SUPREME COURT OF INDIA

New Manek Chowk Spg. and Wvg. Mills Co. Ltd.

Vs.

Municipal Corporation of the City of Ahmedabad

Writ Petns. Nos. 133 156 and 157, 159 to 171, 178, 184. 206 to 210 and 234 of 1966

(K. Subba Rao, C.J.I., J. C. Shah, J. M. Shelat, V. Bhargava and G. K. Mitter, JJ.)

21.02.1967

JUDGEMENT

MITTER, J.:

1. This is a group of Writ Petitions under Art. 32 of the Constitution challenging the validity of the assessment book relating to Special Property section prepared and published by the Municipal Corporation of the City of Ahmedabad by which the Municipality seeks to impose or has imposed property tax on properties described as Special Properties like textile mills, factories, buildings of the universities etc., on the basis of a flat rate per 100 sq. ft. of the floor area of the property situate within the municipal limits of the city. In Writ Petitions Nos. 133, 156-157 159-171, 178, 184 and 234 of 1966. the challenge relates to the validity of the assessment book relating to the year 1966-67: in Writ Petitions Nos. 206 and 210 of 1966. the challenge relates to the years 1964-65 and 1965-66 while in W. Ps. Nos. 207, 208 and 209 of 1966 the challenge relates only to the year 1965-66. The difference lies in this. So far as the assessments for the year 1966-67 and concerned. there has been no authentication of the assessment book after the disposal of all complaints relating to the entries made in the book while the challenge relating to the years l964-65 and 1965-66 is made at a statue after such authentication and in respect of which attachments of property belonging to the assessees have already been levied. in W. P. No. 234 of 1966 filed in October 1966, the issue of a

distress warrant and the levy of attachment are also challenged. Several textile mills in the city of Ahmedabad are before this Court in these petitions and they have a common complaint against the assessments.

2. To appreciate the points raised in these petitions, it is necessary to take a bird's eye view of the relevant provisions of the Bombay Provincial Municipal Corporations Act (LIX of 1949) under which the assessments were purported to be made. S. 127 (1) of the Act makes it obligatory on the Corporation of the City of Ahmedabad to impose, among other taxes, a property tax. Sub-s. (3) of the section provides that municipal taxes shall be assessed and levied in accordance with the provisions of the Act and the Rules and sub-s (4) lays down that nothing in this section shall authorise the impositions of any tax which the State Legislature has no power to impose in the State under the Constitution. (it is needless to add that the Act has been amended after the Constitution came into force). S. 128 empowers the Corporation to recover the tax by the processes laid down in the section in the manner prescribed by rules. These are inter alia (1) by presenting a bill: (2) by serving a written notice of demand; (3) by distraint and sale of the defaulter's movable property: and (4) by the attachment and sale of a defaulter's immovable property. S. 129 lays down that for the purposes of sub-s. (1) of S. 127 property taxes shall comprise the taxes mentioned which shall, subject to the exceptions, limitations and conditions provided be levied on buildings and lands in the city. One of these mentioned in Cl. (c) is a general tax of not less than 12 per cent of their rateable value which may be levied, if the Corporation so determines, on a graduated scale. A building has been defined in S. 2, sub-s. (5) and land in S. 2, sub-s. (30). 'Land' under this definition includes land which is being built upon or is built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street. Under S. 2 (49) 'property tax' means a tax on buildings and lands in the city. S. 2 (53) defines 'rack rent' as the amount of the annual rent for which the premises with reference to which the term is used might reasonably be expected to let from year to year as ascertained for the purpose of fixing the rateable value of such premises and under S. 2 (54) 'rateable value' means the value of any building or land fixed in accordance with the provisions of the Act and the rules for the purpose of assessment to property taxes. Under S. 453 the rules in the Schedule as amended from time to time shall be deemed to be part of the Act. The relevant taxation rules are to be found in Chapter VIII of the rules. R. 7 (1) provides that

"In order to fix the rateable value of any building or land assessable to a property tax there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten per cent. of the said annual rent, and the said deduction shall be in lieu of all allowances, for repairs or on any other account whatever ."

Under R. 7 (2) all plant and machinery contained or situate in or upon any building or land and belonging to any of the classes specified from time to time by public notice by the Commissioner, with the approval of the Corporation, shall be deemed to form part of such building or land for the purpose of fixing the rateable value thereof under sub-r. (1) but, save as aforesaid, no account shall be taken of the value of any plant or machinery contained or situated in or upon any such building or land. Rule 7(3) runs:

"A statement setting out clearly the classes of plant and machinery specified from time to time by the Commissioner under sub-rule (2) and describing in detail what plant and machinery falls within each such class shall be prepared by the Commissioner under the directions of the Standing Committee and shall be open to inspection at all reasonable hours by members of the public at the chief municipal office."

Rule 9 provides inter alia:

"The Commissioner shall keep a book, to be called "the assessment-book", in which shall be entered every official year-

(a) a list of all buildings and lands in the City, distinguishing each either by name or number as he shall think fit, and containing such particulars regarding the location or nature of each as will, in his opinion, be sufficient for identification

(b) the rateable value of each such building and land determined in accordance with the provisions of this Act and the rules;

(c) the name of the person primarily liable for the payment of the property taxes, if any, leviable on each such building or land

(d) if any such building or land is not liable to be assessed to the general tax, the reason of such non-liability;

(e) when the rates of the property-taxes to be levied for the year have been duly fixed by the Corporation and the period fixed by public notice, as hereinafter provided, or the receipt of complaints against the amount of rateable value entered in any portion of the assessment book has expired, and in the case of any such entry which is complained against, when such complaint has been disposed of in accordance with the provisions hereinafter contained, the amount at which each building or land entered in such portion of the assessment book is assessed to each of the property-taxes, if any, leviable thereon;

* * * * *."

Rule 10 provides for preparation of ward assessment books for each of the wards into which the city is for the time being divided for the purpose of election and the ward assessment books and their respective parts shall collectively constitute the assessment book. Under R. 13 (1) when the entries required by Cls. (a), (b), (c) and (d) of Rule 9 have been completed, as far as practicable, in any ward assessment book, the Commissioner shall give public notice thereof and of the place where the ward assessment book or a copy of it may be inspected. Under R. 15 (1) the Commissioner must, at the time and in the manner prescribed in R. 13, give public notice of a day, not being less than 15 days from the publication of such notice, on or before which complaints against the amount of any rateable value entered in the ward assessment book will be received in his office. R. 16 provides for the time and manner of filing complaints against valuation. R. 17 lays down that the Commissioner must give notice to each complainant of the time and place when his complaint will be investigated. R. 18 prescribes for the investigation and disposal of the complaint in the presence of the complainant by the Commissioner. Under R. 19(1) when all such complaints, if any, have been disposed of and the entries required by Cl. (e) of R. 9 have been completed in the ward assessment book, the said book shall be authenticated by the Commissioner who shall certify under his signature that except in the cases, if any, in which amendments have been made as shown therein, no valid objection had been made to the rateable value entered in the said book. Under sub-r. (2) of the said rule, the ward assessment book shall thereupon, subject to such alterations as may be made under the provisions of R. 20, be accepted as conclusive evidence of the amount of each property tax leviable on each building and land in the ward in the official year to which the book relates. R. 21 (l) lays down that it shall not be necessary to prepare a new assessment book every official year and that subject to the provisions of sub-r. (2) the Commissioner may adopt the entries in the last preceding year's book with such alterations as he thinks fit, as the entries for each new year. Under sub-r. (2) a new assessment book has to be prepared at least once in every four years.

3. The Writ Petition of which the papers were placed in detail before the Court is No. l33 of 1966 preferred by the New Manek Chowk Spinning and Weaving Mills Ltd. The respondents are: (l) the Municipal Corporation of the City of Ahmedabad, (2) the Deputy Municipal Commissioner of the same city and (3) the State of Gujarat. The challenge in this case relates to the validity of the assessment book for the year l966-67. The complaint is that respondent No. 1 by the said book imposed property tax on the petitioner on the basis of a flat rate per 100 sq. ft. of the floor area of the petitioner's property as also of all other textile mills, factories, university buildings.' etc., under R. 9 of the Taxation Rules. Annexure 'A' to the petition gives a synopsis of the entries relating to the year of assessment 1966-67. It is divided into three parts, the first being headed 'buildings', the second 'additional land' and the third 'machinery'. So far as 'buildings' are concerned, there are three columns, the first being the area of the building in square feet, the second monthly rental per 100 sq. ft. and the third the annual rental. The building is again divided into two classes, one for processing and the other non-processing. The monthly rental for the processing part of the building is taken at Rs. 6-10-0 per 100 sq. ft. while that for the non-processing portion is Rs. 5-4-0 per 100 sq. ft. With regard to the additional land, the valuation is on the basis of the market rate per sq. ft. of land and as regards machinery the valuation is taken to be effective value of which the annual rental at 71/2per cent, is taken as the annual value. The petitioners complaint is that while under the provisions of the Act and the rules made thereunder it was clear that the rateable value of the property must be arrived at after determining the rack rent or the annual rental value in respect of each premises which is to be computed on the basis of the annual rent for which the property might reasonably be

expected to let from year to year, the municipal corporation of Ahmedabad had adopted the method of determining the annual rent on a flat rate method according to the floor area, irrespective of the locality, quality, age and nature of the property which was not a recognised method and was not permissible in law. According to the petition, a formula on the flat rate method of a fixed amount per 100 sq. ft. for arriving at the rental was not only against the express provisions of the Act but was also against the recognised concepts of valuation in the Law of Rating. The method adopted by respondent No. 1 in this case was arbitrary and repugnant to the petitioner's right guaranteed under Art. 14 of the Constitution. It was said that the buildings of the textile mills were situate in different localities some of which were in the heart of the city and some on its out-skirts. There was no uniformity in the floor area of the mills concerned nor was the age of the buildings in all cases the same. It was further complained that buildings in respect of the properties covered by the special property section included textile mills taxed on the fixed rate method whereas buildings other than those of textile mills were taxed on the basis of annual rent for which such premises were reasonably expected to let from year to year. A further complaint was made that respondent No. 1 had assessed the property tax apart from buildings and lands on the plant and machinery of the petitioner. It was submitted that the imposition of property tax on plant and machinery was beyond the legislative competence of the State. Sub-r. (3) of R. 7 was challenged as giving the Commissioner arbitrary and unguided power to set out the classes of plant and machinery and to describe what plant and machinery fell within each such class for the purpose of assessment of property tax. Moreover, such classification by the Commissioner was made final and binding and no right was given to any person affected thereby to object to the same nor was any right of appeal against such decision of the Commissioner provided. A complaint was also made that respondent No. 1 had not prepared any ward assessment books for the year 1966-67. It is the petitioner's case that the figures in the assessment book for the year 1966-67 were adopted from those of the previous year 1965-66, under R. 21 of the Taxation Rules. It was submitted that such adoption was invalid and improper inasmuch as the assessment books for the previous years were bad in low. The assessment books for the previous years were also bad in law inasmuch as the same were authenticated under R. 19 by the Deputy Municipal Commissioner and not by the Commissioner as contemplated in the said rule. The complaints were not considered by the Municipal Commissioner himself. It was said that the action of the Deputy Municipal Commissioner under a purported delegation of power by order dated November 20, 1964 was invalid as a quasi judicial function could not be delegated. In this connection, reference was made to S. 49 (1) of the Act. It was further contended that even in the Year 1966-67 the power of conducting proceedings under Rr. 13, 15, 16, 17, 18 and 19 of the Taxation Rules had been deputed by the Municipal Commissioner in favour of the Deputy Municipal Commissioner and as such, such deputation was bad in law. Finally, the petition proceeded on the basis that the imposition of property tax on the flat rate method on textile mills as under the special property section was ultra vires the Act and the rules made therein and was violative of the fundamental rights of the petitioner guaranteed under Arts. 14, 31 (1) and 19 of the Constitution and the procedure adopted in preparing the assessment book was ultra vires the procedure laid down by the Act and the rules. The grounds of challenge are formulated in paragraph 35 of the petition. Among the prayers are a writ of mandamus or any similar write directing respondent No. l to forbear from taking any steps for to imposition and realisation of the property tax pursuant to the preparation of the assessment book for the year 1966-67 relating, to the Special Property section, a writ of certiorari or other similar writ to quash the assessment book for the said year; a writ of prohibition or other order restraining respondent No. 2, the Deputy Municipal Commissioner from acting under deputation under S. 49 (1) and other reliefs.

4. The points raised in the counter affidavit are as follows:-(1) the tax being based on the amount of rent for which the property is or may be let from year to year, such rent has got to be ascertained from either the actual or the hypothetical rent for which the property along with all the equipment like plant and machinery and amenities that it contains, is or may be let and such annual rent where the property is let as a factory equipped as a factory would be the rent that it would fetch as a factory and not as a bare building. (2) R. 7 (2) only gives power to the Corporation to include such plant and machinery as it may determine from time to time taking into consideration various factors like the situation of the city, its facilities for transport to other parts of the State and the country, whether the industry is well established or is just being developed etc. (3) Although under R. 9 (b) the amount of the rateable value of the property in the previous year is to be entered, it is open to the Corporation to take any fresh circumstances into consideration before adopting the entry from the earlier year. Entry in col. (b) is neither the imposition of the tax nor the final amount on the basis whereof the tax is leviable. It is in the nature of a proposal by the Corporation and is subject to objection by the assessee and the tax becomes leviable after the objections have been disposed of and the amount is entered in column (e). (4) After the tax has become leviable under the Rules, the assessee is entitled, if he so desires, to file an appeal under S. 406 against either the rateable value or the tax fixed or charged under the Act. The Court of Small Causes can hear and determine the appeal. Under S. 410 there is a provision for a reference to the District Court and S. 411 provides for an appeal to it. The High Court would have the power of revision of the order of the District Judge. (5) The fixing of the rateable value on floor area basis is in accordance with the accepted principles and methods in the Law of Rating. In various cities it is common to let out premises on the basis of the floor area. The computation of rateable value by this means depends on the estimate of the annual rent at which the property may be reasonably expected to let from year to year. The situation of the building, the age of the building, the material used for the building are not relevant for, if the mill containing all plant and machinery and other equipment is let, it is let as a factory for carrying on a business of manufacture of textiles. The grievance of the petitioner is open to redress under S. 406 and the other sections mentioned. (6) It is not incumbent on respondent No. 1 to maintain any ward assessment books, and (7) under S. 49 (1) the power to dispose of complaints against the fixing of rateable value was duly deputed to the Deputy Commissioner and there was nothing illegal about it.

5. The points formulated by Mr. S. T. Desai are as follows:- (1) The method of adopting a flat rate for a floor area for determining the annual value adopted by the Municipal Corporation of Ahmedabad was against the express provision of the Act. (2) The method was also in violation of all recognised concepts and principles of valuation for the purpose of rating. (3) The imposition of tax on a flat rate method was violative of Art 14 of the Constitution. (4) R. 7 (2) and R. 7 (3) were ultra vires the Constitution as beyond the legislative competence and entry 49 of List II (5) The delegation of powers of the Commissioner to the Deputy Commissioner was bad as it involved the delegation of quasi judicial power, and (6) R. 7 (3) suffered from excessive delegation and was violative of Art. 14 of the Constitution.

6. The first, second and third points may be taken together. In the forefront of his argument Mr. Desai relied on a decision of this Court in Lokmanya Mills Barsi Ltd. v. Barsi Borough Municipality Barsi, 1962-1 SCR 306: (AIR 1961 SC 1358). There the common question in the appeals related to the validity of R. 2 C' framed under the Bombay Municipal Boroughs Act,1925. Under S. 73 of the

Act the. Municipality was entitled to levy a rate on lands and buildings. In 1947 new rules were made after obtaining the approval of the Government of Bombay for the purpose of enhancing the assessment of lands and buildings within the area of the Municipality. Rule 2 C of the new rules provided that :

"As regards Mills, factories and buildings relating thereto, the annual letting value shall be fixed at Rs. 40 per 100 square feet or part thereof for every floor, ground floor or cellar and the tax shall be assessed on the said annual letting value at the ordinary rate.

* * * * *"

The Municipality prepared an assessment list under the new scheme of taxation in respect of factories and buildings relating thereto and issued notices of demand calling upon the appellants to pay house tax and water tax so assessed. The question before this Court was whether rule 2 C was ultra vires. This Court examined the provisions of the Act under which the rate could be levied on lands and buildings assessed on the valuation thereof based on annual letting value. It was said:

"If the rate is to be levied on the basis of capital value, the building to be taxed must be valued according to some recognised method of valuation: if the rate is to be levied on the basis of the annual letting value, the building must be valued at the annual rental which a hypothetical tenant may pay in respect of the building. The Municipality ignored both the methods of valuation and adopted a method not sanctioned by the Act. By prescribing valuation computed on the area of the factory building, the Municipality not only fixed arbitrarily the annual letting value which bore no relation to the rental which a tenant may reasonably pay, but rendered the statutory right of the tax-payer to challenge the valuation illusory An assessment list prepared under S. 78, before it is authenticated and finalised, must be published and the taxpayers must be given an opportunity to object to the valuation. By the assessment list in which the valuation is not based upon the capital value of the building or the rental which the building may fetch, but on the floor area, the objection which the tax-payers may raise is in substance restricted to the area and not to the valuation"

It was further observed that if the Municipality had adopted any of the recognised methods of valuation for assessing the annual letting value, the tax would not be open to challenge. The Court further noted:

"In any event, there is no evidence on the record of this case that the factories and "buildings relating thereto" such as ware-houses, godowns and shops of the Mills situate in the compound of the mills, may be separately let at the uniform rate prescribed by the Municipality. The vice of the rule lies in an assumed uniformity of return per square foot which structures of different classes

which are in their nature not similar, may reasonably fetch if let out to tenants and in the virtual deprivation to the rate-payer of his statutory right to object to the valuation."

7. It may be interesting to note that an Act was passed to validate the said imposition. On a Writ Petition No. 1476 of 1966 (Bom) the Bombay High Court held the Validating Act to be ultra vires. The contention put forward before the Bombay High Court was inter alia that the levy of a tax on buildings and lands on the basis of floor area was necessarily arbitrary and capricious in that the valuation of buildings and lands so arrived at could have no relation to their actual value, for the value of buildings depended, among other things, upon location, age, mode of construction, material used etc. A uniform rate on buildings and lands of widely differing values was clearly discriminatory because of lack of classification leading to inequality. It was further argued that there was violation of Art. 14 in that the owners of mills and factories were discriminated against as compared to the owners of other buildings and lands. These grounds were upheld by the Bombay High Court.

8. Reference was made by Mr. Desai to decisions of other High Courts wherein similar observations were made. In Bhuvaneswariah v. State of Mysore, AIR 1965 Mys 170 the Mysore Buildings Tax Act, 1963 and Schedule II thereto were challenged before the High Court of Mysore. It was pointed out that under the scheme of the Act a cow-shed and an ultra modern cinema house in the best locality would be charged with the same amount of tax if the extent of floorage of both were the same. The High Court held that the Act suffered from lack of rational classification because:

"The floorage basis is not only unscientific, it is something arbitrary and mechanical. It does not conform to any of the known principles of taxation. In the very nature of things, under that basis the incidence of tax must fall unevenly or, things similar."

Kunhati N. Haji v. State of Kerala, AIR 1966 Ker 14 was a case where under the Kerala Buildings Tax Act, 1961 (19 of 1961) tax was sought to be imposed not on the basis of letting value but on the floor area of buildings. It was held that the lack of classification had resulted in inequality with the result that the provisions of the Act were held to be invalid. Relying on the above decisions, Mr. Desai argued that the method adopted by the Municipal Corporation of Ahmedabad was against all known principles of rating and was violative of Art. 14 of the Constitution. He submitted that there were a number of textile mills situated in different parts of the city some of which were odd and some were of fairly recent origin. Their method of construction was not the same, some being more permanent in the nature of things than others. Apart from the question of the valuation of plant and machinery, Mr. Desai argued, it was impossible to suggest that a hypothetical tenant would be agreeable to take on rent the building of a mill which was well built and of recent origin as another which was fairly old and not constructed with the same kind of material. Mr. Desai further argued that the situation of the mill was another factor which any tenant would take into consideration and even if the buildings of the two mills were otherwise similar, a tenant would not agree to pay for one situated on the outskirts of the city the same rent as he would be willing to pay for the one in the heart of it. In these circumstances, he. argued it was wholly unreasonable to think that a tenant would be willing to pay Rs. 6-10-0 per 100 sq. ft. of the floor area whether it was in the heart of the

city or in the outskirts of it. whether the building was old or whether it was new and whether it was well constructed or in constructed.

9. Mr. Setalvad tried to argue that such a method of valuation was not unknown and in any event a person who wanted to take on rent a textile factory would only be concerned with what profits he could make out of it and that it did not matter to him as to where it was situate in the city, whether the building was old or whether it was new or whether it was constructed properly with first class materials or not. According to Mr. Setalvad, the tenant would only go by the use to which the building could be put. So far as the methods of valuation are concerned, we may refer to certain well-known text books on the subject. Halsbury in Vol. 32 (page 76, Art. 106-Third Edition) points out:

Except in the case of public utility undertakings which, in the absence of special circumstances, must as a matter of law be valued on the profits basis, there is no rule of law as to the method of valuation to be adopted for rating."

This does not however mean that it is open to municipal authorities to fix upon any scale and say that they will adopt it. They must show, if challenged, that the scale adopted by them allows the fixing of an annual value and provides a basis for determination of the same as that which a hypothetical tenant might be expected to pay for the building. All the text books lay down certain methods of valuation. As Halsbury points out at page 77, Art. 108:

"In the absence of rental evidence of value, the accounts, receipts or profits of the occupier of the hereditament may be relevant. The profits themselves are not rateable but they may serve to indicate the rent at which the hereditament might reasonably be expected to let, particularly where profit is the motive of the hypothetical tenant in taking the hereditament, or where the trade can only be carried on upon that hereditament."

In Article 109, the learned author points out:

"Where neither actual rents nor the profits of trade afford evidence of annual rental value, a percentage of the cost of construction of structural value of the hereditament, or of a suitable hereditament, is sometimes taken as evidence."

This is referred to loosely as "the contractor's method". The value taken is sometimes called the "effective" capital value, that is to say, the capital value leaving out of account expenditure on

unnecessary ornamentation, or accommodation surplus to requirements and after allowing, if necessary, for age and obsolescence. The percentage to be applied to capital value is that prevailing in the market, and not necessarily that at which the actual occupier can borrow or obtain money. Mr. Setalvad placed reliance on Faraday on Rating (5th Edition) where the learned author gives four recognized methods of arriving at the annual value of a hereditament at p.24 of the book, these being

1. The "competitive or comparative methods", i.e., by finding out rents actually paid for the hereditament in question and/ or others of a similar kind, adjusting them to bring into line with the statutory conditions, and thus arriving directly at an estimate of the rent

2. The "profits basis", or calculation by reference to receipts and expenditure, which is now required to be applied to certain public utility undertakings, and may properly be applied to any other hereditament on which a business is carried on which enjoys privileges in the nature of a monopoly....

3. The "contractor's method," by which it is assumed, in the absence of any other better way of estimating the rent, that the tenant would arrive at it by finding the figure for which a contractor would provide him with premises neither more nor less suitable for his purpose, and the rate of interest on that cost which the contractor would charge him as rent.

4. The "unit method," by which schools may be valued at so much a place, hospitals at so much a bed, or certain industrial premises at so much a furnace or other unit of output.

Mr. Setalvad laid particulars stress on a passage at p. 164 reading:

"Modern factories are frequently found in groups due to Town planning or in some cases because Trading Estates have been developed. Under these conditions it is often possible to arrive at the rental value per foot super of floor area by applying the contractor's basis to typical factories or because there are sufficient rents or by a. combination of the two methods."

This is followed by an illustration of a bakery and warehouse which goes to show that different portions of the building which were of different nature were measured and valued differently and then on the valuation of the total the; floor area method was adopted for the purpose of similar buildings. As the learned author himself points out at p. 165:

"The floor area method of valuation is usually used where there are numerous factories in an area. mostly similar and used for the same trade. In the North mills are frequently valued on this method."

The learned author also stresses that great care must be taken in applying the price per square foot which will vary according to the character of the factory or mill. Lower down in the same page, the learned author points out that a' factory put up years ago may contain machinery which has become old fashioned and modern machines for the same purpose might occupy far more or less space, and, therefore require larger or smaller buildings. and probably reduce the wages bill and effect other economics whilst at the same time giving more output than the old cumbersome undertaking. Acoording to the author, the value of the old factory, from a rental point of view, would be less than that of a new one with the same power of, production, since it would be impossible to find a tenant who would give the same rent for both concerns inasmuch as he could obviously operate in the new buildings more economically than in the old one.

10. There is nothing in the counter affidavit to show that conditions in the City of Ahmedabad with regard to textile mills are such as would make the method laid down at p. 164 of Faraday's book applicable. The affidavit does not purport to show that the factories were constructed at or about the same time or in groups or were so similar in their operation that their rental value could be determined at per foot super of floor area applying the contractor's basis. There is nothing to show that any textile factory was valued on the contractor's basis and that from the figures of valuation so worked out, the rental value per foot super of floor area was determined. On the other hand, the affidavit suggests that because in various cities it was common to let out premises on the basis of floor area, the municipal authorities of Ahmedabad had resorted to this method for fixing the rateable value.

We can take judicial notice of the fact that sometimes godowns or buildings constructed for office purposes are let out on the basis of floor area, but even then, the rate would vary according to the nature of the building and according to the site of the building in the city. It would also depend upon the age of the building and the amenities provided therein. It would be impossible to say that in the City of Ahmedabad a tenant would be willing to pay at the same rate of read for factory accommodation, no matter where the building was situate or when it was put up or how it was constructed.

11. Our attention was also drawn to other well known books on Rating like Ryde on Rating, Bean and Lockwood on Rating and Graham Eyre on Rating. Incidentally, we may refer to Witton Booth on Valuations for Rating (Fourth Edition) at p. 125 wherein the learned author states:

"Reductions of floor areas to units, as already described, are necessary to effect -reliable

comparisons, but it is merely a mechanical process used in preparing material for the valuation, the actual valuation being the decision and application of the appropriate rate or rental value per unit of area. This may be exactly to a standard, and, indeed, it probably will be to the majority of properties where these are go nearly alike in character as to be regarded for rating purposes as identical Where, how rates or rental values per unit of area are applied indiscriminately, without discernment on the wholesale, as it were- inequalities are certain to arise, and these give rise to the whole method being caustically referred to as "valuations by the foot rule." "

12. The above comment is sufficient to show that this method can only be applied where the majority of properties are so nearly alike in character as to be regarded identical for rating purposes. There is no such statement in the affidavit.

13. We are, therefore, not satisfied that conditions prerequisite for determination of annual value of textile factories in Ahmedabad on the basis of rental value per foot super of floor area existed at the relevant time nor has it been shown to us that the so-called contractor's basis was adopted by the municipal authorities of Ahmedabad. The method is not also one which is generally recognised by authorities on rating. Applied indiscriminately-as it appears to have been done in this case-it is sure to give rise to inequalities as there has been no classification of the factories on any rational basis. Further, there does not seem to be any basis for dividing the factories and the buildings thereof under two general classes as buildings used for processing and buildings for non-processing purposes. What was said by this Court in Lokmanya Mills' case, 1962-1 SCR 306=(AIR 1961 SC 1358) (Supra) applies with equal force to what has been done here and we must hold that the municipality did not observe the law and failed in its duty to determine the rateable value of each building and land comprised in each of the textile factories in terms of R. 9 (b) of the rules under the Bombay Provincial Municipal Corporations Act, 1949 so far as the assessment book for the year 1966-67 is concerned.

14. Mr. Setalvad argued that at that stage there is only a proposal and even if the municipality had acted arbitrarily it was open to the assessees to take objection thereto and have proper valuations made and the assessment book prepared properly. We cannot accept this argument. If the municipality fails in its initial duty to act in terms of R. 9 (b) it does not lie in its mouth to say that any irregularity, however, patent on the face of it, is open to correction. Moreover, the methods of correction in this regard are really illusory. The Small Causes Court cannot decide the applicability of Art. 14 of the Constitution and according to the judgment of the Bombay High Court in Balkrishna v. Poona Municipal Corporation (1963) 65 Bom LR 119, (by which the District Judge would be bound):

".....the words used in S. 406 (1) of the Act..... do not cover the vires of the tax or the legality of the tax which is sought to be levied."

Earlier, the learned Judges had pointed out after noting Ss. 406 to 413 that:

"the decision of Judge aforesaid upon any appeal against any such value or tax if no appeal is made therefrom under S. 411 and if such appeal is made the decision of the District Court in such appeal shall be final."

From this it follows that it would be useless for the assessee to take objections or file appeals against the decisions on rateable value to the authorities prescribed by the Act if he was challenging the determination of the rateable value as being violative of Art. 14 of the Constitution. It is no answer to such a charge to say that the rateable value could be determined properly by the municipal authorities acting under the Act and the rules thereunder when they do not resort to any of the well-known methods of valuation and cannot justify their arbitrary method.

15. With regard to the writ petitions questioning the annual values appearing in the assessment books for the years 1964-65 and 1965-66 which were similarly prepared point of res judicata was taken in that some of these mills which have filed writ petitions before this Court had challenged the assessment book in writ petitions under Art. 226 of the Constitution before the Gujarat High Court and our attention was drawn to the judgement of the Gujarat High Court in W. P. No. 1365 of 1965 (Guj) decided by that Court very recently. The decision in that case cannot operate as res judicata for the simple reason that the learned Judges pointed out at p. 141 of the transcript of the judgment made over to us that there were not sufficient averments with regard to the plea of discrimination and violation of Art. 14 and the submission based on these grounds was therefore, rejected and not gone into. To quote from the judgement :

"In the absence of any specific averment the aforesaid effect, it is quite clear that the aforesaid plea cannot be said to have been properly pleaded. Therefore, we reject that submission on that ground."

Moreover, it appears to us that the right of appeal in a case where the rateable value is challenged on the ground of Art. 14 is hardly of any use to the assessee. As already noted, S. 128 of the Act shows that a municipal tax may be recovered by presenting a bill or by serving a written notice of demand or by attachment and sale of the defaulter's immovable property, etc. As the Commissioner is not likely to pay heed to any complaint against the determination of any rateable value based on Art. 14 of the constitution, he is bound to authenticate the assessment book under R. 19 and can under R. 39 cause to be presented to the assessee a bill for the amount of the tax due. Under . 41 he can serve upon the person liable for the payment of the tax a notice of demand in Form G if the amount of the tax has not been paid into the municipal office or deposited with him as required by sub-s. of S. 406 within 15 days from the service of the bill. Rule 42 (1) lays down that if the person to whom the notice of demand has been served under R. 41, does not within l5 days from the said service pay the sum demanded or show sufficient cause for non-payment of the same to the satisfaction of the Commissioner and if no appeal is preferred against the said tax, such sum with costs of recovery may be levied under a warrant in Form H to be issued by the Commissioner by distress and sale of moveable property of the defaulter or the attachment and sale of immovable property of the

defaulter, etc. Section 406 (1) provides for appeals against any rateable value or tax fixed or charged under the Act. Section 406 (2) provides inter alia as follows :

"No such appeal shall be heard unless-

(a) it is brought within fifteen days after the accrual of the cause of complaint:

(b) in the case of an appeal against a rateable value a complaint has previously been made to the Commissioner as provided under this Act and such complaint has been disposed of ;

* * * *

(e) in the case of an appeal against a tax, or in the case of an appeal made against rateable value after a bill for any property tax assessed upon such value has been presented to the appellant, the amount claimed from the appellant has been deposited by him with the Commissioner."

16. The net result of all this is that unless the assesse pays the amount of tax demanded, his appeal cannot be heard so that if he questions the rateable value or the levy of the tax, he must in any event, deposit the amount demanded. In effect, the Act and the appeal rules do not make any provision for relief to an assessee who complains that the assessment book has been prepared in violation of the law. This may be illustrated from what happened in the case of the Ahmedabad Laxmi Cotton Mills Co., Ltd. who have preferred Writ Petition No. 207 of l966. In this case the municipality prepared the assessment book for the year 1965-66 adopting the figure from the previous year under R. 21. The Mills finally complained on July 3, 1965 raising various objections regarding the jurisdiction and the validity of the imposition of property tax on the floor area method. These were overruled and the assessment was finalised by an order, dated September 15, 1965. On September 17, 1965 the municipality issued a bill in respect of the assessment. The Mills filed a tax appeal on September 27, 1965. On October 7, 1965 a notice of demand under R. 41 (1) of the Taxation Rules was made on the Mills. A Writ Petition was filed in the Gujarat High Court being Special Civil Application No. 1155 of 1965 on October 16, 1965. This petition along with various other petitions filed by other textile mills was dismissed by a common judgment in Appln. No. 1365 of 1965 on May 5, 1966 (Guj). On May 7,1966 the municipality issued an order of attachment under R 45 (1) of the rules. The Mills filed another Writ Petition in the Gujarat High Court against the issue of the of order of attachment, but this was dismissed in limine on July 18, 1966. It may be noted that the Mills in common with other Mills had preferred an application for grant of a certificate under Arts. 132 and 133 of the Constitution against the dismissal of the Writ Petition on May 5, 1966 and such certificate was granted on June 20, 1966.

17. Mr. Desai's next challenge was directed against sub-rr. (2) and (3) of R. 7. According to him, it was beyond the legislative competence of the State to levy a property tax on plant and machinery. The relevant entry in List II of the 7th Schedule is Item 49, namely, 'Taxes on land and buildings'. The corresponding entry in List II under the Government of India Act, 1935 was taxes on "lands, buildings, hearths and windows". Mr. Desai contended that the legislature was not competent by the definition of land' in S. 2 (3) of the Act to include plant and machinery even if they were attached to the earth or permanently fastened to anything attached to the earth. Mr. Desai argued that it may be that the definition of 'land' in certain Acts embraces plant and machinery but when the legislature tries to impose a tax on plant and machinery in the garb of land, it travels beyond its powers. He argued that apart from the definition in certain Acts and deeming provisions contained therein, plant and machinery can never be said to form part of the land or included in land or building. Counsel conceded that entries in legislative lists were certainly to be construed very widely but even then no artificial meaning or arbitrary extension of the meaning of the words in an entry could be allowed.

18. In this connection, our attention was drawn to the observations of Gwyer C. J. in In re The Central Provinces and Berar Act No. XIV of 1938, 1939 FCR 18 at p. 37 = (AIR 1939 FC 1 at p. 4), that

"..... a broad and liberal spirit should inspire those whose duty it is to interpret it; but I do not imply by this that they are free to stretch or pervert the language of the enactment in the interests of any legal or constitutional theory, or even for the purpose, of supplying omissions or of correcting supposed errors."

In Diamond Sugar Mills Ltd. v. State of Uttar Pradesh, l96l-3 SCR 242 at p. 248= (AIR 1961 SC 652 at p. 655), the question was, whether Entry 52 of List II of the Seventh Schedule which empowered State Legislatures to make a law relating to "taxes on the entry of goods into a local area for consumption, use or sale therein." sanctioned the passing of the U. P. Sugarcane Cess Act, 1960 authorising the State Government to impose a cess on the entry of sugarcane in the premises of a factory for use, consumption or sale therein. It was contended by the appellant that the premises of a factory was not a "local area within the meaning of the said Entry. The majority of Judges in that case held the impugned legislation to be beyond the competence of the State Legislature and observed:

"In considering the meaning of the words `'local area" in Entry 52 we have, on the one hand to bear in mind the salutary rule that the words conferring the right of legislation should be interpreted liberally and the powers conferred should be given the widest amplitude on the other hand we have to guard ourselves against extending the meaning of the words beyond their reasonable connotation, in an anxiety to preserve the power of the legislature."

In this case, counsel argued the language was clear and unambiguous and, therefore, it was not open

to resort to any artificial definition. He also referred to Legislative Practice in India on this point and contended that the same was against giving an extended meaning to the expression 'land and buildings' so as to include plant and machinery. In 1939 FCR 18=(AIR 1939 FC 1) (supra), the question was whether a tax on retail sales of motor spirit and lubricants was ultra vires the Provincial Legislature being a duty of excise within the meaning of entry No. 45 in List I of the 7th Schedule to the Government of India Act, 1935 and not within entry No. 48 of List II of that Schedule. There Gwyer, C. J. referred to the legislative practice preceding the Constitution Act and said at p. 53 (of FCR) (at p. 12 of AIR):

"Lastly, I am entitled to look at the manner in which Indian Legislation preceding the Constitution Act had been accustomed to provide for the collection of excise duties; ....In all the Acts by which these duties were imposed it is provided (and substantially by the same words) that the duty is to be paid by the manufacturer or producer, and on the issue of the excisable article from the place of manufacture or production."

In the same case, Sulaiman, J. observed:

"Our attention has not been drawn to any provincial enactment, which might have imposed any excise duty on the retail sale of motor spirit and lubricants, or for that matter on the retail sale of any other goods."

19. That Courts can look into the legislative practice was again adverted to in Ralla Ram v. Province of East Punjab, 1948 FCR 207 = (AIR 1949 FC 81), where the question related to the vires of a Punjab Act taxing the owner of buildings and lands on their annual value. There the contention was that the tax was really one on income and as such beyond the competence of the Provincial Legislature. The Court referred to the Central Provinces and Berar Act's case, 1939 FCR 18 = (AIR 1939 FC 1), and examined the legislative practice in India. Mr. Desai referred us to a large number of Municipal Acts passed by different Provincial and State Legislatures in India both before and after 1935 to show that plant and machinery were expressly excluded from the purview of such taxes. We may refer to a few only of them which are: Punjab Municipal Act, 1911, S. 3 (1), The Madras Act IV of 1884, S. 65 (2); Madras District Municipalities Act, 1920, S. 82 (2), Proviso (b); The Patna Municipal Corporation Act, 1951, Section 130 (3); The Bombay District Municipalities Act, 1911, S. 3 (11); The Bombay Municipal Boroughs Act, S. 3 (1) The Bombay Municipal Corporations Act, 1888 S. 154 (2); The Calcutta Municipal Act, 1899, S. 151, Proviso (2), North-West Province and Oudh Municipal Act, S. 3 (1), Proviso: . The Central Provinces Municipalities Act of 1903, S. 36, Proviso; and The Central Provinces and Berar Municipalities Act, l922, S. 73 Proviso. Mr. Desai also drew our attention to the English Rating and Valuation Act, 1925. Therein S. 2 (1) gives the power to levy a consolidated rate and sub-s. (3) states that the rate shall be at a uniform amount per pound on the rateable value of each hereditament in that area. Section 24 (1) of that Act provides that plant and machinery in or on the hereditament as belongs to any of the classes specified in the Third Schedule to the Act shall be deemed to be a put of the hereditament.

20. This according to Mr. Desai went to show that even in England plants and machinery were not considered part of the hereditament and were made so by a sort of fiction. It was argued that by a deeming provision the meaning of a word may be extended, but when the language was clear, no such extension by way of interpretation was postage.

21. Our attention was also drawn to a number of sections in the Bombay Act of 1949 which on the face of it, went to show that land in those sections was clearly not meant to include the plant and machinery situate therein.

22. On this question, Mr. Setalvad relied on the principles of rating of plant and machinery in England. We have already noted the provisions of the Rating and Valuation Act, 1925. It is pointed out in Ryde on Rating (Eleventh Edition) at P. 399.

"From towards the end of the eighteenth century to the passing of the Rating and Valuation Act, 1925, there has been controversy as to the inclusion in valuation of machinery and plant, and as to the extent to which (if machinery and plant were included) the valuation was to be effected. The series of judicial authorities on this subject extends from R. v. St. Nicholas, Gloucester, (1783)1 TR 723n, decided in 1783 to Kirby v. Hunslet Union, 1906 AC 43 and Smith and Sons Ltd. v. Willesden Union (1919) 89 LJKB 137, decided in 1906 and 19I9. The effect of the decision of the House of Lords in 1906 AC 43, was to sweep away the principles on which a discrimination had previously been made between machinery and plant which was to be "taken into account" in valuation, and that which was not-such as physical annexation to the hereditament, or legal annexation in the sense that the thing in question would pass to the tenant as landlord's fixtures on a demise, ... and practically to direct the rating authority to value the hereditament equipped with machinery and plant as it appears to the eye."

23. The matter is thus put in Witton Booth on Valuations for Rating (Fourth Edition) at p. 575 :

"The rateability of plant and machinery under the law which applied universally before 1925, and which still applies to hereditament valued by reference to the profits earned therein depends on legal decisions on what is comprehended by the term "land" These decisions were based on principles applicable to fixtures generally, of which rateable plant and machinery were one kind."

24. It will, therefore, be noticed that the rateability of plant and machinery depended on judicial decisions as to the meaning of the word "land" There is no reason why we should accept those decisions as to what was comprehended by the term "land" when we find in our statutes plant and machinery being excluded therefrom.

25. In 1906 AC 43 (supra) Lord Halsbury expressed himself thus at p. 49:

" I decline myself to enter into what I may call the original equities which might have guided this matter. It is enough for me that a long series of decisions, for certainly half a century, have established the bald proposition, which is all I am insisting upon, namely, that although the machinery may not be part of the freehold, it yet is to be taken into account, and in saving that, I do not want to muffle it in a phrase, but what I mean by that is, that to increase the amount of the rate which is exacted from the tenant you may enter into that question and form a judgment upon it although, as a matter of fact, the machinery may not be attached to the freehold."

There, the Act in question was Parochial Assessment Act, 1836 under which the assessment of hereditaments was regulated on the principle that the rateable value was the rent which might be expected to be given for the hereditament alone. The contention on behalf of the appellant before the House of Lords was that machinery affixed to the soil so as to become a part of the freehold must be taken into account in assessing the rateable value but no other machinery. Delivering judgment, Lord Halsbury pointed out that:

"The overseer had a comparatively simple problem to solve, although it is difficult enough sometimes ; he sees the place being conducted as a brewery, or an iron foundry, or what not, he looks at the premises, he looks at the furniture which is necessary for carrying on the business as a brewery or foundry, he does not in his own mind analyse, and to my mind he ought not to analyse, what would be likely to be the initial arrangements between the intended brewer and the owner of the freehold, to see who should provide this or that engine or what not, but he looks at the premises as they are, as they are being occupied, and as they are being used, and he says to himself, "Well, looking at the whole of the place such and such is the rent which would probably be paid by a tenant from year to year for such an establishment as this"."

26. The problem in our case is not quite the same. The hypothetical tenant would certainly take into consideration the machinery in the building if he was going to rent it for the purpose of running a textile factory. But if the State Legislature had power to levy a tax only on land and buildings, we do not see how the same could be levied on machinery contained in or Situate on the building even though the machinery was there for the use of the building for a particular purpose.

27. It, therefore, appears to us that R. 7 (2) of the rules framed under the Bombay Act of 1949 was beyond the legislative competence of the State. The rule also suffers from another defect. namely, that it does not lay down any principle on which machinery is to be specified by public notice by the Commissioner to be deemed to form part of such building for the purpose of fixing the rateable value, to this, Mr. Setalvad argued that if the building was equipped with machinery for the purpose

of running a textile mill, whatever machinery was there for the purpose would be valued. According to him the question would be which of the machinery would help in the enjoyment of the property and thereby add to its rateable value. Unfortunately, the specification of the classes is done from time to time by the Commissioner with the approval of the Corporation irrespective of the question as to where they are to be found. It, therefore, depends on the arbitrary will of the Commissioner as to what machinery he would specify and what he would not Moreover, he is the only person who can examine this question. There is no right of appeal from any specification made under sub-r. (3) of R. 7 except that the Commissioner is to act under the directions of the Standing Committee. Rule 7 (2) shows the' all plant and. machinery may not be taken into account for the purpose of valuation and any such plant or machinery which is not included in the classification may escape rateability, however, much they may be prized by the tenant who takes the premises on rent. It seems to us, therefore, that R. 7 (2) is beyond the legislative competence of the State Legislature and sub-r. (3) of R. 7 is also invalid on account of excessive delegation of powers by the Legislature.

28. In view of the above, it is not necessary to go into the question as to whether the Deputy Municipal Commissioner could exercise quasi judicial powers of the Commissioner as regards the determination of the rateable value under S. 49 (I) of the Act and we express no opinion thereon.

29. In the result, the petitions are allowed. A writ of mandamus will issue in each case directing the respondent No. 1. Municipality, to treat the relevant entries the assessment book for the years 1964-65 1965-66 and 1966-67 relating to special property section questioned in these petitions as invalid and cancelled, and directing respondent No. 1 to prepare fresh assessment lists for the said years relating to the textile mills and other properties dealt with in the said special property section. The petitioners are entitled to costs of these applications. One set of hearing fee.

Petitions allowed.