

**Hari Ram Vs. Collector and ors.**

**Hari Ram Vs. Collector and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/489896](http://sooperkanoon.com/489896)

**Court :** Allahabad

**Decided On :** Aug-10-2004

**Reported in :** 2005(1)AWC758

**Judge :** Ashok Bhushan, J.

**Acts :** Uttar Pradesh Zamindari Abolition and Land Reforms Act - Sections 11, 13, 21(1), 21(2), 132, 133, 133A, 172, 176A, 184, 186, 189, 190, 190(1), 190(2), 191, 192, 194, 195, 197, 198, 198(4), 198(7), 200, 202, 204, 206, 220, 221, 222, 230 and 338; Uttar Pradesh Land Reforms (Supplementary) Act, 1952; Uttar Pradesh Land Revenue Act, 1901 - Sections 33 and 39; Zamindari Abolition and Land Reforms Rules, 1952 - Rules 154, 172, 172(3), 173 to 176A, 176A(1), 176A(2) and 176A(3); [Constitution of India](#) - Article 39

**Appeal No. :** C.M.W.P. No. 15880 of 2004 and 7 other Writ Petitions

**Appellant :** Hari Ram

**Respondent :** Collector and ors.

**Advocate for Def. :** N.P. Pandey, Adv. and ;Anuj Kumar, S.C.

**Advocate for Pet/Ap. :** P.K. Tyagi, ;Archana Tyagi, ;A.P. Tewari, ;S.B. Singh and ;S.K. Shukla, Advs.

**Disposition :** Petition allowed

## **Judgement :**

**Ashok Bhushan, J.**

1. The challenge in these writ petitions is to the action of the Sub-Divisional Officer by which the asami leases in favour of the petitioners have been cancelled and the names were also expunged from revenue records. All the cases raise similar question, hence are being decided by this common judgment.

2. Counter and rejoinder-affidavits have been exchanged between the parties and with the consent of the parties, the writ petitions are being finally decided.

3. Heard Sri A.P. Tiwari, Sri S.B. Singh, Sri. S.K. Shukla, Sri P.K. Tyagi. Smt. Archana Tyagi for the petitioners and Sri N.P. Pandey learned standing counsel appearing for the State.

4. For deciding all these writ petitions, it is sufficient to note facts of Writ Petition No. 15880 of 2004 and Writ Petition No. 18126 of 2004.

5. Writ Petition No. 15880 of 2004 has been filed by the petitioner praying for quashing the orders dated 28th August, 1998 and 29th September, 1998. Order dated. 28th August, 1998 is a letter written by Additional Collector (Administration) to the Sub-Divisional Officer requesting him to cancel all irregular entries. The letter states that Collector has directed for expunging the entries of asami leases. Order dated 29th September, 1998, is an order of Sub-Divisional Officer by which the Sub-Divisional Officer has approved as proposed the report of the revenue officials for expunging the name of the petitioner. Petitioner's case in the writ petition is that petitioner is a lessee of plot Nos. 68 and 156 total area 0.911 from the year 1963 after the approval of Tahsildar. Petitioner's case further is that name, was also recorded in the khatauni on the basis of lease granted in his favour. Petitioner is continuing in possession and has been paying the land revenue. It is stated that on the basis of ex parte report submitted by Lekhpal, Deputy Collector has passed order dated 29th September, 1998, approving the report for cancellation of leases in favour of the petitioner. Petitioner's case further is that leases were cancelled without any notice to the petitioner. It has further

been stated that Sub-Divisional Officer has no jurisdiction to cancel the lease. A counter-affidavit has been filed on behalf of the respondents by Tahsildar. It has been stated in the counter-affidavit that power under Rule 176A of Zamindari Abolition and Land Reforms Rules, 1952 (hereinafter referred to as the Rules) has been exercised by the Sub-Divisional Officer. It has further been stated that after cancellation of irregular entries of the petitioner, the land has been allotted by Land Management Committee in favour of other persons. It has further been stated that petitioner has also filed case for cancellation of the lease granted in favour of Vinod Kumar and others. In reply to paragraph 7 of the petition, in which petitioner has claimed grant of lease in the year 1963 with regard to plot Nos. 68 and 156, only this much has been stated that Tahsildar has no jurisdiction to approve the asami lease and an irregular entry in favour of the petitioner has been cancelled.

6. Writ Petition No. 18126 of 2004 has been filed by the petitioner praying for quashing the order dated 24th March, 2004, passed by Additional Commissioner by which order the revision of the petitioner filed against the orders dated 24th February, 1994 and 19th October, 2002 have been dismissed. The Sub-Divisional Officer has passed order dated 24th February, 1994 in Case No. 124 of 1993-94 directing for cancellation of the asami lease in favour of the petitioner in exercise of jurisdiction under Rule 176A of the Rules. The order stated that petitioner is in possession as asami lessee of plot No. 256 since 1372 fasli and the lease being for a maximum period of 10 years, its period came to an end, hence in exercise of jurisdiction under Rule 176A of the Rules, the lease is being cancelled. The Sub-Divisional Officer forwarded the copy of the order to Tahsildar for making entries in the revenue records. The petitioner filed an application to recall the said order which was rejected by Sub-Divisional Officer on 19th October, 2002, as barred by time. The revisional court took the view that period of lease having expired, the Sub-Divisional Officer has rightly cancelled the lease exercising jurisdiction under Rule 176A of the Rules.

7. In other writ petitions also similar orders of Sub-Divisional Officer directing expunction of entries of the petitioners names as asami has been challenged. In the counter-affidavit filed by the State reliance has been placed on Rule 176A of

the Rules in directing for cancellation of leases.

8. Learned counsel appearing for the petitioners, challenging the impugned action of the Sub-Divisional Officer, has made following submissions in support of their respective writ petitions :

(i) The petitioners being granted asami leases earlier, only procedure for ejectment of the petitioners is filing of suit under Section 202 of U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act). The ejectment of the petitioners can only be ordered in suit filed under Section 202 of the Act and the Sub-Divisional Officer has no jurisdiction to direct cancellation of leases/expunction of the entries of the petitioner's names in any other proceeding.

(ii) An asami can be ejected from his land only on the grounds as mentioned in Section 202 of the Act by filing a suit under Section 202 of the Act.

(iii) Even if in exercise of powers under Rule 176A of the Rules, the lease of the petitioner could have been determined, the ejectment of the petitioners could be made only by means of a suit under Section 202 of the Act and even for determination of the leases under the Rules, it is necessary to file suit under Section 202 of the Act for ejectment/dispossession of the petitioners.

(iv) The orders directing for cancellation of leases/ expunction of the entries having been made without notice and opportunity to the petitioners, the same cannot be sustained.

9. Learned standing counsel replying the submissions, contended that Rule 176A of the Rules gives the power to the Assistant Collector to determine the lease and filing of suit under Section 202 of the Act is not necessary. He submitted that Assistant Collector has jurisdiction to determine the lease and direct for expunction of the names of the petitioners from revenue records and it is not necessary to file a suit under Section 202 of the Act. He further submitted that names of the petitioners were wrongly recorded in the records since the period of asami leases had long expired.

10. I have considered the submissions raised by counsel appearing for both the parties.
11. All the submissions of the counsel for the petitioners being interrelated, are being taken together.
12. Before considering the above mentioned submissions, it is necessary to take note of the relevant provisions of the Act relating to asami lease.
13. Section 133A of the Act mentions four clauses of asami. Asami leases in the present writ petitions are referable to Section 133 (c) which is with regard to persons who have been admitted by the Land Management Committee as a lessee of land described in Section 132. Chapter VIII of the Act deals with the tenure. Section 184 provides that an asami may surrender his holding by giving a notice in writing to the Land Management Committee. Section 186 deals with abandonment. Section 190 deals with extinction of the interest of bhumidhar with non-transferable rights. Sub-section (2) of Section 190 also provides that provisions of Sub-section (1) shall apply mutatis mutandis to asamis also. Section 190 is extracted below :
- '190. Extinction of the interest of a (bhumidhar with non-transferable rights).--(1) Subject to the provisions of (Section 172), the interest of a (bhumidhar with non-transferable rights) in a holding or any part thereof shall be extinguished :
- (a) when he dies having no heir entitled to inherit in accordance with the provisions of this Act ;
  - (b) when the holding has been declared as abandoned in accordance with the provisions of Section 186 ;
  - (c) when he surrenders his holding or part thereof ;
  - [(cc) when the holding or part thereof has been transferred, let out or used in contravention of the provisions of this Act ;
  - (d) when, the land comprised in the holding has been acquired under any law for the time being in force relating to the acquisition of land ;

- (e) when he has been ejected in accordance with the provisions of this Act ; or
- (f) when he has been deprived of possession and his right to recover possession is barred by limitation.

The provisions of Sub-section (1) shall apply mutatis mutandis to asamis also.'

14. Section 191 provides that extinction of the right, title and interest of a bhumidhar shall operate to extinguish the interest of any asami holding under him. Section 192 provides one more contingency in which interest of an asami in his holding shall be determined. Section 194 provides that Land Management Committee is entitled to take possession of land when the asami has been ejected or his interest otherwise extinguished under the provisions of this Act. Section 194 of the Act is extracted below :

'194. Land Management Committee to take over land after extinction of interest therein.--The (Land Management Committee) shall be entitled to take possession of land comprised in a holding or part thereof if :

(a) the land was held by a bhumidhar, and his interest in such land is extinguished under Clause (a) or Clause (aa) of Section 189 or Clause (a), Clause (b), Clause (c), Clause (cc) or Clause (e) of Section 190.

(b) [\* \* \*]

(c) the land being land falling in any of the classes mentioned in Section 132, was held by an asami and the asami has been ejected or his interest therein have otherwise extinguished under the provisions of this Act.'

15. Section 197 provides for admission of land mentioned in Section 132. Section 198 provides for preference. Section 198 Sub-clause (4) empowers the Collector to cancel a lease. Section 198 (7) provides for consequences after cancellation of the lease. Section 200 provides that no asami shall be liable to ejectment from his holding except as provided in this Act. Section 202 of the Act, which is heavily relied by counsel for the petitioners, provides for procedure of ejectment of asami. Section 202 of the Act is quoted below :

'202. Procedure of ejectment of asami.--Without prejudice to the provisions of Section 338, an asami shall be liable to ejectment from his holding on the (suit of the (Gaon Sabha) or the land holder as the case may be) on the ground or grounds :

(a) mentioned in Section [\* \* \*], 191 or 206 ;

(b) that he :

(i) belongs to any of the classes mentioned in Clauses (a), (b), (c), (e), (g) or (i) of Sub-section (1) of Section 21, or Sub-section (2) of the said section, or in Clause (c) or (d) of Section 133, or

(ii) has acquired the rights of an asami under the Uttar Pradesh Land Reforms (Supplementary) Act, 1952 ;

and that he holds the land from year to year or for a period which has expired or will expire before the end of the current agricultural year,]

(c) that he belongs to the class mentioned in (clause (d) of Sub-section (1) of Section 21) and the mortgage has been satisfied (or the amount owing under the mortgage has, whether or not it has become payable thereunder, been deposited in Court,]

(d) that he (is an asami under Section 11) and the right to maintenance allowance does not any longer subsist ;

(e) that he belongs to the class mentioned in (Clause (h) of (Sub-section (1) of Section 21) or Clause (b) of Section 133 and that :

(i) the land holder wishes to bring the land under his personal cultivation and in cases where the lease is for a fixed term such term has expired, or (f) that he (is an asami under Section 13) and the period mentioned in Clause (a) of Sub-section (2) of (the said section) has expired ;

(g) that there is an unsatisfied decree of arrears of rent outstanding against him and such decree can be executed by ejectment.'

16. Section 204 provides consequences of failure to institute a suit for ejectment under Section 202. Section 220 provides for application for payment of rent and ejectment in default of an asami. Sections 221 and 222 provides for notice to asami and in the event of failure to comply with the notice, order for payment of amount and in default for ejectment of asami from the holding.

17. The thrust of submissions of counsel for the petitioners is that except by way of suit under Section 202, there is no other method or procedure for ejectment of asami. The submission, first to be considered, is as to whether Section 202 is the only provision under which asami can be evicted. Further submission raised by the counsel for the petitioner is that even if lease is determined under Rule 176A of the Rules for eviction a suit is required to be filed under Section 202 of the Act. Before proceeding further, it is also necessary to note Rule 176A of the Rules which has been substituted in the Rules vide notification dated 1st November, 1975. Section 230 empowers the State Government to make rules for the purpose of carrying into effect the provisions of Chapter VIII. Rule 176A has been framed for the purposes of carrying into effect the provisions of Chapter VIII of the Act. Rule 176A of the Rules, as substituted on 1st November, 1975, is extracted below :

'176A. (1) On receipt of the list in Z.A. Form 57B with the order of the Assistant Collector in-charge of the Sub-Division, the Chairman of the Land Management Committee shall call the person whose selection for allotment of land has been approved by the Assistant Collector in-charge of the Sub-Division and shall furnish to him a certificate in Z.A. Form 58 and shall get a counterpart in Z.A. Form 58A executed by him. If the land sought to be allotted is a land referred to in Section 132, the person concerned shall be furnished with a certificate in Z.A. Form 59 and shall be asked to execute a counterpart in Z.A. Form 59D :

Provided that no lease shall be made to an asami for a period exceeding five years.(2) It shall be lawful for the Assistant Collector-in-charge of the Sub-Division to determine at any time the lease in favour of an asami and upon such determination, the asami shall not be entitled to any compensation.

(3) Every order of determination of lease under Sub-rule (2) shall be effective from the commencement of the agricultural year following the date of the order.

(4) Where the decision of the Land Management Committee regarding admission to any land is not approved by the Assistant Collector-in-charge of the Sub-Division, steps will be taken afresh for settlement of such land in accordance with the procedure laid down in Sub-rule (1) read with Rules 173 to 176A. All contracts relating to a lease, licence or allotment of land shall be executed in duplicate. One copy of the contract shall be given to the lessee, licensee or allottee and the other copy shall be retained by the Land Management Committee for record.'

18. As noted above, Section 202 provides that an asami shall be liable to ejectment from his holding on the suit of the Gaon Sabha or the land holder on the ground as mentioned therein. Under Clause (b) the suit can be filed on the ground that asami holds the land from year to year or for a period which has expired or will expire before the end of the current agricultural year. In the present writ petition all the leases are claimed to have been granted by the Land Management Committee after the date of vesting as contemplated under Sub-section (c) of Section 133. The suit under Section 202 cannot be brought with regard to leases granted after the date of vesting except on the ground as mentioned in Section 202 (b). It is also relevant to note Section 206 which provides ejectment of asami on suit of Gaon Sabha for using land for any purpose other than a purpose connected with agriculture, horticulture or animal husbandry. Thus, Section 202 is not the only section under which suit for ejectment can be brought nor contains the only grounds on which asami can be ejected. A perusal of various provisions contained in Chapter VIII of the Act also indicates that Land Management Committee can take possession from an asami in different other contingencies. Section 194 provides that Land Management Committee is entitled to take possession of land held by an asami when the asami has been ejected or his interest therein have otherwise extinguished. From Section 194, it is clear that if the right of an asami have been extinguished, the Land Management Committee can take possession of the land without institution of suit. For carrying out the provisions of Section 194, Rules have been framed. Rule 172 read with Rule 154 of the Rules give the procedure under which declaration will be made by Assistant Collector that the

interest of the asami has been extinguished. Rule 172 (3) provides that possession shall be delivered to the Land Management Committee on behalf of the Gaon Sabha in accordance with the procedure laid down in Rule 154. Provisions of Section 194 of the Act read with Rules 172 and 154 of the Rules, thus, make it clear that there are other circumstances and contingencies in which possession from asami can be taken apart from ejectment of asami as contemplated under Section 202 of the Act. The contention of the petitioners' counsel that for taking possession from an asami, suit under Section 202 of the Act is necessary to be filed in all circumstances, thus, cannot be accepted. For example, if the holding has been abandoned by the asami, there is no necessity of filing a suit under Section 202 of the Act for ejectment.

19. Rule 176A of the Rules is a rule, which has been substituted in the Rules by notification dated 1st November, 1975. Proviso to Sub-rule (1) provides that no lease shall be made to an asami for a period exceeding five years. The intention of the provisions is clear that lease should be granted to asami for a period of five years. The object of provisions contained in Chapter VII pertaining to grant of lease by Land Management Committee is a provision which has been enacted to give effect to constitutional mandate as contained in Article 39(b) of the Constitution. The object contained in Article 39(b) is distribution of material resources of the community to best subserve the common hood. The restriction of five years of an asami lease is only for the purpose that lease be again granted after five years to best subserve the common hood. Section 198 of U.P., Zamindari Abolition and Land Reforms Act Sub-clause (1) provides for order of preference in admitting persons to land under Sections 195 and 197 of the Act. The object can be illustrated by taking an example, asami lease is granted to a bhumidhar or asami residing in the circle holding land less than 1.26 hectares for a period of five years. After expiry of period of five years the person who was granted asami lease has added in his holding and possesses land more than 1.26 hectares, hence he will go out of the preferred categories and when the next step will be taken for granting lease some more deserving persons may be there who can be granted the lease. The object of limiting the lease for five years is to subserve the common hood and the exercise of settling the land is to be repeated after expiry of the lease considering the field of abilities at the time of exercise.

Sub-rule (2) of Rule 176A is a provision which empowers the Assistant Collector to determine at any time the lease in favour of an asami. From the materials brought on the record, it is not clear as to whether leases granted to the petitioners were for a fixed period or whether from year to year. There being no material on the record to establish that leases granted to the petitioners were for the fixed period, the asami leases granted to the petitioners are assumed to be leases from year to year. Sub-rule (2) of Rule 176A empowers the Assistant Collector to determine at any time the lease. The determination can be done by the Assistant Collector even before expiry of the period of lease. From the provisions of the Act and the Rules, it is clear that prior to Rule 176A there was no provision in the Rules for determining the lease. The leases are granted to an asami with the previous approval of the Assistant Collector in-charge. In the present case we are concerned only with the grant of lease under Section 197 which refers to Section 132 of the Act. The power thus to be exercised by the Assistant Collector under Sub-rule (2) of Rule 176A is with regard to only above categories of leases.

20. Sri A. P. Tewari and Sri S. B. Singh, learned counsel for the petitioners, contended that power under Rule 176A can be exercised only during the period lease subsists and after expiry of the period power under Rule 176A cannot be invoked.

21. As observed above, there is no material on the record to suggest that leases were for a fixed period. Asami leases of the petitioners have been taken to be year to year and in the present case leases being year to year, for determination of the lease orders are required to be passed. However, the words 'at any time' used in Sub-rule (2) of Rule 176A are wide enough to exercise the power when the lessee continues with the lease. There is no provision in the Act or the Rules that after expiry of the period of lease, lease shall automatically stand determined and right, extinguished. There being no provision in the Act and Rules for automatic determination or extinction of the right for determining the rights, a decision has to be taken. In above view of the matter, the arguments of the petitioners' counsel cannot be accepted that in the facts of the present case power under Rule 176A could not have been exercised by the Assistant Collector. Rule 176A (2) uses the word 'determine'. After determination of the lease the right which flows from the

lease will naturally be extinguished. As noted above, Section 194 (c) uses two phrases, namely, asami has been ejected or his interest therein have otherwise extinguished. This provision also makes it clear that Land Management Committee can take over land from asami either when he has been ejected or his interest therein have otherwise extinguished. The word 'otherwise extinguished' used in Sub-clause (c), as noted above, can also take in its purview the extinction of the lessee's right by determination of the lease under Rule 176A (2). The exercise of power under Rule 176A is for carrying out the purpose of the Act which rule has been framed under Section 230 for carrying out the provisions of Chapter VIII.

22. The submission remains to be considered is as to whether power under Rule 176A (2) can be exercised by Assistant Collector without notice and opportunity to the lessee although Sub-rule (1) of Rule 176A does not mention issuing any notice to the lessee.

23. Sub-rule (2) being enabling provision empowering the Assistant Collector to determine the lease, determination has to be in consonance with the principles of natural justice. The determination of lease will adversely affect the rights of the lessee, hence affording an opportunity has to be read into the provision. Rule 172 which provides the procedure for declaration of tenure holder's right as contemplated under Section 194 also provide for issuing a notice to tenure holder. From very nature of the power given under Rule 176A (2) the notice to the lessee is necessary. Thus, it is held that the Assistant Collector before determining the lease under Rule 176A (2) has to give a notice to the lessee and pass orders after giving notice. Sub-rule (3) of Rule 176A also makes it clear that determination of lease shall amount to extinction of rights of the lessee, which shall be effective from the commencement of the agricultural year following the date of the order. Sub-rule (3) of Rule 176A, as quoted above, also makes it explicit that order of determination will become effective from the commencement of agricultural year following the date of the order. The above provision negates the argument of the petitioners that even after determination of the lease suit under Section 202 of the Act has to be necessarily filed. After determination of the lease under Sub-rule (2) of the Rule 176A, there is no necessity of filing a suit for ejectment and if the submission raised by the petitioner's counsel is to be accepted that suit has to be

filed after determination, the said suit will only delay the delivery of possession and fresh settlement of asami lease which cannot be the object of the Legislature.

24. From abovesaid discussions, it is held that rights of asami can be extinguished by determination of the lease under Rule 176A (2). It is further found that after determination of the lease there is no necessity of filing a suit under Section 202 of the Act for ejectment of the asami and the possession of the asami can be taken by Land Management Committee in accordance with the Rules from the commencement of agricultural year following the date of the order. It is further held that before determination of the lease under Sub-rule (2) of Rule 176A, a notice is required to be given by the Assistant Collector to the lessee.

25. Writ Petition No. 15880 of 2004, challenges the order that has been passed by Sub-Divisional Officer on 29.9.1998, approving the report for expunction of names of the petitioners from the revenue records. In paragraph 6 of the counter-affidavit, it has specifically been stated that the order has been passed in exercise of power under Rule 176A of the Rules. The petitioner categorically stated in paragraph 12 of the writ petition that the said order was passed without notice. No specific reply has been given to paragraph 12 of the writ petition and only it has been stated that irregular entry has been cancelled. The power having been exercised under Rule 176A of the Rules as claimed in the counter-affidavit, the same could have been exercised in consonance with the principle of natural justice. The order dated 29.9.1998, having not been passed after giving notice to the petitioner, the same cannot be sustained and is hereby set aside.

26. Writ Petition No. 17746 of 2004, challenges the order passed by Sub-Divisional Officer dated 25th September, 2003, by which in purported exercise of power under Section 33/39 of U. P. Land Revenue Act, 1901, the name of petitioner has been expunged. In the order itself reliance has been placed upon Rule 176A (2) of the Rules. The order in essence exercises the power under Section 176A of the Rules and mention of Section 33/39 of U.P. Land Revenue Act, 1901, was not correct. Further it was not the case for correction of mistake in the annual register so as to attract Section 39 of U.P. Land Revenue Act, 1901. From the order of Sub-Divisional Officer, it is clear that the said order has been

passed on the report submitted by Tahsildar praying for expunction of name of the petitioner. The order does not disclose that any notice was issued to the petitioner. The order of Sub-Divisional Officer having been passed without notice to the petitioner, cannot be sustained and is hereby set aside. The revisional court's order is also set aside on the same ground.

27. Writ Petition No. 18126 of 2004, challenges the order dated 24th March, 2004, passed by Additional Commissioner by which revision filed by the petitioner has been rejected against the orders dated 24th February, 1994 and 19th October, 2002. Order dated 24th February, 1994, passed by Sub-Divisional Officer refers to Rule 176A of the Rules. Although order states that notice was sent but the same was not served. The order does not show that service of notice was effected on the petitioner according to rules. The service of notice to the petitioner, thus, cannot be accepted. Petitioner's case categorical is that he did not receive any notice and in fact he filed an application to recall the order which was rejected as barred by time. In the facts of the present case, it is in the interest of justice that petitioner be given an opportunity of hearing before passing the order. The order dated 24th February, 1994, as well as the order of Additional Commissioner dated 24th March, 2004, dismissing the revision cannot be sustained and are hereby set aside.

28. Writ Petition No. 16391 of 2004, prays for quashing the order dated 29.10.2002 by which the Sub-Divisional Officer directed expunction of names of the petitioners from Clause 3. A counter-affidavit has been filed in the writ petition in which it was stated that Sub-Divisional Officer had jurisdiction to cancel the lease. Petitioner's case is that no case was registered nor any objection was invited. The said allegation has been made in paragraph 9 of the writ petition. Paragraph 9 of the writ petition has not been specifically replied in the counter-affidavit, rather it has been contended that no notice was required. The Assistant Collector who determined the lease under Section 176A of the Rules could have done the same after notice, hence the order of Sub-Divisional Officer cannot be sustained and is hereby set aside.

29. Writ Petition No. 17976 of 2004, Writ Petition No. 16393 of 2004, Writ Petition No. 16396 of 2004 and Writ Petition No. 16398 of 2004 challenges similar order dated 29th October, 2002, which are also being set aside for the same reasons.

30. It will, however, be open to the Assistant Collector to proceed afresh under Rule 176A of the Rules after giving notice to the petitioners.

31. All the writ petitions are allowed to the above extent.

32. Parties shall bear their own costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**