule shall not be

called in question merely on the ground that such rule was made retrospectively without the rule making power. The Legislature could have adopted any course, namely, it could have made the amending provision in Section 214 of the Code retrospective in its operation, or it could have validated all actions taken and things done in past as if the amended provision in the principal Act was in force at all the relevant times. It is ultimately the question of legislative practice and we do not see any reason to hold that the validating Act has failed to achieve its purpose. The third and fourth points, therefore, should be answered in the negative and against the petitioners.

Re : Point No. 5:

20. Before we recapitulate the rival contentions urged in connection with this point, it is necessary to refer to a few material provisions which are relevant to the discussion on hand. Section 48 of the Code, as it stood before its amendment by the Bombay Land Revenue (Gujarat Amendment) Act, 1976, (hereinafter referred to as "the amending Act") provided for the manner of assessment and the alteration of assessment of the land revenue. The land revenue under the original section was to be assessed with reference to the use of the land viz. agricultural purpose, building purpose, or any purposes other than agriculture or building. Sub-section (2) of original Section 48 empowered the competent authority to alter the assessment fixed under the Code upon such land where it was put to any purpose other than the one for which the assessment was fixed though the term for which such assessment has been fixed has not expired. Sub-section (1) of Section 48, after the amendment by the amending Act, reads as under:

(1) The land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land:

- (a) for the purpose of agriculture;
- (b) for the purpose of residence;
- (c) for the purpose of industry;
- (d) for the purpose of commerce, or
- (e) for any other purpose.

Sub-section (2) is amended so as to provide for alteration of the assessment where the land assessed for the use for any purpose is permitted or deemed to have been permitted u/s 65 or Section 65-A of the Code to be used for any other purpose, or is so used without the prior permission of the Collector or before the expiry of the period prescribed under the said sections. Section 65-A which is inserted by the amending Act enjoins the occupant intending to put any land assessed or held from one non-agricultural purpose to another non-agricultural purpose to apply to the Collector for permission and all the provisions of Section

65 shall, so far as may be, apply to such application. The old Section 66 has been substituted by new Section 66 providing for penalty of summary eviction from the land so used or from the entire survey number or sub-division thereof by the Collector which will be without prejudice to his liability to pay new assessment which may be leviable under the provisions of Section 48. We are not concerned in this group of petitions with the other amendments made in the Code by the said amending Act.

21. By the preliminary notification of July 21, 1976, the draft rules were published. These Rules are styled as "the Gujarat Land Revenue (Second Amendment) Rules, 1976" and they were to come in force from 1st August, 1976. By the said draft amendment Rules, Rules 80, 11(1) and (2), 84-A, 87(b), 100, 102 and 103 were substituted. Similarly Rules 80-A, 81(3), 82, 82-AA, 86, 86-A, 87(a), 89, 90 and 92 to 99 were deleted. Similarly Rule 80-AAA was inserted. As regards the rest of the amendments of the said amendment Rules, we are not concerned in this group of petitions. New Rule 80 provides for alteration of the assessment by the Collector in exercise of the power u/s 48(2). The new Rule 80-AAA empowers the Collector to revise from time to time the rate of non-agricultural assessment in accordance with the rules contained in Chapter XIII in respect of any land held or used for non-agricultural purpose. Rules 81(1) and (2) are material for purposes of this group of petitions and, therefore, it is set out in extenso. It reads as under:

81. Rates of non-agricultural assessment:

(1) For the purpose of determining generally the rate of non-agricultural assessment leviable, the Collector shall from time to time by a notification in the Official Gazette, divide villages, towns and cities into the following classes:

Class A :- The cities of Ahmedabad, Vadodara, Surat and Rajkot and their adjoining areas.

Class B :- Cities, other than those in Class-A above and having population exceeding 50,000 and adjoining areas.

Class C :- Cities and towns with a population of more than 10,000 and upto 50,000 and adjoining areas.

Class D :- Towns and villages with a population of more than 5,000 and upto 10,000.

Class E :- Villages with a population upto 5,000:

Provided that in respect of industrial and allied areas as may be notified by Government from time to time, Collector shall classify them in Class B notwithstanding the fact that their population may be less than 50,000,

Explanation I :- For the purpose of the rule:

(i) adjoining area" means:

(a) in relation to the city of Ahmedabad or any other local area which is constituted to be a city u/s 3 of the Bombay Provincial Municipal Corporations Act, 1949 as in force in the State of Gujarat or a town with a population exceeding 2.5 lakhs, a peripheral area of five kilometres;

(b) in relation to any other city or town, a peripheral area of one kilometre. (ii) "population" means population as ascertained at the last preceding Census of which relevant figures have been published.

Explanation II :- Where a village, town or city or any part thereof falls in a particular class on the basis of its population and it also falls within the adjoining area of a city or town then that village, town, city or part thereof shall be reckoned in the class or the adjoining area of city or town where higher rates of non-agricultural assessment are applicable.

(2) The assessment shall then be fixed by the Collector at the following rates with effect from the commencement of the revenue year 1976-77, namely:

Rate per square metre per annum in paise															Non		
agricultural use of land Commercial Residential Industrial & other uses															Class of		
city, town or village.															A		
															10		
															15		
25	B	6	9	12	C	4	6	9	D	3	4	5	E	1	1	1	

Provided that in respect of lands falling within the urban agglomerations to which the Urban Land (Ceiling and Regulation) Act, 1976 applies, assessment at double the rates mentioned above shall be fixed so long as the land in question is not put to the non-agricultural use for which permission is granted or deemed to be granted.

22. It is not necessary to refer to the other rules for the purposes of the point under consideration. These rules were finalised and published by the final Notification of 24th January, 1978. Rules 81(1) and "(2) appear to have been varied and the said sub-rules which finally emerged read as under:

(1) For the purpose of determining generally the rate of non-agricultural assessment leviable, the Collector shall, from time to time, by a notification in the Official Gazette:

(a) divide villages, towns and cities into the following classes, namely:

Class A:- The cities of Ahmedabad, Vadodara, Surat and Rajkot;

Class B :- (i) Cities and towns other than those in Class-A above and having a population exceeding 50,000;

(ii) such industrial and allied areas as may be notified in this behalf by the State Government from time to time irrespective of the population in such areas.

Class C :- Cities and towns with a population of more than 10,000 and upto 50,000 inclusive of the population in areas falling under Clause (ii) of Class B within those cities and towns;

Class D :- Towns and villages with a population of more than 5,000 and upto 10,000 inclusive of the population in areas falling under Clause (ii) of Class B within those towns and villages.

Class E :- Villages with a population upto 5,000, inclusive of the population in areas falling under Clause (ii) of class B within those villages.

(b) determine areas adjoining such villages, towns and cities into following classes namely:

Class I :- The peripheral area of five kilometres adjoining the cities falling under Class A.

Class II :- The peripheral area of one kilometre adjoining the cities and towns falling under Class B.

Class III :-The peripheral area of one kilometre adjoining the cities and towns falling under Clause C.

Explanation I:- For the purpose of this rule "population" means population as ascertained at the last preceding Census of which relevant figures have been published.

Explanation II :- Where a village, town or city or any part thereof falling in a particular class on the basis of its population also falls within the adjoining peripheral area of another city, town or village specified in relation to such other city, town or village in Clause (b) and falling in a different class then that village, town, city or part thereof shall be reckoned in that one of such two classes where higher rates of non-agricultural assessment are applicable.

(2) The assessment shall then be fixed by the Collector on the lands used for non-agricultural purpose with reference to the nature of the non-agricultural use of such lands at the rates shown in Table-A or Table-B whichever may be applicable with effect from the commencement of the revenue year 1976-77, namely:

TABLE-A

Rate per square metre per annum in paise on lands situated in villages, towns or cities referred to in Clause (a) of Sub-rule (1).

-----																Class of				
city		Residential		use		Industrial		Use		Commercial and town, village				Village, Other		industries				
other						uses				industries						industries				
-----																A 6 6				
10	15	B	4	4	6	8	C	3	3	4	6	D	2	2	3	4	E	1	1	1

Provided that in respect of lands falling within the urban agglomerations to which the Urban Land (Ceiling and Regulation) Act, 1976 (Act 33 of 1976) applies, assessment at double the rates mentioned above shall, with effect on and from 1st August 1979 be fixed so long as the land in question is not put to non-agricultural use for which permission is granted or deemed to be granted.

Explanation- For the purpose of this Table, the expression "village industry" shall have the same meaning as it has in the Bombay Village Industries Act, 1960.

TABLE-B

Rate per square metre per annum in paise on lands situated in peripheral areal referred to in Clause (b) of Sub-rule (1).

----- Class of						Peripheral Residential use Industrial use Commercial & areas other use.			
-----						I 4 6 8			
II	3	4	6	III	2	3		4	

23. In context of the above amended provisions Rule 81 has been challenged as ultra vires Section 48 and/or Section 45 and/or Section 52 of the Code. In submission of the Learned Counsel for the petitioner Rule 81 is ultra vires Section 48 of the Code inasmuch as the assessment of the land revenue in Section 81 is with reference not only to the use of the land but also its location which is, therefore ex-fade beyond the power u/s 48 which enjoins the assessment of the land revenue having regard to its use only. Section 48 does not contemplate linking of non-agricultural assessment with the location of the land as provided in the impugned Rule 81. The subdivision of industrial uses into village industry and other industries is also, according to the Learned Counsel for the petitioners, inconsistent with Section 48 of the Code. A serious grievance was made that clubbing of the use for residential purpose and that for village industry by providing a uniform rate of non-agricultural assessment is inconsistent ex-fade with the provisions of Section 48 of the Code. There is no warrant, according to the petitioners, in Section 48 to provide for a common rate of non-agricultural assessment for commercial use and any use other than agricultural, residential or industrial.

24. On behalf of the State Government the amended provisions were sought to be justified by urging that having regard to the nature of the impost, the classification of the State into cities, towns and villages is necessary, legal and valid since for purposes of assessment, the effective and productive use of the land must be determined. The classification is intended ultimately for finding out the value of the land. The detailed classification made in Rule 81 is for the purposes of effectively implementing the legislative mandate contained in Section 48 of the Code. The prescription of different rates on the lands situate in different parts of the State having regard to the classes of cities, towns or villages within which they are located and also the different kinds of use is a

rational classification which the State Government can make for equal distribution for just and fair incidence of impost.

25. It is necessary to remind ourselves as to what is the precise nature of this impost of land revenue on the lands used for agricultural and non-agricultural purposes u/s 48 of the Code. In *Bomanji Ardeshir Wadia v. Secretary of State* AIR 1929 P.C. 34, the Judicial Committee was concerned with the question of the nature of grant for services rendered to the Government, and in that context the Judicial Committee referred to the nature of the impost of land revenue. The Judicial Committee observed as under:

... The Act of 1879 by Section 48 does not provide for an additional assessment; it only provides for an altered assessment to be imposed according to rules. Once the building assessment is imposed the old agricultural assessment has gone for ever. This if it is thought out is quite logical. The root idea of British rule in India is that he who has the soil must pay, not in kind like a proper tithe, but in money, a certain proportion of what he gets from, cultivation, and this money payment can be raised from time to time so as to maintain the proportion to the fruits of cultivation which have increased. If, therefore, the cultivation for agricultural purposes is given up and the land is used for building, the building assessment carries out the same idea, as being the equivalent for a certain proportion of what the cultivation of lands under these new conditions might bring....

In other words, the rationale underlying the impost is that he who has the soil must pay in proportion to the fruits he reaps out of the Cultivation of the land. The non-agricultural assessment also seeks to carry out of the same purpose. It should vary with change in the use of the land and must be commensurate with what the cultivation of the land under the changed conditions might bring about. If, therefore, this perspective of the land revenue on the use of the land for agricultural or non-agricultural purpose is kept in mind, it becomes manifestly clear that the payment of revenue should vary directly with the proportion of the use of the land. The grievance of the petitioners that Section 48 does not warrant the levy of land revenue with reference to the location of the land is also based on misapprehension of the true rationale of the impost. If the money payment can be raised from time to time so as to be commensurate with the fruits of the cultivation of the land, whether it is agricultural or non-agricultural, the conclusion is inescapable that the payment must relate itself to the quantum of the produce from the use of the land. If this had not been the rationale of the land revenue, there would have been no justification for different rates of assessment when the land is put to non-agricultural use. The fact that the building assessment is also motivated with the same idea, namely, equivalence between the changed use of land and the produce which the new conditions might bring about, the conclusion is inescapable that the assessment must be fixed, *inter alia*, having regard to the fruits of the cultivation of the land for non-agricultural purposes. If the location of the land has no relevance in fixing the

assessment, there could not have been different assessment for agricultural land situate within different parts of the State. The legislative intent in Section 48 for assessment of the land revenue with reference to the use of the land by necessary implication postulates the assessment of the land with reference to its location also. As a matter of fact, the unamended Rule 81 provided for ordinary rates of non-agricultural assessment. By Sub-rule (1) the Collector was empowered to divide the villages, towns and cities in his district into two classes where standard rate under Rule 81 had not been extended. By Sub-rule (2) the Collector was required to fix the assessment subject to general or special order of the Government at a sum per square metre within the maximum and minimum limits prescribed thereunder, the maximum was two paise and one paise for Class I and II lands respectively and the minimum was agricultural assessment, and in fixing such assessment within the aforesaid limits, he had to bear in mind the general value of the lands in the locality used for non-agricultural purposes. Rule 82 which has been now deleted by the impugned Amendment Rules of 1977 provided for special rates of non-agricultural assessment in certain areas. Rule 82 prescribed a rate of non-agricultural assessment to be determined in accordance with the detailed provisions contained in Clauses (1) to (4) of the said rule for the lands in an area to which the State Government has applied the said rule by a notification in the Official Gazette having regard to the keen demand for building site or for any other special reason. Such non-agricultural assessment was to be a percentage of the full market value of the land as a building site or the market value of the land estimated on the basis of actual sales of unoccupied lands for building purposes in the locality where there is a demand for building site. The special rate was liable to be revised on expiry of ten years or at such another interval as the State Government may direct. It is thus clear that this concept of fixing the non-agricultural assessment rate not only with regard to the use of the land but also with regard to its location is not a novel concept introduced by the impugned Amendment Rules, 1977. We are, therefore, of the opinion that this ground of attack has no substance in it and the point is answered in the negative, that is, against the petitioners.

Re : Point No. 6:

26. This ground of attack against the impugned Amendment Rules of 1977 was that they are violative of Article 14 of the Constitution inasmuch as they are arbitrary, unjust and discriminatory. This ground of attack comprises of three-fold objection. The classification with reference to the location of lands in different cities, towns and villages and their adjoining areas is discriminatory inasmuch as the equals are treated unequally. In other words, the lands having the same purpose of use but situate in different areas are treated differently for which there is no rational nexus with the object of the Code. Secondly, it was urged that the mini-classification of industrial use into village industries and other industries is also discriminatory inasmuch as the classification has no nexus with the object of the Code and, therefore, clearly violative of the Rule of Law

enshrined in Article 14 of the Constitution. Thirdly, the prescription of flat rate merely with reference to the location and use, without consideration of any other relevant factors, is also irrational and, therefore, violative of Article 14 of the Constitution. The classification of cities, towns and villages with reference to their population has no nexus with the object of the Code and has no justification whatsoever for purposes of fixing the non-agricultural assessment. This injustice has been aggravated by further classifying the notified industrial and allied areas as a special class which has been equated with Class-B of cities and towns, other than those in Class-A, having population exceeding 50,000. There is no apparent and real justification for treating these two Classes at par. There is no guideline to control the exercise of the power of the State Government in notifying any areas as industrial and allied areas for inclusion in Class-B(II) under Rule 81(1) and, therefore, the power of the State Government is absolute and uncanalized power and, therefore, arbitrary and void. There is no apparent and real reason which can justify the basis adopted in the rule for determining the peripheral areas of cities, towns and villages in Classes A, B and C, respectively as prescribed in Rule 81(1) of the impugned Amendment Rules of 1977, and particularly in adopting the same basis of one kilometre for determining the peripheral areas of cities and towns falling under Classes B and C. The classification of land having regard to its location within the limits of city, town and village and that peripheral area, and the prescription of different rates for these two classes of land does not bear any rational nexus with the object of the land revenue and, therefore, also violative of Article 14 of the Constitution.

27. In support of this broad contention of violation of rule of equality enshrined in Article 14 of the Constitution, a number of Supreme Court decisions has been cited on behalf of the petitioners. We will deal with each of these decisions at the appropriate places but for the immediate purpose, we will remind ourselves as to what should be the basic approach of the Court when a taxing measure is to be tested on the touch-stone of Article 14 of the Constitution. It is not capable of any debate that a taxing statute is not wholly immuned from attack on the ground that it infringes the equality clause of Article 14 of the Constitution. Courts are, however, not concerned with the public policy which has prompted the State in adopting a particular taxing measure nor are they concerned whether there would have been more reasonable and equitable way of taxing the subject. What Article 14 provides is the class legislation and not classification. In order to be a classification beyond the prohibition of Article 14, it should be found on intelligible differentia which distinguishes the persons grouped together from those who are left out and the differentia must have a rational nexus with the object sought to be achieved by the Act. The main principle is that the State does not have to tax everything in order to tax something. This principle provides a wide liberty and latitude to the State of selection and freedom in appraisal not only in the objects of the tax and manner of the tax but also in the determination of the rate or rates applicable. The next principle which has been established on the highest authority is that the burden of proving discrimination

is always heavy and heavier still when taxing statute is under attack. The burden is on the person complaining of discrimination. The burden is of proving not possible inequality but hostile unequal treatment. As long as there is equality and uniformity within each group and/or category of the objects to be taxed under a statute, the measure cannot be attacked on the ground of it being discriminatory notwithstanding that some concluded in a class or a group get some advantage over others due to fortuitous circumstance or a peculiar situation provided they are not sought for a special treatment. It is equally settled that mere fact that a tax falls more heavily on some in the same group or category is by itself not a ground for its invalidity for then hardly any tax should escape such a charge (see : Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, It is trite position in law that the permissible classification within the bounds of Article 14 of the Constitution must be based on some real and substantial distinction and must not be made arbitrarily and without any substantial basis. Classification has been defined to mean "segregation in classes which have a systematic relation, usually found in common properties and characteristics". (vide : Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, The pertinent observation of Hidayatullah J. (as he then was) in his dissenting opinion in 5. Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. D'costa Brothers, is instructive on the point. It reads as under:

One must first find out the object of the impugned provision and compare it with the topic of legislation and then try to discover a reasonable basis for making a difference between different classes of persons affected by the law, in keeping with the topic of legislation and the object of the enactment. A difference which is aimless, arbitrary or unreasonable and which is unconnected with the object in view must remain a discrimination and incapable of being upheld. In all cases in which laws were struck down under Article 14 this was the approach. It is hardly necessary to refer to the previous cases because each provision to be tested in its own setting, and no two cases can be alike.

28. In *The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another*, where the Supreme Court was considering the challenge, under Article 14 of the Constitution, to the provisions of the Kerala Plantation (Additional Tax) Act (17 of 1960) as amended by the Kerala Plantation (Additional Tax) Amendment Act, 1967, Hidayatullah J., speaking for the court observed in paragraphs 15 and 16 as under:

We may now state the principles on which the present case must be decided. These principles have been stated earlier but are often ignored when the question of the application of Article 14 arises. One principle on which our courts (as indeed the Supreme Court in the United States) have always acted, is nowhere better stated than by Wills in his Constitutional Law at page 587. This is how he put it:

A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for

taxation if it does so reasonably...The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation.

This principle was approved by this Court in *East India Tobacco Co. v. State of Andhra Pradesh* 1962 13 STC 529. Applying it, the Court observed:

If a State can validly pick and choose one commodity for taxation and that is not open to attack under Article 14, the same result must follow when the State picks out one category of goods and subjects it to taxation.

This indicates a wide range of selection and freedom in appraisal not only in the objects of taxation and the manner of taxation but also in the determination of the rate or rates applicable. If production must always be taken into account there will have to be a settlement for every year and the tax would become a kind of Income Tax.

The next principle is that the burden of proving discrimination is always heavy and heavier still when a taxing statute is under attack. This was also observed in the same case of this Court approving the dictum of the Supreme Court of the United States in *Madden v. Kentucky* (1940) 307 US 83:

In taxation even more than in other fields, legislatures possess the greatest freedom in classification. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.

As Rottechaefer said in his Constitutional Law at page 668:

A statute providing for the assessment of one type of intangible at its actual value while other intangibles are assessed at their face value does not deny equal protection even when both are subject to the same rate of tax. The decisions of the Supreme Court on this field have permitted a State legislature to exercise an extremely wide discretion in classifying property for tax purposes so long as it refrained from clear and hostile discrimination against particular persons or classes.

29. In *Vivian Joseph Ferreira and Another Vs. The Municipal Corporation of Greater Bombay and Others*, where certain provisions of the Bombay Buildings Repairs and Reconstruction Board Act, 1969 were challenged on the ground of they being in contravention of Article 14, the Supreme Court summarized the principles emerging from the different decisions where fiscal statutes have been challenged on the ground of they being in violation of the equality clause. In paragraph 15 of the judgment, the Court laid down as under:

It is well recognised that a legislature does not have to tax everything in order to tax something. It can pick and choose districts, objects, persons, methods and even rates of taxation as it does so reasonably. (Wills, Constitutional Law of the United States 587). A taxing statute is not invalid on the ground of discrimination merely because other objects could have been but are not taxed by the legislature [*Venugopala Ravi Varma Rajah v. Union of India* (1964) 74 ITR 49].

When a statute divides the objects of tax into groups or categories, so long as there is equality and uniformity within each group, the tax cannot be attacked on the ground of its being discriminatory, although due to fortuitous circumstances or a particular situation some included in a class or group may get some advantage over others, provided of course they are not sought out for special treatment : KHANDIGE SHAM BHAT AND ANOTHER Vs. AGRICULTURAL Income Tax OFFICER, KASARAGOD, AND ANOTHER., Likewise, the mere fact that a tax falls more heavily on some in the same group or category is by itself not a ground for its invalidity, for then hardly any tax, for instance, sales tax, can escape such a charge The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another,

30. Though it is well settled that taxation law cannot claim immunity from the equality clause nor can it be arbitrary and oppressive, this well recognized principle does not entitle the Court to scrutinise the impact of burden of a given taxing measure on different persons or interests meticulously. Merely because an alternative method of taxation which may be fair and just in the opinion of the court is available, it does not mean that the Legislature cannot select another method provided it is not capricious, fanciful, arbitrary or clearly unjust (see : Khandige Sham Bhat v. Agricultural Income-tax Officer AIR 1963 S.C. 591). The area within which the Court must play its role of holding Judicial scrutiny of an impugned taxation measure is what Krishna Iyer J., said in Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another, that search light of the Court from judicial inspection tower is to "search for arbitrary and irrational classification and its obverse namely, capricious uniformity to treatment, where a crying dissimilarity exists in reality."

31. It is in the perspective of the above settled legal principle that we have to consider whether the petitioners are justified in attacking the impugned Amendment Rules of 1977 as clearly committing breach of the mandate of equality enjoined by Article 14 of the Constitution. Before we deal with each ground of attack urged on behalf of the petitioners, we may recapitulate broadly the scheme of the non-agricultural assessment as contained in Rule 81, as it stood before its Amendment in 1976 and the draft rules published under the cover of the preliminary Notification of 21st July 1976 and the rules which were ultimately finalised and published under final Notification of 24th January, 1978. The scheme of non-agricultural assessment, as prescribed under the pre-amended Rule 81, was broadly as under:

(1) The Collector had to divide villages, towns and cities in his district into two classes.

(2) He had to fix the assessment at his discretion at a sum per square metre within the floor and ceiling rates prescribed in the rule, namely minimum of agricultural assessment and maximum of two paise or one paise per square metre for Class I lands and Class II lands respectively.

(3) Before fixing the non-agricultural assessment the general level of the value of the lands in the locality was to be kept in mind.

(4) He may fix the assessment at a higher rate which should not exceed 50% of its annual rateable value and for reasons to be recorded if the land, in case, has exceptionally favourable situation or where it is used temporarily for non-agricultural purpose or the purpose of the use is of special kind.

(5) He had to assess the land at the special rate of non-agricultural assessment, to be determined as prescribed under Rule 82, in the areas in which on account of there being a keen demand for building site or for any other special purpose, the State Government has by notification applied the said rule.

The scheme of non-agricultural assessment as envisaged in the proposed draft rules published under the cover of preliminary Notification of 21st July 1976 was broadly as under:

(1) The scheme was to fix non-agricultural assessment by broadly linking it to two-fold cumulative consideration, namely:

(a) location of the land in particular class of village, towns and cities and the adjoining areas or notified industrial and allied areas or urban agglomerations; and

(b) purpose of the use.

(2) The Collector had to divide villages, towns and cities into any of the classes specified in the rules. The broad classification prescribed was:

(a) Corporation cities.

(b) Cities other than Corporation cities and those of which the population exceeding 50,000.

(c) Cities and towns having population between 10,000 and 15,000. (e) Towns and villages having population between 5,000 and 1,000. (0 Villages with a population upto 5,000.

(3) The Collector was also to classify industrial and allied areas as notified by the Government as Class-B cities irrespective of its populatuion being less than 50,000.

(4) The adjoining area was defined to mean a peripheral area of 5 Kilometres in relation to a city having a Municipal Corporation or having a population exceeding 2.5 lakhs and one kilometre in relation to any other city.

(5) The Collector has to fix the assessment at different rates with respect to its location in any classes of cities, towns or villages having to its use; namely, residential, industrial, commercial and other uses.

(6) Rule 3 of the draft rules prescribed August 1, 1976 as the date on which the

rules were to come in force.

32. The scheme of non-agricultural assessment as emerging from the final rules departed from the original scheme in two material particulars. Firstly, the industrial use was sub-classified into that of village industries and other industries and, secondly, different rates were prescribed for the lands having regard to their use situate within the cities, towns or villages on one hand and adjoining areas on the other.

33. It is in the context of the scheme as emerging finally that we have to determine its validity on the touch-stone of the rule of equality. The first aspect which we have to consider is as to whether the prescribed division of the district into different classes of cities, towns and villages is founded on intelligible basis which would distinguish the persons grouped together from those who are left out. We do not think and really no attempt was made on behalf of the petitioners to treat these different classifications as unintelligible or to treat this differentia as one without any distinction. The aspect which immediately crises for our consideration is : What is the object of the impugned provision ? The object, in our opinion, is apparent. It is to locate the land and ascertain the purpose of its use. The two-fold exercise of locating the land and ascertaining the precise use thereof is actuated with the object of finding out the optimum use of the land and the maximum fruits of the cultivation thereof by putting it to a specified non-agricultural use. It hardly requires much of imagination to appreciate that the fruits of cultivation of the land by putting it to different non-agricultural uses such as residential, industrial, commercial etc. would materially vary and, therefore, unless the broad classification, as has been sought to be attempted in the impugned Amendment Rules of 1977, is made, there is possibility of the rules being exposed to the vice of treating unequals as equals, which, in its turn, would render such provisions as violative of Article 14 of the Constitution. Where objects, persons or transactions essentially dissimilar are treated by the imposition of a uniform tax, discrimination may result since the refusal to make a rational classification may itself in some cases operate, as denial of equality (see : The State of Kerala Vs. Haji K. Haji K. Kutty Naha and Others etc., There must be, therefore, a real attempt of making a rational classification. This is precisely what has been sought to be done in the present case before us. If the revenue is levied on the lands irrespective of their use which cannot be properly ascertained de hors their location, the impost is likely to be treated as a refusal to make a rational classification and may expose to the vice of denial of equality. The Learned Counsel for the petitioners pressed this decision in service in support of his third objection that the prescription of flat rate having regard to the use of the land and its location without considering the other relevant factors such as in case of residential use, the class of the building, the nature of construction, its situation and such other relevant circumstances, would make the classification irrational as dissimilars are treated similarly. We do not think that the Learned Counsel is justified in relying upon this decision since the Supreme Court was concerned in that case with the tax on lands and buildings

where, by Section 4 of the Kerala Buildings Tax Act, 1961, the tax was to be assessed on the floor area of the building irrespective of the other relevant factors as mentioned above. The Supreme Court upheld the decision of the High Court which declared the charging Section 4 of the said Act as violative of Article 14 of the Constitution. Shah J., speaking for the Court, set out the reasons in support of the conclusion aforesaid as under:

3. ...A. The Act applies to the entire State of Kerala, and whether the building is situate in a large industrial town or in an insignificant village, the rate of tax is determined by the floor area; it does not depend upon the purpose for which the building is used, the nature of the structure, the town and locality in which the building is situate, the economic rent which may be obtained from the building, the cost of the building and other related circumstances which may appropriately be taken into consideration in any rational system of taxation of building....

4....The power of the Legislature to classify is, it is said, of "wide range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways (A.I.R. 1963 S.C. 591).

5. But in enacting the Kerala Buildings Tax Act no attempt at any rational classification is made by the Legislature.... If levy of tax in a municipal district based on floor area in respect of a factory building violates Article 14 of the Constitution when the tax is sought to be levied by the Municipal Corporation, we see no reason to uphold the tax imposed under the impugned Act when the State in exercise of legislative authority conferred by Entry 49, List II Sch. VII, imposes liability to tax buildings solely on floor area. The vice of the Act in the present case is more pronounced than it was in *New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others*,

(emphasis supplied)

We do not think that this decision of the Supreme Court can be of any assistance to the cause which the Learned Counsel for the petitioners has argued before us for the obvious reason that the basis of the land revenue is the use of the land u/s 48 of the Code and the use of the land de hors its location is likely to treat unequals as equals. We are, therefore, of the opinion that the object of the impugned Amendment Rules is for determination of the precise use of the land which, as indicated above, cannot be determined precisely without its location since any attempt to determine about its use without reference to its location is likely to result in unequals being put at par.

34. The second aspect which we have to consider is, as indicated by Hidayatullah J., in *Vasantsen Dwarkadas*" case (supra), to compare the object of the impugned provisions with the topic of legislation so as to find out whether there is a rational connection between the two. The topic of the legislation is obviously levy, assessment and collection of the land revenue. The genesis of the land revenue, as explained by the Privy Council in *Bomanji Ardeshir Wadia*'s case

(supra), is that he who has the soil must pay in money a certain proportion of what he gets from cultivation and this money payment can be varied directly with the increase in fruits of cultivation from the land so as to maintain a certain proportion and the non-agricultural assessment also carries out the same root of idea, namely, the revenue must be equivalent to the produce from the cultivation of the land by putting it to non-agricultural use under the changed conditions. We are, therefore, unable to agree with the Learned Counsel for the petitioners that the object of the impugned provisions has no connection with the topic of the legislation. In our opinion, the classification of the land having regard to its use and location is inextricably connected with the levy and assessment of the land revenue. The Learned Counsel for the petitioners was right when he urged that the occupants of the land situate in different cities, towns and villages will be assessed at different relevant rates prescribed in the impugned Amendment Rules and, therefore, assessed in different sums even though they may be putting the lands to the same type of use. He was also right when he contended that the occupants of the land situate within different classes of cities, towns and villages will be treated differently in the matter of assessment from those occupants of the land situate within different classes of peripheral areas since different rates have been prescribed for the cities, towns and villages and the peripheral areas. We are afraid this is too spacious a contention which can invalidate the impugned Amendment Rules. A State has a very wide latitude in classification for taxation inasmuch as it is allowed to prescribe different rates of taxation for different persons and objects. It is recognized on principle and authority that equal protection rule is not infringed by a State providing for assessment on different basis. It can provide for the assessment of one type of intangibles at its actual value while other intangibles can be assessed at their face value and the State has extremely wide discretion in classifying the properties for tax purposes so long as it does not practise clear and hostile discrimination against particular persons or classes (see : *Twyford Tea Co. Ltd.*'s case - supra). No doubt if the same class of property similarly situate is subjected to an incidence of taxation which results in inequality, the taxing measure has the vice of the breach of the rule of equality (see : *Moopil Nair*'s case - supra). It is equally settled that so long as there is equality and uniformity within each group or class, the tax cannot be attacked on the ground of it being discriminatory although due to a particular situation some included in a class or group may get some advantage over others provided no special preferential treatment is sought to be given to them (see : *Khandige Shyam Bhat*'s case - supra). It is, therefore, difficult for us to agree with the petitioners' counsel that merely because the use of the land is same or similar by the occupants of the lands situate in different classes of cities, towns or villages, there is a breach of the rule of equality. There is no case that in the same class of cities, towns or villages the occupants using the lands for same purpose are treated differently. The apparent difference in the matter of assessment of the occupants of the lands in different classes does not really constitute discrimination much less hostile discrimination against particular persons or classes since the classification

of the persons, objects or things is bound to result into some kind of different treatment. The burden of proving discrimination is on the person complaining of the same. The burden is of proving not possible inequality but hostile unequal treatment. We are not satisfied that any hostile discrimination is practised against any particular user of the land. The entire legislative attempt of the classification under the impugned Amendment Rules is with an ultimate view of equalising the tax incidence through the method of ascertaining the use of the land which is not possible de hors its location. It should be emphasised at the cost of repetition that the land revenue u/s 48 of the Code read with Rule 81 of the Rules is to be assessed according to the use to which the land is put and "especially in case of use of the land for the purpose other than agriculture, the non-agricultural assessment would be assessed keeping in view the use to which the land is put and the profit and advantages derived from such use of land" (see : *State of Mysore v. M.L. Nagade & Gadag and Ors.* AIR 1983 S.C. 762). We do not, therefore, find any substance in the ground of attack of the petitioners that the prescription of different rates for non-agricultural assessment having regard to the use and location has no nexus with the object of the Code. We have been unable to persuade ourselves to find any support for the points which the Learned Counsel for the petitioners was pressing before us in this connection from a few decisions of the Supreme Court pressed into service.

35. The first decision relied on by the Learned Counsel for the petitioners is in *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, where reservation of 70% of seats for medical graduates from Delhi in post-graduate courses run by the Delhi University was challenged as violative of Articles 14 and 15 of the Constitution. The Supreme Court, while holding that 70% reservation was on high side, directed the University to admit the petitioners to post-graduate course if the Medical Council of India agrees to the addition of one seat as a special case in the said year without deciding about the vires of the reservation rules. We have not been able to appreciate how this decision can be of any assistance at all to the cause of the petitioners particularly when it was in altogether a different context and not dealing with the question of approach in the matter of challenge on the ground of Article 14 to the taxing statute.

36. The second decision which was pressed in service was in *Om Prakash Sud and Others Vs. State of Jammu & Kashmir and Others*, where the allotment of quotas of resin by the State of Jammu & Kashmir in favour of all the respondents and consequent rejection of the applications of the petitioners was challenged on the ground of violation of Article 14 of the Constitution. The Court in that case ruled that the selection of quota-seekers should have a rational relation to the object sought to be achieved in the industrial policy decision of the States, and if the selection or differentiation is arbitrary and lacks a rational basis it offends Article 14. The Supreme Court found that the State has failed to explain the basis, if any, of allotment because in fact no reasonable basis has been adopted in making the allotment in favour of new allottees and denying allotments to the petitioners. It is hardly necessary to distinguish this case since each impugned

provision is to be tested in its own setting. The case on hand cannot be of any use to us for answering the problem with which we are concerned. In taxation, even more than in any other fields, the Legislature possesses the greatest freedom in classification and the burden is on the person attacking the legislative arrangement to negative every conceivable basis which might support it (see : Twyford Tea Co."s case-supra).

37. The next decision which was pressed in service was State of Kerala and Others Vs. T.M. Peter and Others, where Section 12 of the Travancore Town Planning Act, as applicable to Kerala, was challenged on the ground that there was no time limit fixed for sanctioning the draft scheme by the Government as found in proviso to Section 6 of the Kerala Land Acquisition Act. Negating this challenge, the Supreme Court held that the modern urban development schemes are in different category by themselves from the common category of acquisition for public purposes and the conceptwise and strategywise development schemes stand on a separate footing and, therefore, the classification of town planning scheme differently from the routine compulsory acquisition proceedings is justified as passed on a rational differentia which has a reasonable relation to the end in view viz. improvement of towns and disciplining their development. We are really at loss as to how and for what purpose this decision has been pressed into service.

38. The two other decisions on which reliance has been placed by the Learned Counsel for the petitioners are : Shri Kishan Singh and Others Vs. The State of Rajasthan and Others, and Gopal Narain Vs. State of Uttar Pradesh and Another, In Kishan Singh"s case, the Supreme Court was concerned with Sections 81 to 86 of the Marwar Land Revenue Act, 1949. The validity of this group of sections was challenged on the ground of its repugnanacy to Article 14. The validity was challenged, firstly because the Act was directed against the Jagirdars in one area of the State and not the whole of it and, therefore, discriminatory and void. The validity was also challenged because the rent rate was to be fixed on the basis of the average of the ten years preceding the settlement, and if the proceedings were started for different areas on different dates, that might result in different rates being fixed, which would make for inequality such as is prohibited by Article 14. Both these contentions were rejected since in the opinion of the Supreme Court the classification may be justified on a territorial basis if that was germane to the purposes of the enactment and having regard to the fact that the conditions of tenants vary from locality to locality, the Court did not feel any hesitation in holding that a tenancy legislation restricted to a portion of a State cannot be held to be violative of Article 14 of the Constitution. As regards the second limb of the contention, the Court rejected it following its earlier decision that a statute can provide for different dates for its application.

39. In Gopal Narain"s case (supra), the Supreme Court rejected the challenge to the notification impugned therein imposing house tax and scavenging tax in Civil Lines area of Bareilly Municipality as violative of Article 14 of the Constitution on

the ground that the impugned taxation measure was valid as the Legislature has power in the matter of taxation to adopt geographical classification which must have reasonable relation to the object of the statute, and if for providing special amenities for a particular unit, the tax has to be levied in that area, it cannot be said that it impinges upon the equality clause.

40. Both the above decisions have been pressed in service to persuade us that the classification of cities, towns and villages has no reasonable connection with the object of the Code. We do not think that these authorities are of any relevance to the problem confronting us. In both these decisions when the validity of the impugned measures was challenged on the ground that the respective measure was operative in some part of the State and thereby resulting in discrimination, the challenge was negated by the Supreme Court on the ground of validity of geographical classification since it had, in the opinion of the Court, reasonable nexus with the object of the statute under which such classification was made. In the present case before us, there is no question of any geographical classification and operation of any impugned measure exclusively in that area. What is in dispute between the parties in the present case is whether the classification of the land having regard to its location has any reasonable nexus with the object of the Land Revenue Code. The present problem is altogether in different context to which the two decisions do not apply at all.

41. We are, therefore, not impressed by any of the above decisions pressed in service on behalf of the petitioners for the reasons which we have stated hereinbefore. We must, therefore, conclude that the grievance of the petitioners that the impugned Amendment Rules of 1977 result in discrimination or the classification prescribed in the said rules has no reasonable nexus with the object of the Code does not appear to be well conceived. This very Rule 81 of the Land Revenue Rules, as was in force in the erstwhile State of Bombay and which continued to apply to that part of the State which was bifurcated and included within the State of Andhra Pradesh, came up for consideration before the Supreme Court recently alongwith Rule 71 of the Andhra Pradesh (Telengana Area) Land Revenue Rules, 1951 enacted in exercise of the rule making power of the State Government u/s 172 of the Hyderabad Land Revenue Act, 317 providing for non-agricultural assessment or special assessment of the revenue of the land put to non-agricultural use. The validity of the said rules was challenged, inter alia, on the ground of violating Article 14 of the Constitution inasmuch as the Commissioner enjoyed very wide and unfettered discretionary power since there was no guideline in the Code or the Rules and the power was uncanalised and arbitrary. This challenge found favour with the Karnataka High Court which held that Rule 81 under challenge conferred unguided and uncontrolled power and it also suffered from the vice of excessive delegation and, therefore, the rule was struck down. In appeal, the Supreme Court in *State of Mysore v. M.L. Nagada & Gadag* (supra) reversed the decision of the Karantaka High Court. While rejecting the challenge to Rule 81 as amended and

in force in 1958 in the State of Bombay and thereafter in the State of Andhra Pradesh, the Supreme Court, speaking through D. A. Desai, J., considered the scheme of the Bombay Land Revenue Code and the rules governing the non-agricultural assessment. It is not necessary to set out what Desai, J., has said in respect of the scheme in extenso but the relevant part, so far as material for our purposes, reads as under:

23. ...Floor and ceiling rates vary from area to area demarcated on the basis of population and it is further provided that in fixing the rates within floor and the ceiling due regard shall be had to the general level of the value of the lands in the locality used for non-agricultural purposes. Rule 82 makes detailed provision for the rate of non-agricultural assessment to be determined in accordance with that provision where special rate of non-agricultural assessment is in force. Where N.A. assessment is levied at an ordinary rate, the Commissioner before determining the rate at which N.A. assessment will be levied on any particular plot has by notification to divide district in his division to which a standard rate under Rule 82 has not been extended into two classes. Even while assessing N.A. assessment, the Commissioner has to keep in view the level of value of land in the locality used for non-agricultural purposes. In our opinion, both the Act and Rules thus provide for sufficient guidelines, and it cannot be said that the Commissioner enjoys wide arbitrary discretionary power. The discretion has to operate within the floor and the ceiling; the yardstick is the value of the land used for non-agricultural purposes in the locality, the area has to be divided village-wise, town-wise, city-wise and overall what is being assessed is land revenue because N.A. assessment is nonetheless land revenue. In our opinion, the High Court was in error in striking down the provision on the ground that the Commissioner enjoyed wide arbitrary discretion uncontrolled by any guidelines. The discretion is not only controlled but there is sufficient guidelines in the Act and the Rules and therefore the High Court was in error in striking down the amended Rule 81...

42. In view of the above decision of the Supreme Court, it is difficult for us to agree with the petitioners that inasmuch as the impugned Amendment Rules of 1977 require the Collector to divide his district into different classes of cities, towns and villages as prescribed in the rules and to fix the assessment of the land put to non-agricultural use at different rates specified having regard to the use of the land, they would operate in a discriminatory manner and, in any case, the classification has no reasonable nexus with the object of the Code and is, therefore, violative of Article 14 of the Constitution. As a matter of fact, the challenge to this very rule, as it existed prior to its amendment in 1978, where the scheme was almost similar to the one which is now prescribed after the amendment, on the ground of the earlier scheme being violative of Article 14 as the power of the Collector was uncanalised and arbitrary, was in terms negated by the Supreme Court. We do not think that it would be open to the petitioners now to challenge the similar scheme prescribed under the impugned Amendment Rules of 1977 on the ground that they are discriminatory and, therefore,

violative of Article 14 of the Constitution. In any view of the matter, we have found on examination of the present scheme that the impugned Amendment Rules of 1977 are not discriminatory, or that the classification prescribed therein has no unreasonable nexus with the object of the Code. This point, therefore, must be answered in the negative and against the petitioners.

43. A faint attempt was made to challenge the impugned Amendment Rules of 1977 on the ground of excessive delegation of the legislative power. We do not think that the challenge is well-founded since Section 45 read with Section 48 of the Code provides for a clear guideline and if Section 214 of the Code has conferred a power to enact rules for giving effect to the provisions of the Act, it could not be contended that the Legislature was guilty of delegating its essential legislative functions in favour of the executive. This contention is also not open in view of the decision of the Supreme Court in M.L Nagada's case (supra).

Re. : Point No. 7:

44. Having read the proviso closely, we have not been able to appreciate what is the purpose underlying this proviso. If it is to penalise any occupant for converting the land to any non-agricultural use other than the one for which permission is granted or deemed to have been granted, it would certainly amount to a penalty and would be beyond the rule making power of the State Government. It is uncertain and imprecise and therefore void. (see Craies on statutes p. 272). If the underlying object is not to penalise any occupant then it would be certainly violative of Article 14 inasmuch as the classification of the land not put to non-agricultural use for which permission is granted or deemed to be granted and subjecting it to the assessment at double the rate prescribed the respective use in Table-A would not be an intelligible and rational classification because, on the plain reading of the proviso it is capable of being interpreted and applied, to the cases of innocent occupants, who may be, for reasons beyond control, unable to put the land to the non-agricultural use for which permission is granted or deemed to be granted. In any case, the classification has no rational nexus with the object of the Code which is to collect the revenue according to the use of the land. The proviso may be viewed from any angle, but it is not capable of any precise meaning; arbitrary and violative of Article 14 of the Constitution, and also beyond the rule making power of the State Government which has no plenary power (see Bimal Chandra Banerjee Vs. State of Madhya Pradesh etc., The proviso is, therefore, liable to be quashed and struck down. Since the rest of the enactment of the rules after omitting the voided proviso is workable and does not frustrate the intention of rule making authority. The rest of the enactment is valid (see : R.M.D. Chamarbaugwalla Vs. The Union of India (UOI),

45. Two subsidiary contentions were urged in the course of hearing. One of them was that the Collector is the competent authority to fix the assessment and the amount to be paid as land revenue and for such period as he may think fit in his discretion. The grievance was made on behalf of the petitioners that the impugned Amendment Rules of 1977 do not leave any matter of the assessment

to the discretion of the Collector. Under the impugned rules, he is virtually reduced to a position where he has to act mechanically in the matter of assessment since the impugned rules have prescribed for every small matter relevant to any assessment. The classes of cities, towns and villages, the adjoining areas, the rates for different non-agricultural uses have been prescribed by the rules. Nothing has been left to the discretion of the Collector with the result that the Collector has become a mechanical agent to merely work out the total amount of land revenue by multiplying the meterage of the land by the relevant rate prescribed for the respective use of the land. We find it difficult to persuade ourselves to accept this submission. The entire premise of this argument is misconceived for the obvious reason that u/s 52, discretion of the Collector is not absolute. It is qualified in the sense that the discretionary power of the Collector to fix assessment is subject to the rules and if, therefore, in the rules elaborate provision has been made so as to avoid the charge of assessment being arbitrary or capricious, we do not think that any exception can be taken to such a legislative exercise.

46. The second subsidiary contention urged on behalf of the petitioners was that there was variance between the content of the draft rules and those of the impugned rules which finally emerged and it was, therefore, urged that the variance was so material that the persons affected thereby had no opportunity to file their objections or make suggestions in that behalf and, therefore, there was no previous publication of the impugned rules as required by Section 214 of the Code. We do not find any limitation on the rule making power of the State Government which would oblige the Government to go through the gamut of publication all over again if there is some change in the final rule as compared to the draft rule. In absence of such a limitation in Section 24 of the Bombay General Clauses Act, we do not think that this objection is well-founded. We should not be understood to have stated that even if the contents of the final rules materially and fundamentally defer from those of the draft rules properly published and the suggestions and objections duly considered in that behalf, even then the final rules would be said to have been validly made according to Section 24 of the General Clauses Act. If the final rules are so foreign to the draft rules, a question may well arise about the validity of such final rules since a possible objection about the proper previous publication may arise [see : *Maula Bux and Others Vs. The Appellate Tribunal of State Transport Authority and Others*, and the *The United Cereal Products Ltd. and Others Vs. Union of India and Another*, . The variance as pointed out above cannot be claimed to be such that it can be successfully urged that the contents of the final rules were absolutely foreign to the draft rules.

47. The result, therefore, is that all the contentions urged on behalf of the petitioners, except to the extent to which they relate to the proviso to Rule 81(2), are rejected. We, therefore, partially allow this group of petitions to that extent by quashing and setting aside the said proviso to Rule 81(2) by issuing a writ of Certiorari and the Rule in each of these petitions is made absolute to that

limited extent only. Having regard to the facts and circumstances of this case, there should be no order as to costs in each of these petitions.

Civil Applications filed in the respective Special Civil Applications are also disposed of accordingly with no order as to costs.

Oral Order:

48. Mr. Vakil for the petitioners makes an oral application that the interim relief granted in this group of petitions be continued for a period of six weeks from the date of the receipt of certified copy of this order so as to enable the petitioners to file appeal to the Supreme Court. Interim relief as granted in this group of petitions is extended for a further period of six weeks from the date of receipt of the certified copy of the judgment by the petitioners so as to enable the petitioner to obtain appropriate orders from the Supreme Court.