The Assistant Commissioner of Urban Land Tax and Others

Vs

The Buckingham and Carnatic Co. Ltd., Etc.

Civil Appeal Nos. 21 to 23, 46, 47, 125 and 274 of 1969

(S. M. Sikri, R. S. Bachawat, V. Ramaswami-I JJ)

11.04.1969

JUDGMENT

RAMASWAMI, J. -

1. In these appeals which have been heard together a common question of law arises for determination, namely, whether the Madras Urban Land Tax Act, 1966 (12 of 1966) is constitutionally valid.

2. In 1963 the Madras Legislature enacted the Madras Urban Land Tax Act, 1963 which came into force in the city of Madras on the Ist of July, 1963. In the Statement of Objects and Reasons of the 1963 Act it was stated that the Taxation Enquiry Commission and the Planning Commission were suggesting the need for imposing a suitable levy on lands put to non-agricultural use in urban areas. The State Government, after examining the report of the Special Officer, decided to levy a tax on urban land on the basis of market-value of the land at the rate of 0.4% on such market-value. Section 3 of the Act of 1963 (which will be referred to as the old Act) provided that there shall be levied and collected for every fasli year commencing from the date of the commencement of the Act, a tax on urban land from every owner of urban land at the rate of 0.4% of the average market-value of the urban land in a sub-zone as determined under sub-section (2) of Section 6. Section 7 provided for the determination of the highest and lowest market value in a zone. For determining the average market-value, the Assistant Commissioner shall have regard to any matters specified in clause (a) to (e) of sub-section (2) of Section 6, namely -

> (a) the locality in which the urban land is situated;
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> (b) the predominant use to which the urban land is put, that is to say, industrial, commercial or residential;
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> (c) accessibility or proximity to market, dispensary, hospital, railway station, educational institution, or Government offices;
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> (d) availability of civil amenities like water-supply, drainage and lighting; and
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> (e) such other matters as may be prescribed.

The constitutional validity of Act 34 of 1963 was challenged and in Buckingham and Carnatic Co. Ltd. v. State of Madras, (1966 II MLJ 172) a Division Bench of the Madras High Court held that the impugned Act fell under Entry 49, List II of Schedule VII to the Constitution and was within the

legislative competence of the State Legislature. But the Act was struck down on the ground that Article 14 of the Constitution was violated, because the charging section of the Act levied the tax on urban land not on the market-value of such urban land but on the average value of the lands in the locality known as a sub-zone. The new Act (Act 12 of 1966), was passed by the State Legislature after decision of the Madras High Court. In the new Act provisions relating to fixation of average market-value in the sub-zone were omitted. Instead, Section 5 of the new Act provides that there shall be levied and collected from every year commencing from the date of the commencement of the Act a tax on each urban land from the owner of such urban land at the rate of 0.4% of the market-value of such urban land. Section 2(10) defines "owner" as follows :

> "Owner" includes -
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> (i) any person (including a mortgagee in possession) for the time being receiving or entitled to receive, whether on his own account or as agent, trustee, guardian, manager or receiver for another person or for any religious or charitable purposes, the rent or profits of the urban land or of the building constructed on the urban land in respect of which the word is used;
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> (ii) any person who is entitled to the Kudiwaram in respect of any Inam land; but does not include -
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> (a) a shrotriemdar; or
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> (b) any person who is entitled to the Melwaram in respect of any Inam land but in respect of which land any other person is entitled to the Kudiwaram.
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> Explanation. - For the purposes of Clause 9 and Clause 10 Inam land includes Lakhiraj tenures of land and shrotriam land. Section 2(13) defines 'land' to mean any land which is used or is capable of being used as a building site and includes garden or grounds, if any, appurtenant to a building but does not include any land which is registered as wet in the revenue accounts of the Government and used for the cultivation of wet crops."

Section 6 states :

> "For the purposes of this Act, the market-value of any urban land shall be estimated to be the price which in the opinion of the Assistant Commissioner, or the Tribunal, as the case may be, such urban land would have fetched or fetch, if sold in the open market on the date of the commencement of this Act."

Section 7 provides for the submission of returns by the owner of urban land and reads :

> "Every owner of urban land liable to pay urban land tax under this Act shall, within a period of one month from the date of the publication of the Madras Urban Land Tax Ordinance, 1966 (Madras Ordinance III of 1966), in the Fort St. George Gazette, furnish to the Assistant Commissioner having jurisdiction a return in respect of each urban land containing the following particulars, namely -
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> (a) name of the owner of the urban land,

(b) the extent of the urban land,

(c) the name of the division or ward and the street, survey number and sub-division number of the land and other particulars of such urban land, and

(d) the amount which in the opinion of the owner is the market-value of the urban land."

Section 10 deals with the procedure for the determination of the market-value by the Assistant Commissioner and states -

(1) Where a return is furnished under Section 7 the Assistant Commissioner shall examine the return and make such enquiry as he deems fit. If the Assistant Commissioner is satisfied that the particulars mentioned therein are correct and complete, he shall, by order in writing determine the market-value of the urban land and the amount of urban land tax payable in respect of such urban land.

(2) (a) Where on examination of the return and after the enquiry the Assistant Commissioner is not satisfied that the particulars mentioned therein are correct and complete he shall serve a notice on the owner either to attend in person at his office on a date to be specified in the notice or to produce or cause to be produced on that date any evidence on which the owner may rely in support of his return.

(b) The Assistant Commissioner after hearing such evidence as the owner may produce in pursuance of the notice under clause (a) and such other evidence as the Assistant Commissioner may require on any specified points shall, by order in writing, determine the market-value of the urban land and the amount of urban land tax payable in respect of such urban land.

(c) Where the owner has failed to attend or produce evidence in pursuance of the notice under clause (a), the Assistant Commissioner shall on the basis of the enquiry made under clause (a), by order in writing determine the market-value of the urban land and the amount of urban land tax payable in respect of such urban land."

Section 11 enacts :

(1) Where the owner of urban land has failed to furnish the return under Section 7 and the Assistant Commissioner has obtained the necessary information under section 9 he shall serve a notice on the owner in respect of each urban land specifying therein -

(a) the extent of the urban land,

(b) the amount which, in the opinion of the Assistant Commissioner, is the correct market-value of the urban land, and direct him either to attend in person at his office on a date to be specified in the notice or to produce or cause to be produced on that date any evidence on which the owner may rely.

(2) After hearing such evidence, as the owner may produce and such other evidence as the Assistant Commissioner may require on any specified points, the Assistant

Commissioner shall, by order in writing, determine the market-value of the urban land and the amount of urban land tax payable in respect of such urban land.

(3) Where the owner has failed to attend or to produce evidence in pursuance of the notice under sub-section (1) the Assistant Commissioner shall, on the basis of the information obtained by him under Section 9, by order in writing, determine the market-value of the urban land and the amount of the urban land tax payable in respect of such urban land."

Section 20 provides for an appeal to the Tribunal from the orders of the Assistant Commissioner :

"(1) (a) Any assessee objecting to any order passed by the Assistant Commissioner under Section 10 or 11 may appeal to the Tribunal within thirty days from the date of the receipt of the copy of the order.

(b) Any person denying his liability to be assessed under this Act may appeal to the Tribunal within thirty days from the date of the receipt of the notice of demand relating to the assessment :

Provided that no appeal shall lie under clause (a) or clause (b) of this sub-section unless the urban land tax has been paid before the appeal is filed.

(2) The Commissioner may, if he objects to any order passed by the Assistant Commissioner under Section 10 or 11, direct the Urban Land Tax Officer concerned to appeal to the Tribunal against such order, and such appeal may be filed within sixty days from the date of the receipt of the copy of the order by the Commissioner.

(3) The Tribunal may admit an appeal after the expiry of the period referred to in clause (a) or clause (b) of sub-section (1) or in sub-section (2), as the case may be, if it is satisfied that there was sufficient cause for not presenting it within that period.

(4) An appeal to the Tribunal under this section shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by such fee as may be prescribed.

(5) The Tribunal may after giving both parties to the appeal an opportunity of being heard, pass such orders thereon, as it thinks fit and shall communicate any such orders to the assessee and to the Commissioner in such manner as may be prescribed."

Section 30 confers power of revision in the Board of Revenue and is to the following effect :

(1) The Board of Revenue may, either on its own motion or on application made by the assessee in this behalf, call for and examine the records of any proceeding under this Act (not being a proceeding in respect of which an appeal lies to the Tribunal under Section 20) to satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and if, in any case, it appears to the Board of Revenue that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly :

Provided that the Board of Revenue shall not pass any order under this sub-section in any case, where the decision or order is sought to be revised by the Board of Revenue on its own motion, if such decision or order had been made more than three years previously :

Provided further that the Board of Revenue shall not pass any order under this section prejudicial to any party unless he has had a reasonable opportunity of making his representations."

Section 33 states :

"(1) The Tribunal, the Board of Revenue, the Commissioner, the Assistant Commissioner, or the Urban Land Tax Officer or any other officer empowered under this Act shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (Central Act V of 1908), when trying a suit in respect of the following matters, namely -

(a) enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

and any proceeding before the Tribunal, the Board of Revenue, the Commissioner, the Assistant Commissioner, the Urban Land Tax Officer or any other officer empowered under this Act shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196, of the Indian Penal Code (Central Act XLV of 1860).

(2) In any case in which an order of assessment is passed ex parte under this Act, the provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908), shall apply in relation to such order as it applies in relation to a decree passed ex parte by a Court."

3. The validity of the new Act was challenged in a group of writ petitions before the Madras High Court on various constitutional grounds. By a common judgment, dated the 10th April, 1968 a Full Bench of five Judges overruled all the contentions of the petitioners with regard to the legislative competence of the Madras Legislature to enact the new Act. However, the Full Bench by a majority of 4 to 1 struck down Section 6 of the new Act as being violative of Articles 14, 19(1)(f) of the Constitution. The State of Madras and other respondents to the writ petitions (hereinafter called the respondents for the sake of convenience) filed appeal Nos. 21 to 23 of 1969 under a certificate granted by the High Court under Articles 132 and 133(1)(a), (b) and (c) of the Constitution. The writ petitioners (hereinafter called the petitioners) have filed C.A. Nos. 46, 47, 125 and 274 of 1969 against the same judgment on a certificate granted by the High Court under Article 132 of the Constitution.

4. The first question to be considered in these appeals is whether the Madras Legislature was competent to enact the legislation under Entry 49 of List II of Schedule VII of the Constitution

which reads : "Taxes on lands and buildings". It was argued on behalf of the petitioners that the impugned Act fell under Schedule VII, List I, Entry 86, that is "Taxes on the capital value of the assets, exclusive of agricultural land of individuals and companies; taxes on the capital of companies." The argument of Mr. V. K. T. Chari may be summarised as follows : "The impugned Act was, both in form and substance, taxation of capital and was hence beyond the competence of the State Legislature. To tax on the basis of capital or principal value of assets was permissible to Parliament under List I, Entries 86 and 87 and to State under Entry 48 of List II. Taxation of capital was the appropriate method provided for effecting the directive principle under Article 39 of the Constitution, namely, to prevent concentration of wealth. Article 366(9) contains a definition of 'estate duty' with reference to the principal value. Entry 86 of List I (Taxes on capital value of assets exclusive of agricultural land) and Entry 88 (Duties in respect of succession to such property) form a group of entries the scheme of which is to carry out the directive principle of Article 39(c). The Constitution indicated that capital value or principal value shall be the basis of taxation under these entries and, therefore, the method of taxation of capital or principal value was prohibited even to parliament in respect of other taxes and to the States except in respect of Estate Duty on agricultural land. Such in effect is the argument of Mr. V. K. T. Chari. But in our opinion there is no warrant for the assumption that Entries 86, 88 of List I and Entry 48 of List II form a special group embodying any particular scheme. The directive principle embodied in Article 39(c) applies both to Parliament and to the State Legislature and it is difficult to conceive how Entries 86 to 88 of List I would exclude any power of the State Legislature to implement the same principle. The legislative entries must be given a large and liberal interpretation, the reason being that the allocation of the subjects to the lists is not by way of scientific or logical definition but by way of a mere sixplex enumeratio of broad categories. We see no reason, therefore, for holding that the Entries 86 and 87 of List I preclude the State Legislature from taxing capital value of lands and buildings under Entry 49 of List II. In our opinion there is no conflict between Entry 86 of List I and Entry 49 of List II. The basis of taxation under the two entries is quite distinct. As regards Entry 86 of List I the basis of the taxation is the capital value of the asset. It is not a tax directly on the capital value of assets of individuals and companies on the valuation date. The tax is not imposed on the components of the assets of the assessee. The tax under Entry 86 proceeds on the principle of aggregation and is imposed on the totality of the value of all the assets. It is imposed on the total assets which the assessee owns and in determining the net wealth not only the incumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account. In certain exceptional cases, where a person owes no debts and is under no enforceable obligation to discharge any liability out of his assets it may be possible to break up the tax which is leviable on the total assets into components and attribute a component to lands and buildings owned by an assessee. In such a case, the component out of the total tax attributable to lands and buildings may in the matter of computation bear similarity to a tax on lands and buildings levied on the capital or annual value under Entry 49, List II. But in a normal case a tax on capital value of assets bears no definable relation to lands and buildings which may or may not form a component of the total assets of the assessee. But Entry 49 of List II, contemplates a levy of tax on lands and buildings on both as units. It is not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of power under Entry 86, List I tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under Entry 49, List II the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value

of lands and buildings for determining tax liability will not make the fields of legislation under the two entries overlapping. The two taxes are entirely different in their basis concept and fall on different subject-matters."

5. In Ralla Ram v. Province of East Punjab (1948 FCR 207) the Federal Court held that the tax levied by Section 3 of the Punjab Urban Immovable Property Tax Act (17 of 1940), on buildings and lands situated in a specified area at such rate not exceeding twenty per cent. of the annual value of such buildings and lands, as the Provincial Government may by notification in the Official Gazette direct in respect of each such rating area was not a tax on income, but was a tax on lands and buildings within the meaning of Item No. 42 of List II of the Seventh Schedule of the Government of India Act, 1935. In that case it was contended that under the provisions of the Punjab Act the basis of the tax was the annual value of the buildings and since the same basis was used in the Income-tax Act for determining the income from property and generally speaking the annual value is the fairest standard for measuring income and, in many cases, is indistinguishable from it, the tax levied by the impugned Act was in substance a tax on income. The Court pointed out that the annual value is not necessarily actual income, but is only a standard by which income may be measured and merely because the Income-tax Act had adopted the annual value as the standard for determining the income, it did not follow that, if the same standard is employed as a measure for any other tax, that latter tax becomes also a tax on income. It was held by the Court that in substance the property tax levied by Section 3, Punjab Urban Immovable Property Tax Act, 1940 fell within Item 42 of the Provincial List and was not a tax on income falling within Item 54 of the Federal List although the basis of the tax was the annual value of the building. The same view has been expressed by this Court in Sudhir Chandra Nawa v. Wealth Tax Officer (AIR 1969 SC 59) wherein it was held that the power to levy tax on lands and buildings under Entry 49 of List II did not trench upon the power conferred on Parliament by Entry 88 of List I and, therefore, the enactment of the Wealth Tax Act by Parliament was not ultra vires.

6. The problem in this case is the problem of characterisation of the law or classification of the law. In other words the question must be asked : What is the subject-matter of the legislation in its "pith and substance" or in its true nature and character for the purpose of determining whether it is legislation with respect to Entry 49 of List II or Entry 86 of List I. In Gallahagher v. Lynn (1937 AC 863 at p. 870) the principle is stated as follows :

> "It is well established that you are to look at the true nature and character of the legislation the pith and substance of the legislation. If on the view of the statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorized field. The legislation must not under the guise of dealing with one matter in fact encroach upon the forbidden field. Nor are you to look only at the object of the legislator. An Act may have a perfectly lawful object e.g., to promote the health of the inhabitants, but may seek to achieve that object by invalid methods, e.g., direct prohibition of any trade with a foreign country. In other words, you may certainly consider the clauses of an Act to see whether they are passed 'in respect of' the forbidden subject."

In the case of Subramaniam Chettiar v. Muthuswami Goundar (1940 FCR 188 at 201) Sir Maurice Gwyer, C.J., said :

> "It must inevitably happen from time to time that legislation, though purporting to

> deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its 'pith and substance', or its 'true nature and character', for the purpose of determining whether it is legislation with respect to matters in this list or in that : Citizens Insurance Company of Canada v. Parsons ((1881) 7 AC 96); Russell v. The Queen ((1882) 7 AC 829); Union Colliery Co. of British Columbia v. Bryden ((1899) AC 580); Att. Gen. for Canada v. Att. Gen. for British Columbia ((1930) AC 111); Board of Trustees of Lethbridge Irrigation District v. Independent Order of Foresters ((1940) AC 513). In my opinion this rule of interpretation is equally applicable to the Indian Constitution Act."

For the reasons already expressed we hold that in pith and substance the new Act in imposing a tax on urban land at a percentage of the market-value is entirely within the ambit of Entry 49 of List II and within the competence of the State Legislature and does not in any way trench upon the field of legislation of Entry 86 of List I.

7. It was then said that an Entry 49 of List II provides for taxes on lands and buildings, the impugned Act which imposes tax on lands alone cannot be held to fall under that entry. It was submitted that when the Legislature taxed land deliberately the legislation fell under List II of Entry 45 i.e., "land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights and alienation of revenues" and not under Entry 49 of that List. The legislative history of Entry 49 of List II does not, however, lend any support to this argument. Before the Government of India Act, 1935, lands and buildings were taxed separately and all that was done under the Government of India Act, 1935 and the Constitution was to combine the two entries relating to land and buildings into a single entry. Section 45-A of the Government of India Act, 1919, provided for making rules under the Act for the devolution of authority in respect of provincial subject to local Governments, and for the allocation of revenues or other moneys to those Governments. The Government of India by a notification, dated December 16, 1920, made rules under that provision called the "Scheduled Tax Rules". These Rules contained two schedules. The first schedule contained eight items of tax or fee. The Legislative Council of a Province may without obtaining the previous sanction of the Governor General make and take into consideration any law imposing for the purposes of the local Government any tax included in Schedule I. Schedule II contained eleven items of tax. In making a law imposing or authorising any local authority to impose for the purposes of such local authority any tax in Schedule II, the Legislative Council required no previous sanction of the Governor General. In Schedule II, Item No. 2 was tax on land or land values and Item 3 was a tax on buildings. In the Government of India Act, 1935, the two entries were combined and List II, Entry 42 is "Taxes on lands and buildings and hats and Windows". The legislative history of Entry 49, List II does not, therefore, lend any support to the argument that Entry 49 of List II relating to tax on land and buildings cannot be separated. On the other hand we are of opinion that Entry 49 "Taxes on lands and buildings" should be construed as taxes on land and taxes on buildings and there is no reason for restricting the amplitude of the language used in the Entry. This view is also borne out by authorities. In Raja Jagannath Baksh Singh v. The State of U.P. (1963 (1) SCR 220) the question at issue was whether the tax imposed by the U.P. Government on land holdings under the U.P. Large Land Holdings Tax Act, 1957 (U.P. Act 31 of 1957), was constitutionally valid. It was held that the legislation fell under Entry 49 of List II

and the tax on land would include agricultural land also. Similarly in H. R. S. Murthy v. Collector of Chittor & Another (1964 (6) SCR 666), it was held that the land cess imposed under Sections 78 and 79 of the Madras District Boards Act (Madras Act No. XIV of 1920) and Mines and Minerals (Regulation and Development) Act (Act 67 of 1957), was a tax on land falling under Entry 49 of the State List. We are of opinion that the argument of Mr. V. K. T. Chari on this aspect of the case must be rejected.

8. We proceed to consider the argument that no machinery is provided for determining the market-value and the provisions of the new Act, therefore, violate Article 14 of the Constitution. The argument was stressed by Mr. V. K. T. Chari that the guidance given under the 1963 Act has been dispensed with and the Assistant Commissioner is not bound to take into account, among other matters, the sale price of similar sites, the rent fetched for use and occupation of the land, the principles generally adopted in valuing land under the Land Acquisition Act and the compensation awarded in recent land acquisition proceedings. We see no justification for this argument. The procedure for determining the market-value and assessment of urban land is described in Chapter III of the new Act. Section 6 provides that the market-value of the urban land "shall be estimated to be the price which in the opinion of the Assistant Commissioner, or the Tribunal, as the case may be, such urban land would have fetched or fetch, if sold in the open market on the date of the commencement of this Act". It was said on behalf of the petitioners that the opinion which the Assistant Commissioner has to form is purely subjective and may be arbitrary. We do not think that this contention is correct. Having regard to the language and context of Section 6 of the new Act we consider that the opinion which the Assistant Commissioner has to form under that section is not subjective but should be reached objectively upon the relevant evidence after following the requisite formalities laid down in Sections 7 to 11 of the new Act. Instead of the Assistant Commissioner classifying the urban land and determining the market-value in a zone, the present Act requires a return to be submitted by the owner mentioning the amount which, in the opinion of the owner, is the market-value of the urban land. On receipt of the return, if the Assistant Commissioner is satisfied that the particulars mentioned are correct and complete, he may determine the market-value as given by the owner of the land. If he is not satisfied with the return, he shall serve a notice to the owner asking him to attend his office with the relevant evidence in support of his return. After hearing the owner and considering the evidence produced, the Assistant Commissioner may determine the market-value. In case the owner fails to attend or fails to produce the evidence, the Assistant Commissioner is empowered to assess the market-value on the basis of an enquiry made by him. Section 11 prescribes the procedure for determining the market-value when the owner fails to furnish a return as required under Section 7. The section requires the Assistant Commissioner to serve a notice on the owner specifying amongst other things the amount, which in the opinion of the Assistant Commissioner, is the correct market-value and directing the owner to attend in person at his office on a date specified in the notice or to produce any evidence on which the owner may rely. After hearing such evidence as the owner may produce and considering such other evidence as may be required, the Assistant Commissioner may fix the market-value. The proceeding before the Assistant Commissioner is judicial in character and his opinion regarding the market-value is reached objectively on all the materials produced before him. Section 20 provides for an appeal by the assessee objecting to the determination of the market-value made by the Assistant Commissioner to a Tribunal within thirty days from the date of the receipt of the copy of the order. The Act requires that the Tribunal shall consist of one person only who shall be a judicial officer not below the rank of a Subordinate Judge. By Section 30, the Board of Revenue is empowered either on its own motion or on application made by the assessee in this behalf, to call for and examine the records of any proceedings under the Act (not being a proceedings in respect of which an appeal lies

to the Tribunal under Section 20), to satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein, and if it appears to the Board of Revenue that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly. Section 32 enables the urban land tax officer, or the Assistant Commissioner, or the Board of Revenue or the Tribunal to rectify any error apparent on the face of the record at any time within three years from the date of any order passed by him or it. Section 33 confers power on the Assistant Commissioner to take evidence, to require discovery and production of documents and to receive evidence on affidavit etc. Thus, the Act envisages a detailed procedure regarding submission of returns, the making of an assessment after hearing objections and a right to appeal to higher authorities. We are hence unable to accept the contention of the petitioners that the provisions of Section 6 of the new Act are violative of Article 14 of the Constitution.

9. It is necessary to state that the High Court decided the case in favour of the respondent mainly on the ground that investment of the power to determine value of the urban land under Section 6 of the Act constituted excessive delegation of authority and so violative of Articles 19(1) and 14 of the Constitution. (See the judgment of Veeraswami, J., who pronounced the main judgment in the High Court). But Mr. V. K. T. Chari did not support this line of reasoning in his argument before this Court. On the other hand learned counsel conceded that the power of determining the value of the urban land being judicial or quasi-judicial in character the doctrine of excessive delegation of authority had no application.

10. We pass on to consider the next contention raised on behalf of the petitioners namely that the Act should be struck down as an unreasonable restriction on the right to acquire, hold and dispose of property and as such violative of Article 19(1)(f) of the Constitution. It was argued that the test of reasonableness would be that the tax should not be so high as to make the holding of the property or the carrying on of the activity (business or profession), which is subject to taxation, uneconomic according to accepted rates of yield. In this connection it was said that the new Act by imposing a tax on the capital value at a certain rate was not correlated to the income or rateable value and, therefore, violates the requirement of reasonableness. We are unable to accept the proposition put forward by Mr. Chari. It is not possible to put the test of reasonableness into the straight jacket of a narrow formula. The objects to be taxed, the quantum of tax to be levied, the conditions subject to which it is levied and the social and economic policies which a tax is designed to subserve are all matters of political character and these matters have been entrusted to the Legislature and not to the Courts. In applying the test of reasonableness it is also essential to notice that the power of taxation is generally regarded as an essential attribute of sovereignty and constitutional provisions relating to the power of taxation are regarded not as grant of power but as limitation upon the power which would otherwise be practically without limit. It was observed by this Court in Rai Ramakrishna v. State of Bihar (AIR 1963 SC 1667 at 1673) :

> "It is of course true that the power of taxing the people and their property is an essential attribute of the Government and Government may legitimately exercise the said power by reference to the objects to which it is applicable to the utmost extent to which Government thinks it expedient to do so. The objects to be taxed so long as they happen to be within the legislative competence of the Legislature can be taxed by the Legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation.
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> The quantum of tax levied by the taxing statute, the conditions subject to which it

levied, the manner in which it is sought to be recovered, are all matters within the competence of the Legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes Article 19, Courts would naturally be circumspect and cautious. Where for instance it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of the tax, or that it is confiscatory, Courts, would be justified in striking down the impugned statute as unconstitutional. In such cases, the character of the material provisions of the impugned statute is such that the Court would feel justified in taking the view that, in substance, the taxing statute is a cloak adopted by the Legislature for achieving its confiscatory purposes. This is illustrated by the decision of this Court in the case of Kunnathat Thathunni Moopil Nair v. State of Kerala, AIR 1961 SC 552, where a taxing statute was struck down because it suffered from several fatal infirmities. On the other hand, we may refer to the case of Jagannath Baksh Singh v. State of Uttar Pradesh, AIR 1962 SC 1563, where a challenge to the taxing statute on the ground that its provisions were unreasonable was rejected and it was observed that unless the infirmities in the impugned statute were of such a serious nature as to justify its description as a colourable exercise of legislative power, the Court would uphold a taxing statute."

11. As a general rule it may be said that so long as a tax retains its character as a tax and is not confiscatory or extortionate, the reasonableness of the tax cannot be questioned. Mr. Chari submitted that the existing property tax under Section 100 of the City Municipal Corporation Act and the tax on urban lands under the new Act both enacted under Entry 49 of the State List, one of them imposing a tax on the capital value of urban lands and the other on the annual value of lands and buildings exhaust an unreasonably high proportion of income. For instance, it is pointed out that in W.P. No. 2835 of 1967, the annual income on property was Rs. 6,000/- and the proposed market-value for the lands alone comes to Rs. 10,40,000. The urban land tax at 0.4% of the market-value is Rs. 4,160 and the income-tax at the rate applicable to the petitioner was Rs. 1,234. The total tax burden in the aggregate under the three heads was Rs. 6,794, which exceeds the rental income. In W.P. No. 3686 of 1967, the municipal annual value was Rs. 4,0915, the property tax was Rs. 1,098 and the urban land tax at 0.4% was Rs. 1,523. The proportion of the two taxes together to yearly or annual municipal value worked out to Rs. 62.5%. It was, therefore, said that the taxes put together would practically exhaust the total income and the charging section in the new Act was unreasonable. The answer to the contention is that the charge is on the market-value of the urban land and not on the annual letting value on which the municipal property tax is based. The basis of the two taxes being different it is not permissible to club together the two taxes and complain of the cumulative burden. If the tax is on the market-value of the urban land as it is in this case it does not admit of a complaint that it takes away an unreasonably high proportion of the income-tax on land values and a tax on letting value, though both are taxes under Entry 49 of List II, cannot be clubbed together in order to test the reasonableness of one or the other for the purposes of Articles 19(1). But so far as the new Act is concerned we consider that the levy at 0.4% of the market-value of the urban land is by no means confiscatory in effect. It was also pointed out by Mr. V. K. T. Chari that in certain cases the market-value of the urban land was arrived at by applying what is known as the contractor's method not to the building which stands on the land whose value is ascertained by that means but to some other building on a different land taken for comparison. It was said that it was difficult enough for a man to apply the contractor's method of valuation to his own building which could be done by a competent architect after taking into account all measurements. But it is absolutely an impossible task to check up or make objections to the contractor's method applied to

another man's property which cannot be trespassed upon. It was said that the contractor's method was the last resort in valuation when a building has to be valued apart from the land and that it was a wrong application of the formula to use it to value the land without the building particularly when valuation of land can be made by applying the principles of the Land Acquisition Act. But this argument has no bearing on the constitutional validity of the charging section or the machinery provisions of the Act. It is, however, open to the writ petitioners to challenge the validity of the particular valuation in any particular case by way of an appeal under a statute or to move the High Court for grant of writ under Article 226 of the Constitution.

12. The impugned Act provides for the retrospective operation of the Act. Section 2 states that except Sections 19, 47 and 48, other sections shall be deemed to have come into force in the City of Madras on the 1st day of July, 1963, and Sections 19 and 47 shall be deemed to have come into force in the City of Madras on the 21st May, 1966. It also provides that Section 48 shall come into force on the date of the publication of the Act in the Fort St. George Gazette. Section 6 enacts that the market-values of the urban lands shall be estimated to be the price which in the opinion of the Assistant Commissioner or the Tribunal such urban land would have fetched or fetch if sold in the open market on the date of the commencement of the Act, that is, from 1st July, 1967. The urban land tax is, therefore, payable from 1st July, 1963. It is contended on behalf of the petitioners that the retrospective operation of the law from 1st July, 1963, would make it unreasonable. We are unable to accept the argument of the petitioners as correct. It is not right to say as a general proposition that the imposition of tax with retrospective effect per se renders the law unconstitutional. In applying the test of reasonableness to a taxing statute it is of course a relevant consideration that the tax is being enforced with retrospective effect but that is not conclusive in itself. Taking into account the legislative history of the present Act we are of opinion that there is no unreasonableness in respect of the retrospective operation of the new Act. It should be noticed that the Madras Act of 1963, came into force on 1st July, 1963 and provided for the levy of urban land tax at the same rate as that provided under the new Act. The enactment was struck down as invalid by the judgment of the Madras High Court which was pronounced on the 25th March, 1966. The Legislature by giving retrospective effect to Madras Act 12 of 1966, that the urban land must be taxed on the date on which the 1963 Act came into force the new Act cured the defect from which the earlier Act was suffering. In Rai Ramkrishna's case (supra) the question at issue was whether the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961 (17 of 1961), was violative of Article 19(5) and (6) of the Constitution for the reason that it was made retrospective with effect from 1st April, 1950. It appears that the Bihar Finance Act, 1950, levied a tax on passengers and goods carried by public service motor vehicles in Bihar. In an appeal arising out of a suit filed by the passengers and owners of goods in a representative capacity, the Supreme Court pronounced on the 12th December, 1960, a judgment declaring Part III of the said Act unconstitutional. Thereafter an Ordinance, namely, Bihar Ordinance No. 2 of 1961, was issued on the 1st of August, 1961, by the State of Bihar. By this Ordinance, the material provisions of the earlier Act of 1950, which had been struck down by this Court were validated and brought into force retrospectively from the date when the earlier Act had purported to come into force. Subsequently, the provisions of the Said Ordinance were incorporated in the Act, namely, the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961, which was duly passed by the Bihar Legislature and received the assent of the President on 23rd September, 1961. As a result of the retrospective operation of this Act, its material provisions were deemed to have come into force on April 1, 1950, that is to say, the date on which the earlier Act of 1950, had come into force. The appellants challenged the validity of this Act of 1961. Having failed in their writ petition before the High Court, the appellants came to this Court and the argument was

that the retrospective operation prescribed by Section 1(3) and by a part of Section 23(b) of the Act so completely altered the character of the tax proposed to be retrospectively recovered that it introduced a serious infirmity in the legislative competence of the Bihar Legislature itself. The argument was rejected by this Court and it was held that having regard to the relevant facts of the case the restrictions imposed by the said retrospective operation was reasonable in the public interest under Article 19(5) and (6) and also reasonable under Article 304(b) of the Constitution. In our opinion the ratio of this decision applies to the present case where the material facts are of a similar character.

13. In this context a reference may be made to a recent review of retroactive legislation in the United States of America :

> "It is necessary that the Legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called 'small repairs'. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have right would have arisen. Thus, the interest in the retroactive during of such a defect in the administration of Government outweighs the individual's interest in benefiting from the defect ..... The Court has been extremely reluctant to override the legislative judgment as to the necessity for retrospective taxation, not only because of the paramount governmental interest in obtaining adequate revenues, but also because taxes are not in the nature of a penalty or a contractual obligation but rather a means of apportioning the costs of Government among those who benefit from it. Indeed, as early as 1935, one commentator observed that "arbitrary retroactivity" may continue ..... to rear its head in tax briefs, but for practical purposes, in this field, it is as dead as wager of law."

(Charles B. Hochman in 73 Harvard Law Review 692 at p. 705.)

14. In view of the legislative background of the present case we are of opinion that the imposition of the tax retrospectively from 1st July, 1963, cannot be said to be an unreasonable restriction. We, therefore, reject the argument of the petitioners on this aspect of the case.

15. For these reasons we hold that the Madras Urban Land Tax Act, 1966 (Act 12 of 1966), must be upheld as constitutionally valid. We accordingly set aside the judgment of the Madras High Court, dated the 10th April, 1968, and order that writ petitions filed by the petitioners should be dismissed. In other words Civil Appeal Nos. 21 to 23 are allowed and Civil Appeal Nos. 46, 47, 125 and 274 are dismissed. There will be no order with regard to costs.

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