State Of Mysore Etc vs M. L. Nagade And Gadag & Ors on 6 May, 1983

Equivalent citations: 1983 AIR 762, 1983 SCR (3) 93, AIR 1983 SUPREME COURT 762, 1983 SCC (TAX) 178, 1983 UJ (SC) 517, 1983 (3) SCC 253, (1983) 2 SCWR 115

Author: D.A. Desai

Bench: D.A. Desai, O. Chinnappa Reddy

PETITIONER:
STATE OF MYSORE ETC.

Vs.

RESPONDENT:
M. L. NAGADE AND GADAG & ORS.

DATE OF JUDGMENT06/05/1983

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
REDDY, O. CHINNAPPA (J)

CITATION:
1983 AIR 762 1983 SCR (3) 93
1983 SCC (3) 253 1983 SCALE (1)618

ACT:
Hyderabad Land Revenue Rules subsequently repealed and re-enacted as Andhra Pradesh (Telengana Area) Land Revenue Rules, 1951 framed under Hyderabad Land Revenue Act (VIII of 1317 F)-r. 71 as amended on July 4, 1958 -Diversion of agricultural land to non-agricultural purposes-mode of assessment of land revenue -Whether. rule valid.

Bombay Land Revenue Rules framed under Bombay Land Revenue Act, 1879-r. 81 as amended on March 27, 1958-Whether rule valid.

Rule 71 of the Hyderabad Land Revenue Rules, which is similar to r. 81 of the Bombay Land Revenue Rules, provides for mode of assessment of land revenue in the event of diversion of agricultural lands to non-agricultural purposes.

HEADNOTE:

The respondents in these appeals had filed certain writ petitions challenging the levy and demand of non-agricultural assessment made by the appellants, on the ground, among others, that the above rules conferred unguided and uncontrolled power and there was excessive delegation of legislative functions and therefore the rules were violative of Art. 14 of the Constitution. The High Court accepted the contention and quashed the demand of assessment.

Allowing the appeals,

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HELD: Delegation of some part of legislative power becomes a compulsive necessity for viability and functioning of the various institutions created by the Constitution. The legislature can delegate details to be worked out by the delegate and the details may be numerous and significant yet they may well be made over to the appropriate agency. The guideline need not be found in the impugned provision. The same may be collected from the setting in which the provision is placed, the purpose for which the Act is enacted and even the preamble of the statute in which the provision is incorporated. The object sought to be achieved by legislation or statute can furnish reliable guideline for the exercise of discretionary power. [104 B, F-G, 100 H, 101 A]

Constitutional Law by Prof. Wills, p. 587; Kunnathat Thathunni Moopil Nair v. The State of Kerala and Another, [1961] 3 SCR 67; New Manek Chowk Spinning and Weaving Mills. Co. Ltd. and Ors. v. Municipal Corporation of the City of Ahmedabad and Ors. [1967] 2 SCR 679; State of Andhra Pradesh

JUDGMENT:

Kerala v. Haji K. Haji K. Kutty Naha & Ors. etc. [1969] 1 SCR 645; Rangildas Varajdas Khandwala v. Collector of Surat & Ors. [1961] 1 SCR 951; and Avinder Singh etc. v. State of Punjab & Anr. etc. [1979] 1 SCR 845, referred to.

The basic purpose for which a Land Revenue Act is enacted is for empowering the State and its agencies and its officials to assess and levy land revenue. The land revenue is a tax and the validity of a taxing statute has to be determined keeping in view the fact that in the matter of taxation the Court allows wide area of picking and choosing and the slab system. [105 A, G-H] In the instant case r. 71 is made in exercise of the rule making power conferred by s. 172 of the Hyderabad Land Revenue Act. This rule making power is to be exercised for the purpose of carrying out the provisions of the Act. Whenever land is diverted to use other than agricultural, power is conferred to levy non-agricultural assessment or special assessment but this assessment is to be determined under the amended r. 71, keeping in view the purpose of the Act, namely, levying and collection of revenue, the use to which the land is put, the profit derived from such deviated use of the and again correlated to population as set out in various sub-clauses of amended r. 71 and within floor and ceiling prescribed in the impugned rule. The High Court fell into an error in holding that rule 71

allowed a wide margin to the revenue officers in the matter of determining the special assessment to be levied on land used for non- agricultural purposes. The High Court failed to notice that area within which the discretion of the revenue officer can operate is circumscribed both by the floor and ceiling fixed and while determining the quantum of assessment, the revenue officer has to bear in mind the use to which land is put as also the profit derived from the use of the of land. The order made by the revenue officer is appealable. When a demand is raised, it can always be controverted under the various provisions of the relevant rules and the concerned assessee will have full opportunity to vindicate his stand.

[104 H; 105 A-B; E-G] There is no excessive delegation of legislative functions in the Hyderabad Land Revenue Act. Section 50 of the Act clearly confers power on the State Legislature to levy assessment and when the land is diverted to a use other than agriculture, the legislature conferred to power to levy non-agricultural assessment. Elaborate provision has been made for levying assessment. Section 172 conferred power to enact rules for giving effect to the provision of the Act and the guideline was provided as herein above indicated. [106 B-C] Bombay Land Revenue Code was enacted in the year 1879 to consolidate and amend law relating to revenue officers and to the assessment and recovery of land revenue and other matters connected with Land Revenue Administration. Section 48 confers power to levy and assess the land revenue with reference to the use of the land. Chapter XI makes detailed provision for the procedure to be followed by the revenue officers while discharging their duties and carrying out the functions imposed by the Code. Chapter XIII provides for appeals and revisions against the orders of the revenue officers. [106 E-G] Rule 81 of the Bombay Land Revenue Rules framed under s. 214 of the Act, as amended on March 27, 1958, provides for ordinary rates of non-agricultural assessment. 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 the 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. The Act and the Rules 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 none-the-less land revenue. 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. [106 H, 107 A-G] We would expect revenue authority ordinarily to hear the person affected by the order levying non-agricultural assessment or at the time of its appeal or revision, but on this count the demand cannot be struck down because when a demand is served it can be objected to and the decision is appealable. It cannot be said that the Rule would be bad as it does not inhere the principles of natural justice. [107 G-H, 108 A] & CIVIL APPELLATE. JURISDICTION : Civil Appeals Nos. 1221-1222 & 1407-1413 of 1970 From the Judgment and Order dated the 30th September, 1965 of the Mysore High Court in Writ Petitions No. 1934/64, 672 of 1963, 1165-1168, 1198-1199 & 2619 of 1963 respectively.

M. Veerappa and Ashok Kumar Sharma for the appellants in all appeals.

Naunit Lal, Kailash Vasdev and Krishna Kumar for Respondents in CA. Nos. 1407-1412/73.

M.N. Phadke, Vinod Bobde, D.N. Misra and Mrs. A.K. Verma with him for the Respondents in CA. 1222 & 1413/70.

S.S. Javali and B.P. Singh for the Respondent in CA. 1221 of 1970.

The Judgment of the Court was delivered by DESAI, J. Civil Appeals Nos. 1221-1222/70 arise from a decision of the Division Bench of the then High Court of Mysore at Bangalore in Writ Petition Nos. 672/63 and 193/64 by which the High Court quashed the demand of Non-Agricultural assessment (N. A. assessment for short) made by the respondents on the ground that Rule 71 as amended on July 4, 1958 of the Hyderabad Land Revenue Rules which appeared to have been repealed and re-enacted as the Andhra Pradesh (Telengana Area) Land Revenue Rules, 1951 was unconstitutional being violative of Art. 14 of the Constitution and hence void.

Civil Appeals Nos. 1407 to 1413/70 arise from a decision of the Division Bench of the same High Court in a group of writ petitions by which the High Court quashed the demand of Non-Agricultural assessment on the ground that Rule 81 of the Bombay Land Revenue Rules as amended on March 27, 1958 was unconstitutional being violative of Art. 14 and hence void.

Appellants in both the groups are the State of Mysore and some officers. Respondents are the original petitioners in both the groups.

Rule 71 of the Hyderabad Land Revenue Rules and Rule 81 of the Bombay Land Revenue Rules were amended in an identical manner but on two different dates and the validity of each amended rule was questioned on identical grounds and more or less the High Court for identical reasons quashed both the Rules as amended and almost identical grounds were canvassed in support of rival contentions before us and therefore, all these appeals are disposed of by this common judgment.

The boundaries of old Mysore State underwent a change consequent upon the re-organisation of States in 1956. Some portion of former Bombay State as well as some portion of the old Hyderabad State were allocated to Mysore State. This historical phenomenon led to different Land Revenue Code remaining in operation in different parts of the State of Mysore. To be precise that area of former Bombay State forming part of Mysore State continued to be governed in respect of land revenue by the Bombay Land Revenue Code, 1879 and the rules made thereunder. Similarly that area of former Hyderabad State which was allocated to Mysore State continued to be governed by the Hyderabad Land Revenue Act (VIII of 1317F).

In Re C. A. Nos. 1221-1222/70 : Respondents questioned the validity of the amended Rule 71 of the Hyderabad Land Revenue Rules which came into force from July 4, 1958. It reads as under :

> "71 (1) : Mode of assessment in the event of diversion of agricultural lands to non-agricultural purposes, the special assessment shall be levied as follows :-
>
> (a) in the case of land situated in any village the population of which does not exceed 5,000 the rate of special assessment leviable shall be not less than the agricultural

assessment leviable on such land and note more Rs. 40 per acre.

(b) in the case of land situated in any village or town other then a town coming under Sub-Rule (c) of this Rule, the population of which exceeds 5,000 the rate of special assessment leviable shall be not less than Rs. 40 per acre and not more than Rs. 80 per acre.

(c) in the case of land situated within an area comprising the Municipality limits of the town of Raichur, Gulbarga and Bidar the rate of special assessment leviable shall be not less than Rs. 150 per acre and not more than Rs. 250 per acre."

The validity of the amended rule was challenged on the ground that it provides no guidelines for determining N.A. assessment for various plots and that it suffers from the vice of excessive delegation of essential legislative functions and therefore any demand raised in exercise of the power conferred by the amended Rule 71 would be arbitrary and therefore violative of Art. 14 of the Constitution.

In Re. C.A. Nos, 1407 to 1413/70: Respondents who were petitioners in the High Court questioned the validity of Rule 81 of the Bombay Land Revenue Rules as amended on March 27, 1958. It reads as under:

"81 (1): Rate of Non-Agricultural assessment:

The rate of Non-Agricultural assessment leviable shall be as follows:-

(a) in the case of land situated in any village the population of which does not exceed 5,000 the rate of Non-Agricultural assessment leviable shall be not less than the agricultural assessment leviable on such land and not more than Rs. 40 per acre.

(b) in the case of land situated in any village or town other than a town coming under Clause (c) of this rule, the population of which exceeds 5,000 the rate of Non-Agricultural assessment leviable shall be not less than Rs. 40 per acre and not more than Rs. 80 per acre.

(c) in the case of land situated in any City or Town referred to in the Table to Rule 100, the rate of Non-Agricultural assessment leviable shall be not less than Rs. 150 per acre and not more than Rs. 250 per acre.

(d) Non-Agricultural assessment will be levied at uniform rates for the entire extent converted for non-agricultural purposes, irrespective of the extent actually built upon."

The same contention which was advanced in the former group of petitions was repeated in this group of petitions.

Validity of both the Rules was questioned on other diverse grounds but except the one herein mentioned, other contentions did not find favour with the High Court and therefore, they need not be recapitulated here.

The sole contention which found favour with the High Court was that the Rule under challenge confers unguided and uncontrolled power and there is no guideline either in the Act or the Rules and there is excessive delegation of legislative functions and therefore, both the amended Rules are violative of Art. 14 of the Constitution.

Thus the question which falls for consideration is whether the amended Rule 71 of the Hyderabad Land Revenue Rules and amended Rule 81 of the Bombay Land Revenue Rules suffer from the vice of excessive delegation of legislative functions or that it confers canalised and unguided arbitrary power on the officers or there is no guideline to govern the discretion while enforcing and implementing the two Rules.

We would first examine the validity of amended Rule 71 of the Hyderabad Land Revenue Rules. The Hyderabad Land Revenue Act (VIII of 1317F) was enacted to amend and consolidate the orders and regulations relating to land revenue. It is an exhaustive Code divided into 12 Chapters. Chapter II deals with appointment of Revenue Officers and their respective powers. Chapter IV contains provision in respect of land and land revenue. Sec. 24 provides that all Unalienated lands belong to Government. Sec. 48 provides that all land, whether applied to agricultural or any other purpose and wherever situate shall be liable to payment of land revenue to the Government in accordance with provisions of this Chapter and Chapters VII and IX except in case title to land has been transferred to any municipality or the revenue thereof has been wholly remitted under any special contract with the Government or under any order or law. Sec. 50 which is material for the present purpose confers power for assessment and levy of land revenue. It reads as under :

> "50. Land revenue shall be assessed according to the various modes of use-
>
> (a) agricultural use.
>
> (b) In addition to agricultural use any other use from which profit or advantage is derived.

When rate is assessed on any land for any one of the aforesaid purposes and the land is appropriated for any other purpose the rate thereof shall be altered and fixed again, although the term of subsisting settlement may not have expired.

It becomes clear that the land revenue was to be assessed according to the use to which the land is put and especially in the case of use of land for purposes other than agriculture, the N.A. assessment would be assessed keeping in view the use to which the land is put and the profit or advantage derived from such use of the land. Chapter VII contains provisions for Survey and settlement of land which would include assessment in respect of each survey, piece and parcel of land. Sec. 84 provides for announcement of the assessment and the manner in which it is made, and the announcement

should include the assessment fixed in respect of each plot of land called survey number. Chapter IX makes provision for responsibility of payment of revenue and the method of its recovery and the priority of payment in respect of land revenue. Chapter X deals with the procedure prescribed for revenue officers in dealing with cases under the Land Revenue Act. Chapter XI provides for appeal, review and revision of the orders of revenue officers. Sec. 172 confers power on the Government to make rules by publication in the Jarida (presumably official Gazette) consistent with the provisions of the Act to carry out the purpose and objects of the Act and for the guidance of all persons in matters connected with the enforcement of the Act or in matters not expressly provided for in the Act. In exercise of this power, Hyderabad Land Revenue Rules have been enacted and promulgated subsequently repealed and re-enacted as the Andhra Pradesh (Telengana Area) Land Revenue Rules, 1951. Rule 71 as amended on July 4, 1958 has been extracted hereinbefore. It provides for mode of assessment in the event of diversion of agricultural lands to non-agricultural purposes. Briefly, N.A. assessment also styled as special assessment has to be levied within the minimum and the maximum as provided in sub-clauses (a), (b) and (c) of Rule 71 (1). The amended rule also confers power for upward revision of N.A. assessment at intervals.

Is this power uncanalised, unguided or arbitrary ? Rule 71 (1) as amended recites that in different areas correlated to population between the floor and the ceiling therein prescribed, N.A. assessment has to be levied. Ordinarily the land is put to agricultural use and the assessment is to be levied depending upon the use of the land for agricultural purposes. Where there is a diversion in the use of land, a special assessment called N.A. assessment can be levied. The right to levy N.A. assessment is not in dispute. And N.A. assessment is none-the-less assessment of revenue to be paid for the use of the land. What is questioned is that the power conferred by the rule gives so much wide arbitrary discretion to the officers that in the absence of guidelines the revenue officers indifferent areas may act arbitrarily and therefore, in the absence of guidelines this rule is violative of Art. 14.

The question therefore, is whether there is any guideline for the exercise of this power ? It is by now well-recognised that guideline need not be found in the impugned provision. The same may be collected from the setting in which the provision is placed, the purpose for which the Act is enacted and even the preamble of the statute in which the provision is incorporated. A legislation or statute is enacted to achieve some public purpose and the policy of law and the object sought to be achieved can furnish reliable guidelines for the exercise of discretionary power. Prof. Wills in his Constitutional Law, p. 587 observes as under:

> "If a statute declares a definite policy, there is a sufficiently definite standard for the rule against the delegation of legislative power, and also for equality if the standard is reasonable. If no standard is set up, to avoid the violation of equality' those exercising the power must act as though they were administering a valid standard."

In Kunnathat Thathunni Moopil Nair v. The State of Kerala and Another(1), a Constitution Bench of this Court struck down the Travancore-Cochin Land Tax Act, 1955 as being violative of Art. 14 on the ground that unequals were treated equally. By the impugned Act all lands in the State of whatever description and held under whatever tenure were to be charged and levied a uniform rate of tax to be called the basic tax. This Court held that the Act obliged every person who held land to pay the

tax at the flat rate prescribed, whether or not he made any income out of the property, or whether or not the property was capable of yielding any income. Consequently, the Court held there was no attempt at classification in the provisions of the Act and it was one of those cases where the lack of classification created inequality. In reaching this conclusion, Sinha, CJ speaking for the majority observed as under:

> "The Act thus proposes to impose a liability on land holders to pay a tax which is not to be levied on a judicial basis, because (1) the procedure to be adopted does not require a notice to be given to the proposed assessee; (2) there is no procedure for rectification of mistakes committed by the Assessing Authority; (3) there is no procedure prescribed for obtaining the opinion of a superior Civil Court on questions of law, as is generally found in all taxing statutes; and (4) no duty is cast upon the Assessing Authority to act judicially in the matter of assessment proceedings. Nor is there any right of appeal provided to such assessee as may feel aggrieved by the order of assessment."

This decision is of no assistance because Hyderabad Land Revenue Act prescribed a detailed method of assessment and relevant provisions would be followed while levying N.A. Assessment. The Rule circumscribes the operation of the discretion between the floor and the ceiling. The various slabs are correlated to population. Sec. 50 itself provides that the N.A. assessment will be assessed keeping in view the use of the land and the profit derived from the use. Further the orders made by the Revenue Officers are not only appealable but even a review petition is contemplated at the instance of the person aggrieved by the order of assessment. Therefore, the criteria which appealed to the Constitution Bench in striking down the Travancore-Cochin Land Tax Act, 1955 are not available in this case. On the contrary where are such detailed provisions for assessment of Non- Agricultural assessment such as use of land, profit derived by the use of the land, the maxima and minima and the various rates correlated to population.

In New Manek Chowk Spinning and Weaving Mills Co. Ltd and Ors. v. Municipal Corporation of the City of Ahmedabad and Ors.(1), a Constitution Bench of this Court struck down the assessment of property tax by the Municipal Corporation inter alia on the ground that the method of levy of tax on the basis of floor area was against the provisions of the Act and the Rules made thereunder. The Court held that the method of taxation on the basis of floor area was sure to give rise to inequalities as there had been no classification of factories on any rational basis and the Corporation failed to observe the law to determine the annual rental value of each building and land comprised in each of the Textile factories. We fail to see how this decision would be of any use because there is no flat rate levy here and the N.A. assessment has to be levied in respect of each plot of land keeping in view its location, use and the profit derived by the use of the land.

Reference was next made to State of Andhra Pradesh & Anr. v. Nalla Raja Reddy & Ors.(2) Affirming the decision of the Andhra High Court which declared Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision Act, 1962 as unconstitutional, the Court held that the classification based on ayacuts has no reasonable relation to the duration of water supply or to the quality or the productivity of the soil and that Secs. 3 and 4 fixing the minimum flat rate for dry or waste land as

the case may be, have ignored the well established tarams principle and therefore, the classification attempted in either case has no reasonable relation to the objects sought to be achieved, namely, imposition of fair assessment and rationalisation of revenue assessment structure. Again we fail to see how the decision would help us because geographical classification based on population criterion is a valid basis for classification.

The next case to which out attention was drawn was State of Kerala v. Haji K. Haji K. Kutty Naha & Ors. etc,(1) in which this Court upheld the decision of the Kerala High Court declaring Kerala Buildings Tax Act, 1961 ultra vires the Constitution in that it infringed the equality clause of the Constitution. The Court following its decision in New Manek Chowk case held that in the absence of any rational classification which was not even attempted, the tax levied on floor area alone ignoring the use to which the building is put, the materials used in putting up the structure had the pernicious effect of treating unequals as equals and therefore, violative of Art. 14 of the Constitution. This decision has hardly any relevance to the issue raised before us.

As against the aforementioned decisions, it would be advantageous to refer to Rangildas Varajdas Khandwala v. Collector of Surat and Ors.(2) The power to levy N.A. assessment was questioned before this Court albeit under different set of circumstances. The land involved in the dispute was governed by the Bombay Personal Inams Abolition Act, 1952, whose constitutional validity was challenged. The Court held the Act was protected by the umbrella of Art. 31A of the Constitution.

The next contention raised in that case was that the Collector could not have levied N.A. assessment under Sec. 52 of the Bombay Land Revenue Code. Negativing this contention, this Court held that when the land is being used for non-agricultural purpose, Sec.

48 makes it obligatory upon the assessing officer when assessing the land revenue to look to the use to which it is put at the time of the assessment and assess it according to such use. Rule 71 provides for three safeguards against arbitrary exercise of power viz. (i) use of the land, (ii) profit derived from the use of the land and, (iii) location of the land.

In this connection we may refer to the latest decision of this Court in Avinder Singh etc. v. State of Punjab & Anr. etc.(1) After a review of large number of decisions this Court held that delegation of some part of legislative power becomes a compulsive necessity for viability and functioning of the various institutions created by the Constitution. Pertinent observation may be extracted:

> "The Law-making is not a turnkey project readymade in all detail and once this situation is grasped the dynamics of delegation easily follow. Thus we reach the second constitutional rule that the essentials of legislative functions shall not be delegated but the inessentials however numerous and significant they be, may well be made over to appropriate agencies. Of course, every delegate is subject to the authority and control of the principal and exercise of delegated power can always be directed, corrected or cancelled by the principal. Therefore, the third principle that emerges is that even if there be delegation, parliamentary control over delegated legislation should be a living continuity as a constitutional necessity. Within these

> triple principles, Operation Delegation is at once expedient, exigent and even essential if the legislative process is not to get stuck up or bogged down or come to a grinding halt with a few complicated bills."

Thus it is crystal clear that the legislature can delegate details to be worked out by the delegate and the details may be numerous and significant yet they may well be made over to the appropriate agency.

Applying this yardstick, what emerges in this case. Rule 71 is made in exercise of the rule making power conferred by Sec. 172 of the Hyderabad Land Revenue Act. This rule making power is to be exercised for the purpose of carrying out the provisions of Act. The basic purpose for which the Land Revenue Act is enacted is for empowering the State and its agencies and its official to assess and levy land revenue. Whenever land is diverted to use other than agriculture, power is conferred to levy N.A. assessment or special assessment but this assessment is to be determined under the amended Rule 71 keeping in view the purpose of the Act, namely, levying and collection of revenue, the use to which the land is put, the profit derived from such deviated use of the land and again correlated to population as set out in various sub-clauses of amended Rule 71 and within floor and ceiling prescribed in the impugned rule. Further the order made by the assessing authority is made appealable and reviewable. In out opinion, there is sufficient guideline in the Act and the Rules following which the assessing authority has to assess the N.A. assessment. In this connection, it will be advantageous to refer to the oft quoted passage from Wills which bears repetition. It reads as under:

> "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 High Court in our opinion unfortunately fell into an error in holding that Rule 71 allowed a wide margin to the revenue officers in the matter of determining the special assessment to be levied on land used for non- agricultural purposes. The High Court failed to notice that area within which the discretion of the revenue officer can operate is circumscribed both by the floor and ceiling fixed and while determining the quantum of assessment, the revenue officer has to bear in mind the use to which land is put as also the profit derived from the use of the land. The order made by the revenue officer is appealable. Now when a demand is raised, it can always be controverted under the various provisions of the relevant rules and the concerned assessee will have full opportunity to vindicate his stand. It should not be over-looked that the land revenue is a tax and the validity of the taxing statute has to be determined keeping in view the fact that in the matter of taxation, the Court allows wide area of picking and choosing and the slab system. We are therefore, of the opinion that there was sufficient guideline to govern the discretion of the revenue officer and the rule could not be struck down on the ground that it confers wide arbitrary, uncanalised discretionary power uncontrolled by any guidelines.

A very feeble attempt was made to urge that there was excessive delegation of essential legislative functions to the executive giving it the power not only to enact the rule but to amend it so as to vary

the N.A. assessment. Sec. 50 clearly confers power on the State Legislature to levy assessment and when the land is diverted to a use other than agriculture, the legislature conferred the power to levy N.A. assessment. Elaborate provision has been made for levying assessment. Sec. 172 conferred power to enact rules for giving effect to the provision of the Act and the guideline was provided as herein above indicated. Therefore, we are not impressed by the submission that in the case the legislature was guilty of delegating its essential legislative functions in favour of the executive.

Re C.A. Nos. 1407 to 1413/70: In this group of appeals, vires of amended rule 81 of the Bombay Land Revenue Rules was questioned on the same identical grounds and the challenge must fail for the same reasons. We may however, briefly point out the scheme of the relevant Act and the rules governing this case.

Bombay Land Revenue Act was enacted in the year 1879 to consolidate and amend law relating to revenue officers and to the assessment and recovery of land revenue and other matters connected with the Land Revenue Administration. Sec. 48 confers power to levy and assess the land revenue with reference to the use of the land -(a) for the purpose of agriculture, (b) for the purpose of building, and (c) for a purpose other than agriculture or building. Chapter VIII includes provision for Surveys, Assessments and Settlements of Land Revenue. Chapter VIII-A makes further provisions for assessment and settlement of land revenue on agricultural land. Chapter XI makes detailed provision for the procedure to be followed by the revenue officers while discharging their duties and carrying out the functions imposed by the Code. Chapter XIII provides for appeals and revisions against the orders of the revenue officers. Sec. 214 confers power on the State Government to make rules not inconsistent with the provisions of the Act to carry out the purpose and object thereof and for the guidance of all persons in matters connected with the enforcement of the Act. Armed with this power, Land Revenue Rules, 1951 were enacted. Chapter XIV headed 'imposition and revision of non-agricultural assessment' make detailed provisions for assessment and levy of N.A. assessment. Rule 80 confers power for alteration of assessment when land assessed or held for agricultural purpose if used for non- agricultural purpose. Rule 80A confers power for revision of N.A. assessment on the expiry of the period for which assessment on any land was assessed and levied. Rule 81 provides for ordinary rates of N.A. assessment. It was amended and the validity of the amended rule is in question. 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 the villages, towns and cities in each 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 none-the-less 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 demanded Rule 81.

It was in passing urged that there is no provision for notice before N.A assessment is levied. We would expect revenue authority ordinarily to hear the person affected by the order levying N.A. assessment or at the time of its appeal or revision, but on this count the demand cannot be struck down because when a demand is served, it can be objected to and the decision is appealable. It cannot be said that the Rule would be bad as it does not inhere the principles of natural justice.

The decisions of the High Court were not sought to be supported on any other ground. Accordingly, these appeals must succeed.

All the appeals are allowed and the judgments of the High Court in both the groups are quashed and set aside and the writ petitions filed by the respondents are dismissed with costs throughout.

H.S.K. Appeals allowed.