Vivian Joseph Ferreira and Another

Vs

The Municipal Corporation of Greater Bombay and Others

Dr. Jehangir Rustom Sethna and Others

Vs

The Municipal Corporation of Greater Bombay and Others

Writ Petitions Nos. 187 and 188 of 1970

(CJI S.M. Sikri, J.M. Shelat, G.K. Mitter, I.D. Dua, S.C. Roy JJ)

04.11.1971

JUDGMENT

SHELAT, J. -

1. These petitions by owners of two residential buildings in the city of Bombay, neither of which is, by reason of its having been recently constructed, either dilapidated or in dangerous condition, challenge the validity of the Bombay Building Repairs and Reconstruction Board Act, XLVII of 1969.

2. The preamble of the Act recites collapses of residential buildings, acute shortage of housing accommodation, and the problems of law and order arising from the unceasing influx of persons into the city of Bombay in search of work as having necessitated its enactment. It also recites the recommendations, suggestions and objections received by Government in response to the proposals made by it and its conclusion after considering them as to the necessity for establishing a Board to deal with the said problems by carrying out structural repairs to dangerous buildings, by acquiring and reconstructing buildings which are beyond repair and by providing for the rehousing of occupiers, who, because of such repairs would be dishoused, and to provide for the temporary levy of an additional cess on buildings and lands to meet the expenditure for the aforesaid purposes. The Act was brought into force on October 1, 1969 and the cess payable thereunder became operative as from November 1, 1970.

3. The Act by Section 1(4) is declared to be a temporary one and would expire on December 31, 1979. Structural repairs are defined by Section 2(s) as meaning repairs or replacement of decayed, cracked, or out of plumb structural components of a building or any substantial part thereof or any part to which the occupiers have common access, by new ones of the like materials, or of different materials including change in the mode of construction such as converting load bearing wall type or timber framed structure to an R.C.C. one, which repairs or replacement, if not carried out expeditiously, may result in the collapse of the building or any part thereof. Sections 3 and 4 provide for the establishment and composition of the Bombay Building Repairs and Reconstruction Board. Sections 21 and 22 lay down the duties, powers and functions of the Board including the power to carry out structural as also tenantable repairs, to move the State Government to acquire old

and dilapidated properties in respect of which the cess is levied and which, in the opinion of the Board, are beyond repair and to reconstruct new buildings thereon, to establish transit camps to temporarily accommodate persons dishoused and to demolish dangerous and dilapidated buildings incapable of being repaired at reasonable cost. Section 27 provides that subject to the provisions of Section 28 there shall be levied a tax on buildings and lands called the Bombay Buildings Repairs and Reconstruction Cess at the rate of so many percentum of the rateable value of the concerned property as is prescribed therefor under the Schedule to the Act. Sub-section (4) of Section 27 provides that the share of the owner shall be 10 per cent. of the rateable value of the property and confers right on such owner to recover the balance from the tenant by making a proportionate increase in rent and recovering it as such. Section 28 enumerates various classes of buildings which are exempted from the enforcement of the levy. Section 29 lays down three categories of buildings to which the Act applies. The Schedule to the Act provides different rates at which buildings falling in each category would be subject to the cess. The Schedule also provides in respect of each category of buildings different rates at which the cess would be payable if structural repairs are carried out to such building. The proceeds of the cess would be first credited to the consolidated fund of the State and thereafter under an appropriation duly made by law in that behalf would be transferred to a fund, the amount of which would be placed at the disposal of the Board for carrying out its several functions (Section 31). Lastly, Section 71 provides that in the case of any building subject to the cess, the owner shall not be bound to keep the premises let to any occupier in good Hotel and Lodging House Rates Control Act, 1947, shall be deemed to have been suspended and the provisions of the Transfer of Property Act, 1882, relating thereto shall apply.

4. Counsel for the petitioners challenged the validity of the Act principally under three heads : (1) that in the context of the existing legislation, i.e., the Bombay Municipal Corporation Act III of 1888 and the Bombay Rent Control Act, 1947, the imposition of a cess on residential buildings, which are in sound and good condition, and which would not require structural repairs for the entire period of the Act, amounts to an unreasonable restriction, and therefore, violates Article 19(1)(f) of the Constitution; (2) that the Act is also violative of Article 14, in that, it fails to recognise the material differences between various buildings with regard to their physical conditions and treats unequals as equals; and (3) that the exemptions provided by Section 28 are arbitrary and without any principle, and therefore, violate Article 14. Counsel argued that by subjecting residential buildings in sound condition to the cess, the Act in substance and effect provides bounties for those owners who have been neglectful of their buildings and have infringed requisitions issued to them by the Municipal Corporation. Counsel for the respondents, on the other hand, urged : (1) that the imposition of the tax was by virtue of power under Article 246(3), read with Entry 49 in List II of the Seventh Schedule of the Constitution, and being for a public purpose cannot be challenged as an unreasonable restriction, (2) that there is an intelligible classification of the buildings and such classification having a rational nexus with the objects of the Act and the mischief it seeks to avert, it is not challengable on the ground of its being discriminatory and (3) that the exemptions in Section 28 are provided for in the light of the objects and the scope of the Act and being in consonance with them, Section 28 is not open to such a challenge.

5. The argument of Mr. Sorabji, however, was that the cess amounted to unreasonable restriction and could not be said to be for a public purpose, in that, it benefits neglectful and defaulting owners at the cost of owners who have been looking after their properties and consistently carrying out tenantable repairs, thus preventing their buildings from being reduced to dangerous conditions. In this connection, he relied on certain passages from Cooley on Taxation (4th Ed.), Vol. 1, American Jurisprudence, Vol. 51 on Taxation and the Commissioner, Hindu Religious Endowments v. Lakshmindra. [1954 SCR 1005, 1040 : AIR 1954 SC 282.] The argument was that the tax was

objectionable as it equated buildings in dangerous and dilapidated conditions with those in good and sound condition, thus, laying down a fictional equality in the teeth of factual and physical inequality. Counsel relied for that argument on K. T. Moopil Nair v. The State of Kerala, [(1961) 3 SCR 77 : AIR 1961 SC 552 : (1961) 2 SCJ 269.] and urged that the tax should be declared invalid on the principles laid down therein. He also argued that the classification of buildings into three categories imposing different rates of tax was not based on any rational principle as even recently constructed buildings and buildings not needing or likely to need structural repairs were brought into the class of buildings subject to the cess. There was next an assumption, he argued, not based on realities, that a building constructed before a certain number of years would need structural repairs although it has been kept in proper condition and therefore not needing such structural repairs. A building constructed several years ago might be in better condition if consistently taken care of than the one built later but not taken care of, yet such a building, only because it was built earlier, is subjected to a higher rate of tax. Section 27 and the Schedule created discrimination between properties (a) inter se in the same category, (b) between buildings in different categories and (c) in imposing the same percentage on buildings in the same category though their actual conditions are totally different and also between buildings in different categories. Thus, buildings in category A, built say in 1900 and those built in 1939 are treated as equals. Even buildings erected at about the same time need not be equal in condition, as, in the case of one tenantable repairs might have been consistently carried out or structural repairs might have recently been carried out than the one in which no such repairs, tenantable or structural, have so far been carried out. Even if such a tax was necessary, its levy should have been made dependable on the actual conditions of the buildings and after a survey of the necessity and the extent of structural repairs required. Further, buildings in sound condition and not needing structural repairs ought to have been exempted. The Act, thus, does not take notice of the actualities in the sense that though a building built in 1939, but wherein extensive repairs have been carried out in 1968, would be a better building than another built in 1950, yet the former has to pay the tax at a higher percentage than the latter. The categorisation of the buildings, therefore, was arbitrary and not based on any rational principle. Counsel also attacked the exemptions given to buildings falling under clauses (g), (h), (i) and (j) of Section 28 as being irrational and without being founded on any principle. Lastly, he urged that the classification between buildings constructed before the Act and those constructed thereafter was not valid since there was no nexus between the date fixed under the Act and the objects of the Act. Even assuming that the Act were to be found to be valid, those buildings which were sound in condition and were likely to remain so throughout the life of the Act could be separated from the rest and a restraint against tax being enforced in respect of them can be imposed. The attack against the validity of the Act thus falls under two heads : (a) that the cess is not for a public purpose as it results in bounties to owners whose buildings need structural repairs at the expense of those whose buildings are sound and are not likely to need any such repairs, and (b) that it suffers from arbitrariness and is violative of Article 14.

6. Before these contentions are examined it is necessary to consider the background in which the Act was passed as that would throw light upon the tergets which the Legislature had in mind while enacting it.

7. Prior to the last World War, buildings had been one of the major investments in the city of Bombay. The cost of construction, owning to the easy availability of building materials, was fairly reasonable and the cost of upkeep and maintenance correspondingly low. It was then a tenant's market as there was then no pressure of population on the city as it is now due to rapid industrialisation, concentration of industries and other allied reasons. The owners of properties then had sufficient incentives to keep their properties in satisfactory repairs. The situation, however, was

completely reversed at the end of the last World War as the gap between the demand and supply had by then widened at an alarming rate. The result was the emergence of the Rent Control Act which froze the rent at the pre-war level and gave security to the tenants by conferring on them the status of irremovability. The building materials in the meantime became scarce, and consequently, with the freezing of rents and the rising costs of materials, the incentive to maintain properties in good repair gradually vanished. As the gap between demand and supply of accommodation grew wider, the pressure on the existing premises substantially increased. The situation got worsened by reason of the reluctance of the owners of the buildings to maintain their properties in tenantable repairs as they found carrying out the repairs uneconomical. A more comprehensive Rent Control Act then replaced in 1947, the existing 1939 Act which had by then been found inadequate. But while it guaranteed to the tenants security of tenancy rights it generated an increasing reluctance on the part of the owners to invest any more capital on their buildings as that type of investment was found to be less and less attractive.

8. One of the features of the city is that a large percentage of the existing residential buildings in it had been constructed several years age. Being almost an island city with limited construction space, the buildings had to expand vertically, a feature not then prevalent in other cities. These buildings were built in timber frames as R.C.C. construction had not then come into vogue. Several of them had been built up to five or six stories having mostly one or two rooms tenements, each of which was habited by a large number of persons. The saline atmosphere of the city coupled with the absence of repairs carried out on this type of structures began to have its inevitable consequences. Collapses of houses which were almost unknown in pre-war days began to occur in increasing numbers till the figures rose to about 125 on an average per year. These collapses had their toll in the loss of human life, physical injuries to the residents of those buildings and the dishousing of a large number of persons from amongst the teeming population residing in them.

9. The problem became so alarming that the city Corporation carried out in 1956, a comprehensive survey of buildings in all its seven wards. The survey was confined mainly to buildings used for residential purposes. That was not due to the absence of likelihood of human loss, suffering and deprivation of accommodation occurring in non-residential premises, but presumably because the need for such a survey of residential premises was found to be of a more urgent character. The survey revealed that there were within the city 36,000 residential buildings, of which 17,490 were built prior to 1905. The survey showed that residential buildings fell into six categories, namely, 7.48% being buildings in steel or R.C.C. frame, 1.58% with external masonry walls and steel or R.C.C. frame, 33% with timber frames, 42% with external masonry walls and internal timber frames, 1% with masonry walls and jackarch floors and 15% temporary tin sheds. The report further revealed that of the said 17,490 buildings : (a) 5,081 of them had a future life of five years only, (b) 3,549 a future life of six to ten years, (c) 3,286 a future life of eleven to fifteen years, (d) 3,583 a future life of sixteen to twenty-five years, (e) 1,716 a future life of more than twenty-six years, and (f) 275 in a sound condition. Therefore, by 1969, when the impugned legislation was undertaken, buildings in (a), (b) and (c) and partly in (d) classes had already outlived the period of their survival. The total number of families living in buildings which imminently required substantial repairs, if they were to survive, came to 1,04,270, 80% of whom were occupying one room tenements.

10. The Report on the development plan for Greater Bombay, submitted to the State Government in 1964, stated that out of about seven lacs tenements in Greater Bombay as on March 31, 1961, 23% of them containing 18,000 buildings would need extensive repairs in the next fifteen years and about 1,000 of them would have to be immediately demolished. 10,000 buildings would have a life of about ten years, and 7,000 a life of fifteen years.

11. With such a situation it was no wonder that collapses of buildings became almost an annual occurrence particularly during rainy seasons. In 1965, the State Government appointed the Bedekar Committee to examine the problem. The Committee reported the following principal causes of collapses :

(1) Indifference of owners to repair due to the freezing of rents, on the one hand, and the rise in the cost of building materials, on the other.

(2) Resulting leakages in sanitary blocks.

(3) Failure to demolish buildings even where they were incapable of being sustained with repairs only.

(4) Overcrowding in the tenements, and the consequent increasing pressure on sanitary services therein, and

(5) Soaring land values tempting owners to let their buildings collapse rather than continue to have them let out on frozen rents.

Amongst the difficulties presented by the current law, the Committee found one of them in the absence of an independent agency to finance and execute repairs on behalf of owners or tenants who have no means to carry them out even when otherwise willing to do so. Such was the reluctance of the owners to invest capital in these buildings that though 18,000 notices for major repairs were issued by the Corporation since 1960, only one third of them were complied with. The Committee also noted that according to the Municipal engineering staff incharge of the several wards in Greater Bombay, 386 buildings had already been declared unsafe and by 1970 and 1980, 751 and 2,416 more buildings would respectively be due for demolition. Thus, a total of 3,600 buildings having about 2 lacs of people living in them would be threatening collapse and would have either to be demolished or repaired in time to prolong their lives. Of the several recommendations made by the Committee, one was to have a separate department to deal with problems connected with the demolition of old structures, construction of new buildings replacing old ones, and annual and special inspection of buildings. For prevention of collapses it suggested : (a) timely demolition where collapses were inevitable, (b) special repairs where it was possible to prolong the life of old structures, (c) acquisition of old buildings and replacing them with new ones, (d) provision for temporary transit accommodation for persons dishoused in this process, and (e) encouragement to local bodies and housing co-operatives to construct residential accommodation, since that was the only way of augmenting residential premises.

12. The problem confronting the State Legislature as appearing from these reports was that of the 17,490 buildings out of the total 36,000 surveyed by the Corporation, barring only 1991 such buildings, the rest of them would have outlived their lives by about 1980. On June 3, 1968, the Government published certain proposals for eliciting public opinion for a legislation to prevent collapses and salvaging dilapidated structures. It was after considering the recommendations, suggestions and objections received by the Government that the impugned Act was brought before the Legislature. The Act was confined to the problem of residential houses only. That was not because there was no danger of collapses of non-residential buildings, but because it was considered feasible to deal with a limited problem, namely, that of residential premises in respect of which the distress was accuter. As the Minister for Housing said during the passage of the bill, the intention of the Government was "to hit the evil where it is greatest". It is also clear that following the reports,

such as the survey report, and the report of Bedekar Committee, the Act placed the residential buildings into three categories according to the periods during which they were constructed and the construction in vogue during those periods. The date, September 1, 1940, in respect of category 'A' was chosen as it was from that date that the rents were frozen under the Rent Control Act.

13. The life of the Act up to 1979 only, restricting it to residential buildings only, their division into three categories, the raising of the fund for implementing the purposes of the Act from the three agencies immediately concerned with the problem, the Government, the Corporation and the owners and occupiers, the exemptions from the operation of the Act in Section 28, all these emerge from the earlier investigations and reports of which the Legislature and the Government were aware of. As aforesaid, the mischief which the Legislature intended to avert applied also to non-residential premises. But the Legislature was entitled to choose priorities according to the degree of danger apprehended by it, and therefore, no infirmity, constitutional or otherwise, can be attributed to such priority if it chose a part of the problem which it thought should be dealt with immediately, not because it was blind to the larger problem but because it considered dealing with a part of it as feasible.

14. The question of validity of taxing statutes has arisen before this Court in a number of cases. The principle emerging from them is that in order that a tax may be valid, it is firstly, within the competence of the Legislature imposing it, secondly, that it is for a public purpose, and thirdly, that it does not violate the fundamental rights guaranteed by Part III of the Constitution. The taxing statute is as much subject to Article 14 as any other statute. [K. T. Moopil Nair v. Kerala (supra) Raja Jagannath v. U.P., [(1963) 1 SCR 220 : AIR 1962 SC 1563.]; East India Tobacco Co. v. Andhra Pradesh [(1963) 1 SCR 404 : AIR 1962 SC 1733.]; Khandige Sham Bhatt v. Agricultural Income Tax Officer [(1963) 3 SCR 809 : AIR 1963 SC 591 : (1964) 1 SCJ 271.] and Andhra Pradesh v. Nalla Raja Reddy. [(1967) 3 SCR 28 : AIR 1967 SC 1458.]] But in view of the inherent complexity of fiscal adjustment of diverse elements a large discretion has to be permitted to the Legislature for classification so long as there is no transgression of the fundamental principles underlying the doctrine of classification. [Cf. Khandige Sham Bhatt v. Agricultural Income Tax Officer (supra)]. These principles are that the classification must be based on an intelligible differentia which distinguishes persons or object grouped together from others left out of the group, and that differentia must have a rational nexus with the object of the statute. So long as these principles are properly followed in classifying persons or objects for taxation, the power to classify must be wide and flexible so as to enable the Legislature to adjust its system of taxation in all proper and reasonable ways. [See Khandige Sham Bhatt v. Agricultural Income Tax Officer (supra)].

15. It is well recognised that a Legislature does not have to tax every thing in order to tax something. It can pick and choose districts, objects, persons, methods and even rates of taxation as long as it does so reasonably. [Wills, Constitutional Law of the United States, 587.] A taxing statute is not invalid on the ground of discrimination merely because other objects could have been, but are not taxed by the Legislature. (Ravi Varma v. Union of India. [(1969) 3 SCR 827 : 1969(1) SCC 681 : AIR 1969 SC 1094.]) When a statute divides the objects of tax into groups or categories, so long as there is equality and uniformity within each group, the tax cannot be attacked on the ground of its being discriminatory, although due to fortuitous circumstances or a particular situation some included in a class or group may get some advantage over others, provided of course they are not sought out for special treatment. [Khandige Sham Bhatt v. Agricultural Income Tax Officer (supra)]. Likewise, the mere fact that a tax falls more heavily on some in the same group or category is by itself not a ground for its invalidity, for then hardly any tax, for instance, sales tax and excise tax, can escape such a charge. (Twyford Tea Co. Ltd. v. State of Kerala). [(1970) 3 SCR 383 : 1970(1)

SCC 189 : AIR 1970 SC 1133.]

16. Definitions of taxation imply that a Legislature can impose a tax for public purpose only. A tax for purposes other than public purposes would constitute taking of property without due process of law within the meaning of the Fourteenth Amendment in the United States. It would be objectionable in this country by reason of Article 31(1) of the Constitution. [Cooley on Taxation (4th Ed.), Vol. I, 381, 382.] Taxation, however, is nonetheless, for public purpose even if particular persons receive more benefit from the use of tax proceeds than others. [Ibid, 392.]

17. A perusal of the provisions of the Act makes it clear that its objects were : (1) to preserve the residential and tenanted buildings existing at the date of its enactment, (2) for that purpose, to set up special agency, the Bombay Buildings Repairs and Reconstruction Board, whose duties and functions would be, (a) to undertake and carry out structural repairs to buildings in respect of which the impugned tax is levied, (b) to provide temporary or alternative accommodation to occupiers of any such buildings where any such bidding collapses, (c) to undertake and carry out tenantable repairs to buildings placed at its disposal, (d) to move the Government to acquire old and dilapidated buildings in respect of which the cess is levied and which are beyond repairs or buildings in which structural repairs have once been carried out but further repairs are not possible, (e) to reconstruct new buildings, (f) to set up transit camps for those dishoused on account of collapses, fire, rain or tempest, and (g) to undertake demolition of dangerous buildings or portions thereof. These objects obviously were fixed upon as a result of the earlier studies undertaken by the Government and the Corporation and the recommendations made by members of the public in answer to the proposals published by Government in connection with collapses of residential buildings and the tragic consequences following them.

18. To ensure implementation of these functions and duties, the Act provides the levy or tax on buildings and lands, save those exempted under Section 28, at rates of percentum of the rateable value of the properties as laid down in the Schedule to the Act. Under Section 27 and the Schedule the properties are grouped into three categories in respect of which varying percentage of the rateable value of the buildings is charged as a basic levy and at a higher rate where any such building is structurally repaired. The three categories are formulated on two principles, the age of the buildings and the type of construction in vogue during the periods when they were constructed. These principles appear to have been adopted from the earlier studies made at the instance of the Government and the Corporation. The amount recovered under this levy is to be first credited to the Consolidated Fund of the State, and thereafter to be transferred by a suitable appropriation to the fund designated as the Bombay Building Repairs and Reconstruction Fund (Section 31). For providing initial expenditure of the Board, the Government and the Corporation have been empowered to make advances (Section 48). The Act also provides that the Government may and the Corporation shall make an annual grant of Rs. 1,00,00,000/- each.

19. Two further provisions in this connection need be noted. The first is Section 27(4) under which an owner who is required to pay the cess pays only 10% of the rateable value of his building and is entitled to recover the balance from the tenant by making a corresponding increase in the rent payable by such a tenant. Default by the tenant gives him the right to sue for eviction under Section 12 of the Bombay Rent Act, 1947, or, on intimation to the Municipal Commissioner, for recovery thereof as arrears of tax due under the Bombay Municipal Corporation Act. The second is that during the life of the Act such as owner is not bound to keep the premises let to any occupier in good and tenantable repair and Section 23 of the Bombay Rent Act is deemed to have been suspended and Section 108(m) of the Transfer of Property Act is to apply, which means that it is the

obligation of the tenant to keep the premises in tenantable repairs. It is, however, true that Section 58, as amended by Act 6 of 1971, saves the power of the Commissioner under the Bombay Municipal Corporation Act to require the owner to carry out repairs to such things as drains, water-closets, latrines etc., to pull down or repair dangerous structures and to prevent causes of danger by such structures, to stop nuisance caused by a leaking roof or by a ditch, tank etc. or by collection of water, and also saves his powers to enforce his orders to execute works, and the right of the occupier to execute any such work in the event of default by the owner. The section also saves the right in such an event of a tenant to execute such work required by the Commissioner under Section 10-D of the Bombay Rent Act. This saving of the powers of the Commissioner, however, cannot be equated with the obligation to carry out tenantable repairs under Section 23 of the Bombay Rent Act or the right of the tenant to carry out such repairs in the case of the landlord's default and to reimburse himself to the extent of two month's rent.

20. Such being the scheme and the objects of the Act, can it be said that the cess imposed thereunder is not for a public purpose ? It may be that some of the existing buildings, by reason of their having been recently constructed or their having been properly cared for or structural repairs having been recently made therein, might not require repairs contemplated by the Act. Yet, their owners are required to pay the cess from out of which the Board would carry out structural repairs to buildings whose owners have been neglectful or even defaulters in carrying out the Municipal requisitions. Does it, however, follow from such a result that the purpose of the Act is to confer bounty on such owners, and that therefore, the purpose of the tax is to serve a private and not a public purpose, and therefore, violative of Article 19(1)(f) ?

21. The rule, no doubt, is that taxes can be levied for public purposes and indirect and incidental benefits which may result to the public do not make a public purpose, where the object is directly private. But the purpose of a tax would not be regarded as private merely because some persons might receive more benefits from the use of its proceeds than others or is imposed for a purpose other than revenue, such as a tariff duties for encouragement of manufactures or licence fees with a view to regulate a particular trade or industry. A law, not only exempting from taxation the limited means of poor and afflicted persons but providing public funds to ameliorate their conditions, is undoubtedly one for public purpose. A clear example of such a tax is the provision for hospitals and asylums where medical and other aid is given to the poor and the dependent free of any charge. A tax in aid of private enterprises would undoubtedly be regarded as loading "the table of the few with bounty that the many may partake of the crumbs that fall therefrom", unless such as enterprise is one of such magnitude of promise that its prosperity constitutes a substantial element of public welfare or which renders it important to national defence or other such national interest. [Cooley on Taxation (4th Ed.), Vol. 1, Ch. 4, Arts. 174 to 211 and American Jurisprudence, Vol. 51, paras 321 and 329.] But the principle that funds raised by taxation cannot be expended for private use does not prevent the Legislature from looking at the ultimate rather than the immediate result of the expenditure, and incurring an expense or creating a liability on the part of the public which it was under no constitutional obligation to incur or create if the ultimate effect will be beneficial to the public. Upon this theory laws establishing minimum wage or limiting the hours of labour have been sustained. The fact that a statute authorising an expenditure of public funds for a public purpose may foster another enterprise which is not a public one does not invalidate the statute if the purpose of the expenditure is legitimate because it is public. It will not be defeated merely because the execution of it involves payments to individuals. The test is not as to who receives the money but the character of the purpose for which it is to be expended. [Ibid, para 330, at p. 381; Carmichael v. Southern Coal & Coke Co., 81 Law. Ed. 1245.] What is to be borne in mind is the distinction between the purpose and the method of its implementation. If in the course of the latter some benefit

incidentally reaches to a particular person or persons, the former neither changes its character not is it invalidated for that reason. For instance, when a sudden or an overwhelming disaster strikes, such as flood or a destructive fire, a Legislature may legitimately authorise expenditure of public money to provide succour to the victims. Persons living in the area may become helpless or destitute, irrespective of whether rich or poor, but it is a public purpose to supply the sufferers with food, clothing and shelter in order to relieve their immediate needs. Expenditure of public funds in such cases have been treated as necessary for the proper exercise of the police powers of the State. [American Jurisprudence, Taxation, Vol. 51, para 353, at 396.]

22. It is a common experience in the field of taxation that the incidence of tax falls upon a class or upon individuals who derive no direct benefit from its expenditure or who are not responsible for the mischief to remedy which the tax is imposed. Besides, in the present case the cess on collection has, in the first instance, to be credited to the State's Consolidated Fund and then under an appropriation duly made after deducting the cost of collection the balance is to be transferred of the Repairs and Reconstruction Fund. The doctrine of benefits cannot apply to such a case, firstly, because the cess goes directly to the Consolidated Fund in augmentation of that Fund and not to a specific fund, and secondly, because the Legislature has the power to authorise expenditure out of the Consolidated Fund on any public purpose which it thinks necessary and proper. [Carmichael v. Southern Coal & Coke Co., 81 Law Ed at pp. 1261 and 1265.]

23. Both the purpose of the cess and its use are without doubt for public purpose. The purpose is to prevent collapses and the suffering they must cause including rendering several persons homeless, a condition accentuated by the demand for accommodation outrunning the supply. The use is for preservation and prolonging the life of the building existing at the date of the enactment of the Act by carrying out structural repairs where owners due to diverse reasons refuse or are reluctant to spend their capital on such preservation, jeopardising the life of their properties and due to the peculiar conditions in the property market fine it profitable to render buildings into vacant plots. If in implementing the purpose, which, as aforesaid, is demonstratably public, some benefit reaches particular individuals, the stature, which does not directly purport so to do, cannot be invalidated.

24. Ch. IV of the Act deals with the levy of the cess and the buildings subjected to its imposition. Though Section 27 imposes the tax on buildings and lands, the exemptions given to buildings exclusively occupied by the owners, to buildings exclusively used for non-residential purpose, to residential buildings exclusively occupied on leave and licence, to open lands not built upon and to buildings which might be erected after the date on which the Act comes into force, have the effect of confining the tax to residential houses occupied by tenants existing at the date of the commencement of the Act. Section 29 divides the buildings so taxed into categories A, B and C. Buildings built prior to September 1, 1940 fall into category A, those built between September 1, 1940 and December 31, 1950 fall into category B and those built between January 1, 1951 and the date immediately before the date on which the Act was brought into force fall into category C. Under the Schedule, category A buildings are charged at the rate of 25% of the rateable value and at 4% if any building in that category is structurally repaired by the Board. If a building falls in category B, it is charged at 20% and at 30% if it is structurally repaired, and buildings falling in category C have to bear the tax at 15%, and at 20% if any one of them is structurally repaired by the Board. The Act thus makes three kinds of classification, (1) by confining the tax to the residential tenanted buildings, it classifies buildings which are used for residential purpose and are tenanted, from the rest; (2) by confining the tax to such existing buildings it classifies them from those built after the date on which the Act is brought into force, and (3) by dividing those which are liable to tax into three categories according to three periods in which they were constructed.

25. To such a classification, the challenge, firstly, was that there was no rationale in dividing the residential and the non-residential buildings as a number of buildings falling in both the groups had been found to be in imminent dangerous condition, and posed the problem of danger to human lives and of collapse. It was said, therefore, that both the kinds ought to have been subject to the provisions of the Act. The second challenge was to the equality of the percentum of the rate to buildings falling in any one of the three categories without regard to their actual physical conditions. Counsel sought to work out several permutations and combinations to show that such equal treatment to buildings in each one of the three categories created inequality by reason of disregard to their unequal conditions. Thus, a buildings built in 1900 was treated equal with one built in 1939 and both bore the tax at the same rate. Similarly, a building totally neglected by the owner, and therefore, needing structural repairs was treated on equal footing with another in the same category, but on which the owner has recently carried out full structural repairs and was therefore in a sounder condition than the former. There was, according to counsel, inequality writ large in Sections 27 and 28, and the Schedule to the Act. The third attack was on the exemptions, the ground of attack being that some of them had no foundation in principle and were totally arbitrary. Reliance was placed in this connection on some of the decisions of this Court to show that discrimination results where classification among equals is based on no rational principle and whcih has no reasonable nexus with the object with which the impugned legislation is enacted. Similarly, such discrimination arises where there is no classification even though the objects which are subjected to tax are unequal and yet treated alike. [See K. T. Moopil Nair v. Kerala, (supra); State of Madras v. R. Nand Lal & Co. [(1967) 3 SCR 645 : AIR 1967 SC 1758.] and Andhra Pradesh v. Nalla Raja Reddy (supra).] Counsel for the respondents, on the other hand, urged that those decisions had no application to the present Act as the classifications made and the exemptions provided thereunder were based on principles which had intimate relation to the objects with which the Act was passed and the evil it sought to avert.

26. From what has been earlier stated, it is manifest that a combination of factors, such as geographical limitations on living space in the city, the consequent limited number of buildings, the fact of a large number of them having been constructed as early as 1905 and even before, the fact of many of them having had to be built vertically and that too on timber frames, the effect of freezing of rents together with obligations imposed on the owners by the Rent Act rendering the maintenance of buildings economically unattractive, reluctance and sometimes inability of the owners to carry out repairs and even to comply with Municipal requisitions, the alarming spurt in the city's population, imigration of labour in large numbers from the hinterland, increasing pressure on the existing residential premises and on sanitary facilities therein, house collapses in large numbers every year entailing human tragedy and rendering hundreds homeless, had raised problems which were of imminent concern to the State as well as the Municipal authorities. In these circumstances, if the legislature took a policy decision to give priority to the residential tenanted premises in respect of which, in its opinion, the danger was graver and more imminent, no challenge to the division between residential and non-residential premises can be sustainable particularly when dealing with a part of the problem and confining its treatment to residential premises only was considered feasible. From the studies undertaken by the Government and the Corporation earlier referred to, it appears that there were two alternatives; the first was reconstruction of large sections of the city and replacing new buildings in place of the old, and the second was the preservation and prolonging the life of the existing structures by carrying out structural repairs and alterations therein. The first obviously would have raised numerous problems, legal and economic. The second would create lesser number of them. If the Legislature thought it best in the circumstances to choose the second instead of the first and confined its attention to the existing structures, no challenge on

the ground of discrimination or arbitrariness can legitimately be made. The classification of residential premises from the rest and that between those existing at the time when the Act was brought into force from the new ones which might be built thereafter can be regarded as based on intelligible differential and related to the objectives and their feasibility which the Legislature had in mind while undertaking the questioned legislation.

27. The division of such existing structures into three categories was evidently made in the light of the survey of buildings by the Corporation and the report of Bedekar Committee and the classification of buildings made therein on the basis of age and the kind of construction in vogue in the respective periods in which they were erected. That being so, it is impossible to say that the aforesaid groupings of buildings was unprincipled, whimsical or arbitrary.

28. But, as Mr. Sorabji was at pains to point out, there might be buildings requiring structural repairs while there might be some in the same category which might not require them for the reason that they had been consistently looked after by their owners, and yet the latter are made to pay the tax and that too to the same degree. To that the answer is two-fold. Firstly, that the tax payable is on the rateable value of each building which differs from building to building, and secondly, it is distributed between owners and the tenants, the former bearing 10% of it only. To make such distribution reasonable and just, the Legislature suspended during the life of the Act some of the obligations of the owners under the Rent Act and revived the obligations of the tenants under Section 108(m) of the Transfer of Property Act, though retaining the powers of the Corporation obviously on the overriding consideration of public health. It is true that even so, some of the owners, whose buildings do not need structural repairs, have to pay the tax, the proceeds of which would be spent for carrying out repairs to buildings whose landlords have been neglectful. The argument, in other words, is reduced to this namely, that there would be one class of tax-payer who would not get the return and individual benefit while the other would get it at the expense of the former. Such an argument, however, can be urged almost against every tax and every public expenditure and no tax can ever escape such a censure. The grievance that individual tax-payers get more or less return from the tax proceeds has hardly ever been entertained and would not be a sustainable ground for a challenge against its constitutional validity. The decision in Railroad Retirement Board v. Alton Railroad Co., [79 Law Ed 1468.] leaned heavily by counsel, disapproving a provision establishing a compulsory bonus system of employees on all carriers treating them all as a single employer, on the ground that it imposed upon solvent carriers the burden of furnishing money necessary to meet the demands of the system upon insolvent carriers, cannot apply as the decision turned on due process clause, a clause not available in our Constitution.

29. The levy of the cess under Section 27 of the Act is not based on the principle of quid pro quo. Its object is not to repair all residential premises, but to preserve and prolong their lives in order to avert the dilemma caused by the acute shortage of residential accommodation on the one hand, and the reluctance and/or inability of the owners to carry out repairs resulting from the Rent Act, on the other, and to establish an agency so that structural repairs to buildings in dangerous or ruinous conditions can be carried out. The finances for these objects are provided from a fund from the impugned cess and contributions by the State and the Corporation.

30. The contention that some of the buildings falling in categories B and C would not need structural repairs throughout the life of the Act or that such repairs would be carried out in buildings not cared for by defaulting landlords, takes no notice of the fact that the primary object of the Act is not to repair all buildings subject to cess but to prevent the annually recurrent mischief of house collapses and the human tragedy and deprivations they cause. The cess being thus levied to prevent

such disasters, there is no question of unequal treatment between one class of owners and another. The classification of buildings into three categories is based, as already stated, on their age and the construction current during the periods of their erection. It is, therefore, based on an intelligible differentia and is closely related to the objects of the legislation. There is, therefore, no question of unequals being treated as equals, as each building in respect of which the cess is payable falls within the surveillance of the Board and has to be structurally repaired if the need were to arise. The principle laid down in Moopil Nair's case (supra) or in New Manek Chowk Spinning and Weaving Mills Co. Ltd. v. Municipal Corporation of the City of Ahmedabad, [(1967) 1 SCR 679 : AIR 1967 SC 1801.] clearly does not apply to the present case.

31. The objection to the exemptions under Section 28 can be met by the fact that buildings in each of the groups therein set out form a distinct class by themselves. Buildings in clauses (a) to (f) are buildings to which the Rent Act does not apply, and therefore, the considerations for which the cess is levied do not apply to them. Buildings used for non-residential purposes do not fall within the scope of the Act, and therefore, had to be excluded from the levy of the cess. Clauses (g), (h) and (j), read with the newly inserted clause (j-a) were, however, objected to. Buildings vesting in or leased to co-operative housing societies registered under the Maharashtra Co-operative Societies Act, 1960, form a class by themselves and cannot be equated with buildings built by individuals. A perusal of that Act is sufficient to satisfy that the relations between a society and its members to whom apartments are either allotted or leased are not the same as those between landlords and tenants. There is, besides, considerable control of the Registrar, Co-operative Societies, over the administration of the funds of the societies and their expenditure and an overall supervision over their affairs. The Bedekar Committee, no doubt, sounded a warning in respect of some of the buildings put up by some of such societies. But these are exceptions and the Legislature could not have carved out a sub-clause in respect of them. The Committee, however, had observed that these societies in the present state of the property market were the only real instrumentalities through which an increase in the residential accommodation can at present be achieved, and therefore, should be encouraged.

32. Likewise, the relations between the owners and persons occupying their buildings under leave and licence cannot be equated with relations between landlords and tenants. The circumstances which led to the imposition of the cess to not apply to premises in the occupation of licensees because such licensees have no rights such as the tenants have, namely, irremovability and the freezing of rents, and the consequential reluctance or inability of the landlords to maintain their premises in tenantable repairs. There is no such statutory control over compensation paid by them as there is in the case of standard rent. Considerations applicable to them are, therefore, quite different. The two classes of occupiers, therefore, cannot be equated. The premises occupied by licensees thus form a distinct class by themselves and could not have been lumped together with tenanted premises without the danger of a challenge under Article 14.

33. So far as the buildings occupied by owners themselves and falling under clause (h) are concerned, counsel frankly conceded that different considerations would apply and therefore on objection could be taken to their being exempted from the tax. If buildings used for non-residential purposes or on the basis of leave and licence are validly treated differently, buildings, if used partly for one and partly for another such purpose or purposes can also be similarly treated provided that not part or parts thereof are occupied or used for a purpose other than those specified in the three clauses. Since these buildings forming separate classes by themselves from the tenanted residential premises, the provisions for exempting them cannot be held as violative of the equal protection clause.

34. For the reasons stated above, the Act has to be held valid and the petitions unsustainable. Accordingly, the petitions are dismissed but in the circumstances of the case there will not be any order of costs.

</html