UNREPORTED

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

WRIT PETITION NO.254 OF 2013.

1. Savedi Parisar Gharmalak Seva Sangh Society, Ahmednagar, Reg.No.MAH/635/07/A'Nagar, Dt.20.10.2007 through Chairman: Nilkanth Narayan Sole, Age 71 years, Occ.Lawyer, R/o 22,Anand Nagar, Gulmohar Road, Ahmednagar, Tq and Dist.Ahmednagar.

2. Madhukar Chintaman Deshmukh, Age 82 years, Occ.Business, R/o Himgiri, Court Galli, Ahmednagar.

(Deleted as per Court's order dated 16.1.2013)

3. Puspalata Narendra Chavan, Age 37 years, Occ.Household, R/o Jall Road, Opp. Of Municipal Office, Ahmedagar, Tq and Dist Ahmednagar. … Petitioners.

Versus

1. The State of Maharashtra, through Secretary, Revenue Department, Mantralaya, Mumbai-32.

2. District Collector, Ahmednagar, Taluka and District Ahmednagar.

3. Tahsildar, Ahmednagar,
Taluka and Dist.Ahmednagar.

4. Talathi, Kedgaon (Devache)
Ahmednagar, Tal and Dist
Ahmednagar. … Respondents.

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Mr.S.P.Brahme, advocate for the petitioners.
Mr.A.M.Phule, A.G.P for the State.

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CORAM : S.V.GANGAPURWALA AND A.M.BADAR,JJ.

Reserved on: 29.01.2016
Pronounced on: 23.03.2016.

JUDGMENT (Per S.V.Gangapurwala,J.)

1. Rule. Rule returnable forthwith. With the consent of the parties, taken up for final hearing.

2. The petitioner assails the validity of the order dated 8.12.2011, passed by the Collector, Ahmednagar under the provisions of the Maharashtra Land Revenue Code.

3. Mr.Brahme, learned counsel for the petitioners submits that initially the standard rate of non-agricultural assessment was fixed by the Respondent No.2 for 12 years from 1.8.1979 to

1.8.1991. The property of the petitioner was situated within the limits of the Municipal Council. On 30.6.2003, Municipal Corporation came into existence. The learned counsel submits that the non-agricultural assessment was already fixed for a period of five (5) years i.e. 1.8.2001 to 31.7.2006. The same was a guarantee period. Within this guarantee period of five (5) years, non-agricultural assessment can not be changed. However, vide the impugned order the non-agricultural assessment was increased even for a period from 30.6.2003 to 31.7.2006. According to the learned counsel, the same is not permissible and against the mandate laid down in Section 113 of the Maharashtra Land Revenue Code. The learned counsel submits that even retrospectively the non-agricultural assessment can not be changed. The learned counsel relies on the judgment of the learned Single Judge of this Court in a case of **“Shobha Prakash Deshmukh and others Vs.State of Maharashtra and others”** reported in **2004 (5) Bom.C.R.464,** so also the judgment of the Division Bench of this Court in a case of **“State of Maharashtra and others**

Vs.Nirlon Synthetic Fibres and Chemicals Ltd and another" reported in **1992 (2) Mh.L.J.1327.** The learned counsel also relies on the doctrine of legitimate expectation stating that for a guarantee period, the Respondent would not change the non-agricultural assessment. For the said purpose, the learned counsel relies on the judgment of the Apex Court in a case of **"Sethi Auto Service Station and another Vs. Delhi Development Authority and others"** reported in **2009 (1) SCC 180.**

4. Per contra, Mr.Phule, learned A.G.P submits that there are different rates of non-agricultural assessment prescribed for the areas within the Municipal limits and for the areas within the Municipal Corporation limit. Though the earlier non-agricultural assessment was fixed for a period 1.8.2001 to 31.7.2006, the same was at a rate applicable to the properties situated in Municipal limits. On 30.6.2003, the said property became part of the limits of Municipal Corporation and as such the rates applicable for properties situated within limits of Municipal

Corporation was applied. The same was perfectly legal and as per the mandate laid down U/s 113(2C) of the Maharashtra Land Revenue Code.

5. We have considered the submissions canvassed by the learned counsel for respective parties. Before we advert to the submission, it would be relevant to refer to the provision relied by the learned counsel for both the parties :-

> *"113. Power of Collector to fix standard rate of non-agricultural assessment :- (1) Subject to the provisions of section 112, [the State Government shall, or if so authorised by the State Government by Notification in the Official Gazette, the Collector shall] fix the rate of non-agricultural assessment as per square metre of land in each block in an urban area (to be called "the standard rate of non-agricultural assessment") at such percentage of the full market value of*

such land as may be prescribed.

[Explanation : For the purposes of this sub-section, the full market value shall be estimated in the prescribed manner on the basis of the land rates as determined and issued in the form of Annual Statement of rates, by the Chief Controlling Revenue Authority under the Banking Stamp (Determination of True Market Value of Property) Rates, 1995 framed under the Bombay Stamp Act, 1958, during the period of five years immediately preceding the year in which the standard rate of non-agricultural assessment is to be fixed.]

[(2) The standard rate of non-agricultural assessment shall remain in force for a period of "[five years] (hereinafter referred to as "the guaranteed period") and shall then be liable to be revised in accordance with the provisions of this Chapter :

[Provided that the first such guarantee period shall commence on the

first day of August 1979 and shall expire on the 31st day of the July 1991].

[Provided further that, the State Government may, extend such guaranteed period for all or any block in any urban area so however that, such extended period shall not be more than five years.]

(2A) Where the standard rate of non-agricultural assessment in any block in any urban area has been fixed or revised before [the lst day of August, 1979, such standard rate shall be deemed to be due for revision at any time on and after the lst day of August 1979, and then such standard rate if so revised shall be deemed to have come into force with effect from the lst day of August 1979 on which date the first guaranteed period commenced and would remain in force up to the 31st July 1991 and would then be subject to further revision under sub-section (2B), from

time to time.]

(2B) Where the standard rate of non-agricultural assessment is fixed or revised for any guaranteed period, the same shall be revised as soon as possible after the commencement of the next guaranteed period and such revised rate shall be deemed to have come into force with effect from the commencement of such next guaranteed period.]

(2C) Notwithstanding anything contained in sub-section (1) or the rule made thereunder, the rates of non-agricultural assessment for the guaranteed period of five years commencing from the lst August, 2001 shall not exceed, -

(a) three times the non-agricultural assessment rate of 1991, in a municipal corporation area and two times of such rate in the area of the rest of the State, for the cases which are already assessed for non-agricultural purposes; and

(b) six times the non-agricultural assessment rate of 1991, in a municipal corporation area and four times of such rate in the area of the rest of the State, for the cases to be assessed for non-agricultural purposes.]

(3) The standard rate of non-agricultural assessment fixed or revised as aforesaid shall be published in the ***Official Gazette,*** *and in such other manner as may be prescribed before they are brought into force."*

6. The petitioners have assailed the order dated 8.12.2011 passed by the Collector, Ahmednagar, fixing the standard rate of non-agricultural assessment for a period from 30.6.2003 to 31.3.2006 basically on two counts. (I) the petitioners have already been assessed for the non-agricultural assessment for the year 2001-2006 vide order dated 1.1.2002. The same being the guarantee period, the rates of non-agricultural assessment during this period can not be changed. (II) the order is passed on

8.12.2011 directing to pay the non-agricultural assessment with retrospective effect.

7. Section 113 of the Code, more particularly, sub-section (2) thereof categorically lays down that the standard rate of non-agricultural assessment shall remain in force for a period of five years which is referred to as a guarantee period and shall then be liable to be revised in accordance with the provisions of this Chapter. Sub-section (2B) of Section 113 further lays down that where the standard rate of non-agricultural assessment is fixed or revised for any guaranteed period, the same shall be revised as soon as possible after commencement of the next guaranteed period and such revised rate shall be deemed to have come into force with effect from the commencement of such next guaranteed period. In the present matter, the standard rate of non-agricultural assessment for a guaranteed period from 2001 to 2006 was already fixed vide order dated 1.1.2002. As per sub-section 2 of Section 113 so also sub-section (2B), the same could have been revised after the

guarantee period is over. Initially in the year 2001 at the time of fixing the standard rate of non-agricultural assessment for a period of five years, Ahmednagar Municipal Corporation was Municipal Council and on 30.6.2003, it was constituted as a Municipal Corporation. No doubt, standard rates of non-agricultural tax is different in Municipal Corporation area and a Municipal Council area. In the present case the standard rate of non-agricultural assessment was already fixed for a period from 2006 to 2007 which is termed as guaranteed period. Sub-section (2B) of Section 113 lays down that when the standard rate of non-agricultural assessment is fixed for any guaranteed period, the same shall be revised as soon as possible after the commencement of the next guaranteed period. If during the guaranteed period, the standard rate of non-agricultural assessment are changed then the very concept of guaranteed period will loose its efficacy.

8. There is another facet to this case. The standard rate of non-agricultural assessment

fixed for a guaranteed period of 2001 to 2006 is sought to be changed with effect from 30.6.2003 to 2006 vide order dated 24.6.2011 with retrospective effect. Reading Section 113 in its entirety, it nowhere contemplates change in the standard rate of non-agricultural assessment to be effectuated with retrospective effect. Reference can be had to the Judgments of this Court in a case of **"Shobha Prakash Deshmukh and others Vs. State of Maharashtra and others"** and the case of **"State of Maharashtra and others Vs. Nirlon Synthetic Fibres and Chemicals Ltd and another"** referred supra.

9. In light of the above, the impugned order to the extent of petitioner No.1 can not be sustained. However, it is made clear that members of the petitioner society who have already paid the standard rate of non-agricultural assessment as fixed vide the impugned order, they will not be entitled to the benefit of the present order and will not be entitled for any refund of the amount. This order will enure only to the benefit of those persons who have paid the

standard rate of non-agricultural assessment as fixed vide order dated 1.1.2002 and has not paid NA taxes as per order dated 8.12.2011.

10. Rule accordingly made absolute in above terms. However, there shall be no order as to costs.

Sd/-	Sd/-
(A.M.BADAR,J.)	**(S.V.GANGAPURWALA,J.)**

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