ALLAHABAD HIGH COURT

Oudh Sugar Mills Ltd.

Vs.

State of U. P

Civil Misc. Writ No. 3214 of 1958, Connected with Civil Misc. Writ Nos. 3146 of 1958, 3147 of 1958, 3538 of 1958, 8 of 1959, 755 of 1959, 756 of 1959, 775 of 1959, 776 of 1959, 3969 of 1958, 990 of 1959, 1057 of 1959, 46 of 1959, 399 of 1959, 400 of 1959, 401 of 1959, 413 of 1959, 414 of 1959, 416 of 1959, 575 of 1959, 3152 of 1958, 3495 of 1958, 3540 of 1958, 3605 of 1958, 6 of 1959, 226 of 1959, 227 of 1959, 228 of 1959, 234 of 1959, 235 of 1959, 236 of 1959, 2723 of 1958, 3213 of 1958, 269 of 1959, 403 of 1959, 2070 of 1958, 3899 of 1958, 3900 of 1958, 3968 of 1958, 3973 of 1958, 3992 of 1958, 3995 of 1958, 35 of 1959, 36 of 1959, 37 of 1959, 38 of 1959, 496 of 1959, 229 of 1959, 246 of 1959, 3430 of 1958, 1079 of 1959, 1080 of 1959, 592 of 1959, 593 of 1959, 800 of 1959, 832 of 1959, 3600 of 1958, 2571 of 1958 491 of 1959, 558 of 1959, 740 of 1959, 746 of 1959, 772 of 1959, 785 of 1959, 898 of 1959, and 1056 of 1959; And Special Appeal No. 4 of 1959.

(Raghubar Dayal, V. Bhargava and Jagdish Sahai, JJ.)

12.10.1959

JUDGMENT

V. Bhargava, J.

1. I have had the benefit of reading the judgment proposed to be delivered by my brother J. Sahai, J., and I entirely agree with him on all the points dealt with by him and the reasons given by him. I may, however, add, that I have felt considerable difficulty on one aspect of the case which relates to the submission of Messrs. Pathak and Jagdish Swarup that the provisions of the U. P. Large Land Holdings Tax Act, 1957 (hereinafter referred to as the Act) as also the schedule to the Act show that it is a tax not on land but on the person who holds the land. The Act undoubtedly lays down that a person having a small area of land has to pay proportionately a small amount of tax but, if the same land is held by another person who already holds a vast area of land, that very small portion of land would be assessed to a higher amount of tax. The incidence of tax is thus not dependent entirely on characteristics of the land itself, such as its area, quality of soil or value whether rental, annual or capitalized. Such characteristics remaining common, the same parcel of land under the Act gives rise to a larger liability of tax if it happens to be held by a person who already holds other lands as compared with the liability when the land

is held by a person who does not hold any other lands. It would appear in these circumstances that the manner, in which the tax incidence has been imposed by the Act, lends support to the view that this Act taxes not the land itself but the person holding the land, treating the land as an asset held by him. The question that arises is whether such a
tax still is a tax on land and not a tax on an individual in respect of his capital assets comprised of land. It also appeared to me that this argument finds some support from the judgment of the Bombay High Court in *Municipal Commissioner, Ahmedabad v. Gordhandas Hargovandas*[1], where the vires of rule 350 A, which was framed under Section 73 of Bombay Act XVIII of 1926, was challenged. The plaintiffs in that case were owners of open land within the jurisdiction of the Corporation and were assessed to tax on the basis of that rule. The contention before the Bombay High Court was that the tax, which was sought to be levied, was in the nature of a capital levy and the Bombay Legislature was not authorised to impose such a tax under entry No. 42 of List II of Schedule VII of the Government of India Act, 1935, and that the relevant entry, under which such a tax could be imposed, was entry No. 55 of List I of Schedule VII of the Government of India Act, 1935, so that the Central Legislature alone had the power to impose such a tax. When discussing this aspect of the case, Gajendragadkar J. held as follows :

> "I am disposed to hold that a distinction must be made between a rate or tax which is levied on land on the basis of its capital value and a tax which is levied on the capital value of the land treating it as an asset itself." Reliance was placed on this comment for the submission that, in the present case, the fact that the incidence of tax varies with the extent of holdings of lands by an individual means that the Act taxes the land holdings treating them as assets of the landholders and is, therefore, beyond the competence of the State Legislature which could only impose a tax on land. On a careful consideration of this submission, however, I have felt inclined to take the view that this argument must also be rejected. The first reason is that, as pointed out by my brother J. Sahai, J., there is no material for coming to a finding that the annual value of a landholding, as calculated under the provisions of the Act, does represent the capital value of the landholding.

The second reason, which has appealed even more to me, is that it is difficult to hold that the mere fact that the incidence of tax is made dependent on the extent of landholding of a particular landholder would convert a tax, which otherwise would be a tax on land, into a tax on the capital assets of the landholder in respect of his land-holdings. In this connection, a parallel is provided by the entry relating to taxes on income under which the Indian Income-tax Act was enacted. That entry also does not contain any provision that the tax to be imposed must be a tax on a person in respect of his income. The entry specifically permits imposition of faxes on income. In the case of the Central Legislature, the entry is No. 82 of List I in the Seventh Schedule to the Constitution permitting imposition of taxes on income other than agricultural income. In the case of the States, the entry is No. 46 of List II of the Seventh Schedule to the Constitution permitting imposition of taxes on agricultural income. The Indian Income-tax Act, 1939, which was enacted under entry No. 54 of List I of Schedule VII of the Government of India Act, 1935,

corresponding to entry No. 82 of List I of the Seventh Schedule to the Constitution, in prescribing the incidence of tax of incomes, follows a scheme which is very similar to the scheme for imposition of tax on landholdings under the Act. The amount of income-tax on a particular income under the Income-tax Act does not depend entirely on the various characteristics of income itself, such as the extent of the income or the source of the income. Under the slab system introduced in that Act, the amount of tax imposed on

[1] AIR 1954 Bom 188

the same income from the same source can be larger if the income is earned by an individual who has larger income from other sources whereas it would be smaller if the income is earned by another person who has no other source of income. If the submission made by Messrs. Pathak and Jagdish Swarup were to be accepted it would have to be held that even the Income-tax Act imposes a tax which is not covered by entry No. 82 of List I of the Seventh Schedule to the Constitution which permits imposition of taxes on income but imposes a tax on a person depending upon the amounts of income earned by him.

It has, however, never been disputed that the tax on income imposed by the Income-tax Act is not a tax on income, so that the mere fact that the incidence of tax on an income is made dependent on other incomes being held by the person in whose hands the income is sought to be taxed does not change the nature of the tax and it continues to be a tax on income. On that analogy, a tax, which is a tax on land, will continue to be a tax on land even though the incidence of the tax on the land depends upon the extent of holdings of land by the landholder. I have indicated these additional reasons which have impelled me to agree with the conclusions arrived at by my brother J. Sahai, J.

Jagdish Sahai, J.

2. These are 66 writ petitions and one special appeal in which the validity of the U. P. Large Land Holdings Tax Act, 1957 (hereinafter called the Act) has been challenged on several grounds. We have heard Messrs. G. S. Pathak, Jagdish Swarup, Rama Shanker Prasad and S. C. Khare on behalf of the petitioners. The other counsel appearing in these petitions made a statement that they had nothing to add to the arguments already addressed by the learned counsel mentioned above. Mr. Pathak who has led the arguments has challenged the validity of the Act on the following three grounds :- (1) that the tax was on the capitalised value of land and the U. P. Legislature was not competent to pass the Act; (2) that there is a delegation of essential legislative functions by the U. P. Legislature and as such the impugned Act is ultra vires; and (3) that the incidence of taxation is so high that the tax is confiscatory in nature and imposes unreasonable restrictions on the fundamental rights guaranteed to the petitioners under Clauses (f) and (g) of Article 19 (1) of the Constitution of India. Mr. Jagdish Swarup has also made the same submissions but in a different way. Mr. Rama Shanker Prasad contended that the tax to be levied by the impugned Act is nothing but land revenue and inasmuch as Sections 251 and 267 of the U. P. Zamindari Abolition and Land Reforms Act provided that the land revenue of a

Bhumidar cannot be increased, the effect of the Act would be that the same would be considerably increased in the name of a tax. It is also contended by him that there cannot be two statutes for the recovery of the same tax and, in any case, the land revenue cannot be recovered twice over from the same person. In the end he has submitted that inasmuch as Section 7 of the Act gives the power of making assessment to the same person who issues the notice asking for the return, the assessing authority becomes a judge of his own cause and on that ground the provisions of Section 7 are invalid. Mr. Khare submitted that the Act is hit by Article 14 of the Constitution of India inasmuch as there is discrimination between the agricultural and non-agricultural land and between land and other forms of property. He has also reiterated the submissions of Mr. Pathak.

3. I will first take the submissions of Mr. Pathak about the competency of the U. P. Legislature to enact the law. The long title of the Act is as follows :

> "An Act to provide for the imposition and collection of a tax on large land holdings." The preamble of the Act is as follows :
> "Whereas it is expedient to provide for the imposition and collection of a tax on large land holdings; it is hereby enacted in the Eighth year of the Republic of India as follows :"

The Act received the assent of the President on 15th October, 1957. Section 3 of the Act which is the charging section falls under Chapter II which is headed as "Imposition of Holding Tax". The said section reads as follows :

> "3 (1) There shall, save as hereinafter provided, be charged, levied and paid, for each agricultural year, on the annual value of each land holding, a tax, hereinafter called the 'Holding Tax' at the rates specified in the Schedule :
> Provided that no such tax shall be charged on any land holding the area whereof does not exceed thirty acres.
> (2) The State Government may, by notification in the official Gazette, exempt or remit in whole or in part, for such period as it may think fit and as often as it may consider necessary, the Holding Tax chargeable under sub-section (1) in respect of any class or classes of land holding as may be prescribed.
> (3) For the purposes of computing the area of land under the proviso to sub-section (1) the land covered by building with the area appurtenant thereto, but not exceeding five acres shall be excluded."

The submission of Mr. Pathak is that the language of Section 3, i. e., the charging section, is unambiguous end a correct reading of the section leads to the conclusion that the object of taxation is the annual value of the holding and not the holding itself. In this connection it is submitted that the annual value is actually the capital value of the holding and as such the tax could not be imposed by the U. P. Legislature. Mr. Pathak has also contended that it is a well

known rule of interpretation of fiscal statutes that for the determination of the question as to what is the object of the tax, the charging section alone must be looked into if the language of that section is unambiguous and it is not permissible to look into the machinery sections in order to find out as to what is the subject-matter of taxation. Mr. Pathak has also submitted that even the proviso to sub-section (1) of Section 3 should not be looked into for determining the object of the tax, because, according to him, the proviso is redundant for contradictory to the enacting clause in Section 3 (1) of the Act.
I will come to the question as to whether or not it is permissible to look to the Act as a whole to find out as to what is the object of taxation and also to the effect of the proviso in the present case at a later stage, and for the present would content myself with the consideration of the language of Section 3 (1) of the Act without the proviso. After having carefully examined the provisions of Section 3 of the Act I have come to the conclusion that the object of the tax is not the annual value of each land holding but the holding itself or, in other words, the land. I will for the present even leave aside the effect of the proviso to sub-section (1) of Section 3 of the Act.

4. It cannot be denied that the words "be charged, levied and paid" relate to the words "a tax, hereinafter called the 'Holding Tax'." Those words obviously have no connection with the words "on the annual value of each land holding." It would be noticed that before and after the words "on the annual value of each land holding" there are commas which clearly go to show that that phrase is detachable. Even without adding or removing any word to Section 3(1) of the Act as it stands, if we change the arrangement a little in order to bring the words "a tax, hereinafter called the 'Holding Tax'" close to the words "be charged, levied and paid" which are related to the former, the section would read as follows :

> "There shall, save as hereinafter provided, be charged, levied and paid, for each agricultural year, a tax, hereinafter called the 'Holding Tax', on the annual value of each land holding at the rates specified in the schedule :
> Provided that no such tax shall be charged on any land holding the area whereof does not exceed thirty acres;"

The expression "Holding Tax" means a tax on holding. If we, therefore, substitute the expression "a tax on holding", for the words "a tax, hereinafter called the Holding Tax" occurring in the rearranged Section 3 (1) it would read as follows after omitting the unnecessary words :

> "There shall .... be charged, levied and paid, for each agricultural year, a tax on holding, on the annual value of each land holding." It is obvious, therefore, that on a correct and careful reading of the sub-section in a manner consistent with the rules of grammar there can be only one answer and that is that the tax is on holding and the annual value is only a measure or the yardstick. In my opinion the expression "on the annual value of each land holding" only means on the basis of the annual value of each land holding.

It would have been much better if the Legislature had also put the words "basis of" in the sub-section after the words "on the" and before the words "annual value of each land holding", but the omission to put those words does not, in my opinion, in any way affect the correct interpretation of the sub-section and that for two reasons. In the first place, "on" is used also in the sense of "on the basis of. In the Shorter Oxford English Dictionary, amongst the meanings given to the word "on" the following also appear; "Indicating non-material basis, ground or footing - Indicating the ground, basis or reason of action, opinion etc. . . . Indicating that which forms the basis of income, taxation, borrowing, betting, profit, or loss". In my opinion the word "on" here has been used in the sense of footing or basis. Therefore even though the words "on the basis of or "on the footing of" have not been used in the sub-section that does not in any way restrict the meaning of the word "on" in the present context and it must be held that the expression "on the annual value of each land holding" in the context must mean "on the basis of the annual value of each land holding". The word "on" is also frequently used like "upon" (see Stroud's Judicial Dictionary).

5. If instead of "on" we use the word "upon" the section would read as follows and the point would be absolutely clear :

> "There shall .... be charged, levied and paid, for each agricultural year, a tax on holding upon the annual value of each land holding."

In the second place, it is permissible while interpreting a statute to read in it some words which have not been used in the section if the context of the section admits it and if it appears that that was the effect of the words already existing in the section even without reading the words that are sought to be read, in order to make clear what already is visible from the section. I am, therefore, unable to agree with Mr. Pathak that even if we confine our attention to sub-section (1) of Section 3, leaving the proviso to that sub-section out of consideration, it would appear that the object of taxation is the annual value of the holding and not the holding itself. Even confining our attention to the sub-section minus the proviso there can, in my opinion, be only one answer to the question as to what is the object of the tax and the answer is land holding or land in the same way as the only answer to the question as to what is the basis or measure of the tax would be that it is the annual value of each land holding. It may be stated that if the words "on the annual value of each land holding" did not find place in Section 3 but were placed in some other section, e.g., Section 5 or in an independent section the argument that it is a tax on annual value could not have been advanced. I have already shown above that those words are clearly separable from the main clause of Section 3(1) and in my opinion their proper place was not in Section 3. It, therefore, appears to me that it is not the substance but only the manner in which sub-section (1) of Section 3 is drafted which has provided Mr. Pathak with the argument that he has advanced. It is well settled that want of skill in drafting a provision does not go to the root of the matter and should not affect the correct interpretation of the statute (see *Mst. Mewa Kunwari v. Bourey*[2], *Salmon v.*

Duncombe[3],

6. What I have said above also finds support from the proviso which makes the whole thing abundantly clear. It would be noticed that the proviso is not enacted by means of a sub-section to Section 3 but is a part of sub-section (1) itself, and after the main clause there is a colon and thereafter the proviso finds its place in the following words :

> "Provided that no such tax shall be charged on any land holding the area whereof does not exceed thirty acres."

7. The proviso clearly shows that it is the land holding and not the annual value of the holding which is the subject-matter of taxation. It is not possible to read the proviso detached from the main clause of sub-section (1) of Section 3 because, as I have said above, the proviso is not contained in a separate sub-section but forms part of sub-section (1) itself and after the words "at the rates specified in the schedule" there is no full stop but only a colon. Therefore, according to the ordinary rules of grammar the whole of sub-section (1) including the proviso has got to be read together. In *Jennings v. Kelly*[4], e House of Lords say that there is no rule that the first or enacting part is to be construed without reference to the proviso. The proper course is to apply the broad general rule of construction which is that a section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest. Viscount Maugham in his speech in that case at page 219 says :

[2] AIR 1934 All 388 [4]1940 AC 206
[3](1887) 11 AC 627)

> "The principle is equally applicable in the case of different parts of a single section and nonetheless that the latter part is introduced by the words 'provided that' or like words .... The true principle undoubtedly is, that the sound interpretation and the meaning of the statute on a view of the enacting clause, saving clause and proviso, taken and construed together, is to prevail."
>
> (See the case mentioned above and also *Gangamoyee v. Manindra Chandra*[5], where the House of Lords case has been followed). It is a matter of common sense that a section, in order to be properly understood, must be read as a whole in its complete form. It is not to be read in pieces. As the punctuations stand in sub-section (1) of Section 3, the whole sub-section including the proviso must be read together.

8. It is true that it is also one of the rules of interpretation of statutes that if there is a clear conflict between the enacting clause and the proviso, or if the proviso is redundant, then the proviso will have to go. But that is not the case here. I have already said above that sub-section (1) of Section 3, even without the proviso, can only mean to provide for a tax on land holding and not on its annual value, the latter being only the basis or the measure of the tax. There is, therefore, no question either of a conflict or redundancy in the proviso. In the present case the proviso only makes abundantly clear what the enacting clause itself provides. It is also well established that if

there is any doubt in the enacting clause the proviso to it can be used to find out its correct meaning. However, it is not necessary to take in aid that rule because I have already held above that the proviso and the enacting clause operate in the same field and there can be no manner of doubt with regard to the construction of the enacting clause which, in my opinion, clearly contemplates a tax on holding and not a tax on its annual value or capitalized value.

9. Mr. Pathak has placed reliance upon the case of *Commissioner of Income-tax, Mysore v. I. M. Bank, Ltd*[6]*.,* and has cited the following passage from that judgment in support of his contention :

> "Lord Macmillan in *M. and S. M. Rly. Co. Ltd. v. Bezwada Municipality*[7]*,* laid down the sphere of a proviso as follows :

The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms. The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says 'unless the words of the proviso are such that that is its necessary effect' (vide also Corporation of the *City of Toronto v. Attorney General for Canada*[8]*,*)" (underlined by me here in '......'). The facts of the Privy Council case (AIR 1944 PC 71) and those of the Supreme Court case mentioned

[5] AIR 1950 Cal 225
[6] AIR 1959 SC 713
[7] 71 Ind App 113 at p. 122: (AIR 1944 PC 71 at p. 73)
[8] 1946 AC 32

above are very different from the facts of our case. There the proviso was being used to destroy or mutilate the effect of the enacting clause. Obviously the proviso could not be used for that purpose. In our case the enacting clause as also the proviso "operate in the same field" and the proviso clarifies what the enacting clause itself provides. Those cases, therefore, are no authority for the facts before us. It may, however, be stated that, according to what their Lordships of the Supreme Court have said, a proviso may in some cases be of use in interpreting the enacting clause (see the underlined (here in ' ') words). For the reasons that I have given above it cannot be held that the proviso is either repugnant or redundant to the enacting clause in Section 3 (1) of the Act and I see no difficulty in using it for the purpose for which I have used it. Sub-section (2) of Section 3 speaks of the tax as holding tax and provides that under certain circumstances the same may be remitted or exempted. Therefore whatever doubts may be entertained, though I have entertained none, about the language of Section 3 (1) of the Act, have been fully cleared up both by the proviso as also sub-section (2) of Section 3. It is a trite saying that a section must be read as a whole. Therefore, all the clauses of Section 3 must be read together. There is abundant authority for the proposition that it is not the nomenclature but the pith and substance of a tax which has got to be seen (see *District Board, Farrukhabad v. Prag Dutt*[9]*, Governor-General in*

Council v. Madras Province[10], and *In re, C. P. and Berar Sales of Motor Spirit and Lubricants Taxation Act*[11], In *Russell v. The Queen*[12], their Lordships of the Privy Council observed as follows :

> "The true nature and character of the legislation in the particular instance under discussion must always be determined, in order to ascertain the class of subject to which it really belongs." In the case of *George Walkem Shannon v. L. M. D. P. Board*[13], their Lordships relied upon the following remarks of Lord Atkin in *Gallagher v. Lynn*[14],
> "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."

10. In the case of *Prafulla Kumar v. Bank of Commerce Ltd., Khulna*[15], *AI*while considering the validity of the Bengal Money-lenders Act, 1940, the Privy Council examined not only Section 13 which was the main section but also Sections 24, 25, 26, 28, 29, 34 and 36 in order to determine the true nature of the legislation.
11. In (1937 AC 863 at p. 870) it was observed as follows :

> "It is well established that you are to look at the 'true nature and character of the legislation' : 1882-7 AC 829, 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."

This judgment was noticed by Supreme Court in the case of *State of Bombay v. F. N. Balasara*[16], The pith and substance of a particular Act can be gathered only after perusing the Act as a whole. In fact Mr. Pathak's argument that it is a tax on the capital value of land cannot be complete unless he takes the aid of Section 5 of the Act and the relevant

[9] AIR 1948 All 382 (FB)
[10] AIR 1945 PC 98
[11] 1938, AIR 1939 FC 1)
[12] (1882) 7 AC 829
[13] AIR 1939 PC 36
[14] (1937) AC 863
[15] R 1947 PC 60,
[16] AIR 1951 SC 318

rules. Section 3 of the Act only provides that the standard on
which the tax is levied shall be the annual value. It does not deal with the manner in which the annual value will be determined. That is dealt with by Section 5 of the Act. That section runs as follows :

> "5. Annual value. - (1) For the purposes of this Act, annual value of a land holding shall be deemed to be an amount equal to the rent payable for the land or lands included therein multiplied by such multiple not exceeding twelve and a half as may be prescribed and different multiples may be prescribed for different districts or portions of districts or for

different classes of lands included in a land holding.

(2) For the purposes of sub-section (1) the tax payable shall be deemed to be an amount calculated at the sanctioned hereditary rates applicable to the land or lands included in the holding and where there are no sanctioned hereditary rates, on such principles as may be prescribed :

Provided that the State Government may, where such rates were sanctioned prior to the first day of July, 1927, enhance the rates of such percentage not exceeding fifty as may be specified by notification in the official Gazette and different percentage may be specified for different classes of lands and for different areas of Uttar Pradesh."

The substance of Mr. Pathak's argument is that in the present case the U. P. Government has fixed twelve and a half times as the multiple for the entire State of U. P., and if the rent payable for the land is multiplied by 12? times it should amount to the capital value of the land. He then refers to the schedule and submits that in some cases 60 n.p. in a rupee will be taken away as tax on the amount arrived at by multiplying the rent by 12? times. This he submits is levying a tax on the capital value. I will examine the correctness of this argument at a latter stage. At the present all that I wish to point out is that in order to complete his argument that the object of tax is the capitalized value of land and not the land holding Mr. Pathak cannot confine himself to Section 3 alone and will have to fall back on other sections of the Act and the schedule also. Therefore the argument of Mr. Pathak that the charging section alone must be looked into is self-destructive. Mr. Pathak has placed reliance upon the passage in the judgment of Lord Thankerton in the case of In re, A reference under the Government of Ireland Act, 1920, 1936 AC 352, which has been quoted by the Federal Court in their judgment in the case of *Ralla Ram v. Province of East Punjab*[17], which says :

"It is the essential character of the particular tax charged that is to be regarded, and the nature of the machinery - often complicated - by which the tax is to be assessed is not of assistance, except in so far as it may throw light on the general character of the tax."

12. I have looked carefully into the case reported in 1936 AC 352. In my opinion there is nothing in that case which would justify the conclusion that for gathering the pith and substance of a tax if is not open to a Court to have a general review of the entire Act.

[17] AIR 1949 FC 81 at p. 86

13. The learned counsel has placed reliance upon the following passage from the judgment of Broomfield, J., in *Sir Byramjee v. Province of Bombay*[18],

"We have to discover what is the 'essential character' of the tax, what it is 'in pith and substance,' apart from the mere machinery by which it is assessed, and we are to look mainly at the charging Sections of the Act for this purpose." The learned counsel also relied upon the following observations of Kania J., in that very case :

"In *Provincial Treasurer of Alberta v. Kerr*[19], the importance of the words in the taxing

Section was stressed in the following terms (p. 720) :

Identification of the subject-matter of the tax is naturally to be found in the charging section of the Statute, and it will only be in the case of some ambiguity in the terms of the charging Section that recourse to other Sections is proper or necessary "

14. According to the learned counsel these passages clearly indicate that the established rule for construing the fiscal enactments is that in order to determine as to what is the object of taxation attention must be confined to the charging section alone. As would appear from the opening words of the passage occurring in the judgment of Kania, J., the taxing section is important but I have not been able to find anything either in the judgment of Broomfield, J., or that of Kania, J., to justify the conclusion that it is not permissible to look into the rest of the Act in order to determine the pith and substance of it but necessarily to confine one's attention to the charging section alone. No doubt the charging section is important but that does not exclude the consideration of the other provisions of the Act.

15. In the case of AIR 1949 FC 81 (supra) for determining the nature of the tax and the object of taxation Fazl Ali, J., considered not only the provisions of Section 3 which was the charging section in the Punjab Act but also Section 5 which provided the manner in which the annual value of the land was to be determined. The learned Judge did not confine his attention only to the charging section. In the case of AIR 1945 PC 98 their Lordships examined the provisions of Sections 2, 3, 4, 5, 6, 7 and 19 of the Madras Act, and after doing so observed as follows :

> "Their Lordships have thought it desirable to refer to the provisions of the Madras Act in this detail in order to emphasize its essential character. Its real nature, its 'pith and substance' is that it imposes a tax on the sale of goods. No other succinct description could be given of it except that it is a 'tax on the sale of goods'."

A perusal of that case will clearly show that the provisions of the entire Act were carefully waded through before their Lordships pronounced their opinion on the essential character of the tax. It is not necessary to multiply authorities on the point but it may be stated without any fear of contradiction that the general judicial practice has been to look into the various provisions of an Act in order to determine its pith and substance and that is so even with regard to fiscal statutes.

16. Looking to the whole of the Act it appears to me that if is clearly a tax on the holding

[18] AIR 1940 Bom 65

[19](1933) AC 710

and not on the annual value and the annual value is only the measure of the tax. This conclusion finds full support from the provisions of sub-section (2) of Section 3 which is a part of the charging section itself as also from Sections 7, 11, 15 and 17 of the Act and also from a perusal

of the preamble and the long title to the Act. I have already given above what sub-section (2) of Section 3 provides. Section 7 provides for the publication of a notice requiring every land holder to furnish a return in connection with the payment of the 'Holding tax'. Section 11 provides for an appeal against an assessment in respect of 'land holding'. Section 15 empowers the assessing authority to issue a notice when in its opinion any land holding has not been assessed or has been assessed at too low a rate. Section 17 provides that the holding tax shall be payable by the person who holds the land holding. The preamble states that "to provide for the imposition and collection of a tax on large land holdings" the Act has been enacted. The long title states that the Act is to provide for the imposition and collection of a tax on large land holdings. A perusal of these sections as also the preamble and the long title of the Act cannot point to any other conclusion except the one I have arrived at and that is the tax is on the land holding and not on the annual value or the capitalized value of the land.

17. Mr. Pathak has strenuously urged that neither the preamble nor the long title can be looked into to determine the nature of the tax and to interpret the Act. While it is true that the preamble or the long title cannot be the sole basis of the interpretation of an Act, especially if it is inconsistent with the various sections in the Act itself, the heading and the preamble can be taken into consideration while trying to find out the pith and substance of the Act and in a way the preamble supplies the key to interpretation (see *Bhola Umar v. Mt. Kausilla*[20]*, Mohammad Yusuf v. Imtiaz Ahmad*[21]*, Mt. Rajpali v. Surju Rai*[22]*,* The Supreme Court has also held that the title of a statute is an important part of the Act and may be referred to (See *Aswani Kumar v. Arabinda Bose*[23]*,)*. I shall, however, deal with this case later as Mr. Pathak has also placed it before us.

18. Mr. Pathak has also cited several cases in support of his contention that the preamble cannot be read to interpret the Act. The first one of those cases is *Attorney General v. Brodie*[24]*,* All that their Lordships have said in that case on the point of preamble is as follows :

> "Now it appears to us, if we are to rely upon the statute alone, the words of the enactment are quite sufficient, and the effect of them is not abridged by the statement of the particular purpose, which is set forth in the preamble."

That case does not support Mr. Pathak's contention that the preamble can never be looked at along with the provisions of the statute itself for the purpose of knowing the object of the legislation.

19. The second case relied upon by *Mr. Pathak is Nga Hoong v. The Queen*[25]*,* That case in fact supports the view that I have taken and not the one which Mr. Pathak has propounded as the following observations of their Lordships of the Privy

[20] AIR 1932 All 617 (FB)
[21] AIR 1939 Oudh 131
[22] AIR 1936 All 507 (FB)
[23] AIR 1952 SC 369
[24] 4 Moo Ind App 190 (PC)
[25] 7 Moo Ind App 72 (PC)

Council will show :

"The preamble describes that to have been the object of the Statute; and there can be no doubt that we must consider the preamble as a key to the construction of the Statute, though it would not, of course, control every provision, for we very often find that the subsequent provisions of a statute extend beyond the limits of the preamble."

20. The third case cited by Mr. Pathak is *Omrao Begum v. Government of India*[26], That case is an authority for the proposition that the provisions of a section in the statute cannot be controlled by any words in the preamble. That case is distinguishable on the facts of the case before us. In our case the preamble is not sought to control the provisions of the Act. It is being considered along with the various provisions of the Act and I have already said above that it is not inconsistent either with the charging section or with the other sections in the Act. This case can, therefore, be of no help to the learned counsel.

21. Mr. Pathak has next relied upon the case of *Secretary of State v. Maharaja of Bobbili*[27], The Privy Council expressed itself in the following words in that case :

" "The case depends upon the proper construction to be put upon the Act referred to. Its preamble is not without importance."
1 find nothing in the case to justify the conclusion that a preamble cannot be used along with the other provisions in the Act to find out the object of legislation.

22. The next case relied upon by Mr. Pathak is AIR 1952 Supreme Court 369. I find nothing in that case to justify the exclusion of the preamble from consideration along with the other provisions of the Act. In fact Das, J., observed as follows :

"Although there are observations in earlier English cases that the title is not a part of the statute and is, therefore, to be excluded from consideration in construing the statute, it is now settled law that the tide of a statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction, although it cannot override the clear meaning of the enactment."

23. The last case cited by Mr. Pathak on this point is *Thangal Kunju Musaliar v. Venkatachalam*[28], In that case again I find nothing which would justify excluding the preamble from consideration. In that case it was observed as follows :

"In order to ascertain the scope and purpose of the impugned section reference must first be made to the Act itself. The preamble of a statute has been said to be a good means of finding out its meaning and as it were a key to the understanding of it."

24. It may be noted that in the cases of the Supreme Court mentioned above the preamble was actually used by their Lordships in their judgments.

[26]10 Ind App 39 (PC)
[27]46 Ind App 302
[28] AIR 1956 SC 246

25. The next argument of Mr. Pathak which has been developed by Mr. Jagdish Swarup also is that the present piece of legislation does not fall under any heading in either List II or List III of the Seventh Schedule of the Constitution. According to them there is no entry in List II or List III which would cover the present enactment. On behalf of the State it is contended that Entry No. 49 in the State List empowered the State Legislature to enact the present law. None of the learned counsel appearing on behalf of the petitioners has been able to point out any entry in the Union List (List I) which would cover the present legislation. Entry No. 86 in List I reads as follows :

> "Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies." This is a verbatim reproduction of entry No. 55 of List I of the Government of India Act, 1935 (hereinafter referred to as the 1935 Act). Entry No. 49 of List II reads as follows :
>
> "Taxes on lands and buildings."

In the 1935 Act its counterpart was Item No. 42 which reads as follows :

> "Taxes on lands and buildings, hearths and windows."

Under the Government of India Act, 1919, the Provincial Legislatures had authority to levy a tax on land as also on buildings but not to implement the revenues of the province and only for the benefit of the local authorities. As is well known there were no lists in the 1919 Act. Till then India did not come to have a federal form of Government and that being so there could be no question of two sovereign spheres of legislation. However, the Provincial Legislative Council were given some powers by way of administrative convenience and under the provisions of Section 80A(3)(a) of the Government of India Act, 1919, the Scheduled Taxes Rules were framed. Rule 8 of those rules reads as follows :

> "3. The Legislative Council of a province may, without the previous sanction of the Governor General, make and take into consideration any law imposing, or authorizing any local authority to impose, for the purposes of such local authority, any tax included in Schedule II to the rules." Entries Nos. 2 and 3 in Schedule II were as follows :
>
> "2. A tax on land or land values.
>
> 3. A tax on buildings."

In the 1935 Act by means of entry No. 42 in List II the Provincial Legislature was empowered to levy a tax on lands and building and inasmuch as the words 'for the purposes of such local authority' did not find place in this entry, the Provincial Legislature became empowered to levy a tax on lands and buildings for all purposes including the purpose of benefiting the provincial

revenues.

26. In my opinion the State Legislature was fully competent to have passed the impugned Act because of entry No. 49 of the State List. There is no other entry in any of the three lists which gives the power to tax land. A glance at the various entries in the three lists would show that the right to impose a tax on land is allotted to the sphere of the State Legislature. It is well known that within its allotted sphere the State or the Central Legislature, as the case may be, has plenary powers of legislation subject only to the express provisions of the Constitution (see *Umeg Singh v. Stale of Bombay*[29]*,)*. It is also well known that entries in Legislative Lists must be given a broad and comprehensive interpretation

> "in construing an entry in a list conferring legislative powers and widest possible construction according to their ordinary meaning must be put upon the words used therein" and further that
> "the cardinal rule of interpretation, however, is that words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative powers the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude" (see *Navinchandra v. Commissioner of Income Tax, Bombay*[30]*,* also see *Amar Singhji v. State of Rajasthan*[31]*,* and *United Provinces v. Atiqa Begum*[32]*,* where very wide interpretation was given to the entries).

The words 'Tax on land' must be given their widest connotation and it has got to be held that it is open to the State Legislature under the sanction of Entry No. 49 of List II to impose any kind of tax on land. I have already held above that the charging section as also other sections in the Act make it abundantly clear that the impugned Act only purports to tax land or land holding. It thus appears to me that it was within the competence of the State Legislature to have enacted the present Act. Once it is found that the subject matter of the impugned Act is within the competence of the State Legislature nothing can prevent them from legislating about it, there being no prohibition in the Constitution against it. (See *Jagannath Baksh v. United Provinces*[33]*,* which was affirmed by the Privy Council in *Jagannath Baksh v. United Provinces*[34]*,*). It may also be mentioned that there is nothing in Entry No. 49 of List II or in any provision in the body of the Constitution to justify the argument that the State Legislature cannot impose a tax on capitalised value of agricultural land, assuming that the present Act purports to impose such a tax. I am saying "assuming" because I have shown later on in this judgment that the impugned Act does not purport to impose a capital levy. Similarly there is nothing in Entry No. 49 of List II or in any provision in the body of the Constitution to justify the conclusion that the State Legislature cannot impose a fax on the capitalized value of non-agricultural land also. The words 'tax on lands and buildings' occurring in Entry No. 49 of List II do not admit of any such restriction. That entry provides for all kinds of taxes on lands whether agricultural or non-agricultural and there is nothing in that entry to justify the conclusion that a capital levy on land

is excepted from the scope of that entry. In my opinion it is not permissible to read in this entry any limitations which its language does not provide. As was observed by the Federal Court in AIR 1939 FC 1, a vast magnitude of subjects has been dealt within a very few words and therefore those words should be given a large and liberal interpretation. The expression 'taxes on land' is wide enough to include every kind of tax

[29] AIR 1955 SC 540 at p. 547 [31] AIR 1955 SC 504 at p. 520 [33] AIR 1943 FC 29
[30] AIR 1955 SC 58 at p. 61 [32] AIR 1941 FC 16 [34] AIR 1946 PC 127

including a capital levy. That would have been the meaning of the expression 'taxes on land' in Entry No. 49 of List II even if the word 'taxation' had not been defined in the Constitution. However, the word 'taxation' has been defined and Article 366 (28) of the Constitution, which is a reproduction of Section 311 (2) of the 1935 Act, runs as follows :

> "366. In this constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say -
> x x x x
> 28. 'taxation' includes the imposition of any tax or impost whether general or local or special and 'tax' shall be construed accordingly."

The magnitude and all-embracing nature of these words is significant. The definition makes it abundantly clear that all kinds of taxes are included in the word 'tax'. This in my opinion concludes the point beyond controversy and it must be held that the scope of Entry No. 49 is wide enough to include a capital levy on agricultural land.

27. In AIR 1949 FC 81, the question before the Federal Court was whether the tax levied by Section 3 of the Punjab Urban Immovable Property Tax Act 1940, fall within item 42 of the Provincial List of the 1935 Act (equivalent to Entry 49 of List II of the Constitution). Their Lordships answered by saying that it was a tax which fell under Entry 42 of the Provincial List. The Punjab Act was in some respects like our Act. The charging section there provided for charging, levying and paying of an annual tax on buildings and lands at the rate of not exceeding 20 per cent of the annual value of such buildings and land. The annual value of the land and the buildings was to be determined under Section 5 of that Act. The argument was that the basis of the tax was the annual value of the building and land and inasmuch as annual value was the fairest standard for measuring income it was a tax on income which would fall under Entry No. 54 of List I and could not fall under Entry No. 42 of List II. Their Lordships held that the broad contention that whenever the annual value is the basis of a tax the tax became one on income was not correct and that other factors had to be taken into consideration. It was further held that the charging section spoke of a tax on land and buildings and not one on income and that though annual value was the basis the annual value was not the actual income but only hypothetical or notional income meant only for the purposes of that tax. While doing so, Fazl Ali, J., observed as follows (P. 87) :

> "If a tax is to be levied on property it will not be irrational to correlate it to the value of the property and to make some kind of annual value the basis of the tax, without intending to

tax income."

After examining the pith and substance of the Act their Lordships held that it fell within the purview of entry No. 42 of List II of the 1935 Act.

28. In AIR 1954 Bombay 188, the vires of rule 850A which was framed under Section 37 of the Bombay Act 18 of 1925 was challenged. The plaintiffs of that case owned open land within the jurisdiction of the Corporation and were called upon to pay certain amounts which were assessed on them on the basis of R. 350A. The argument before the Bombay High Court was that the tax which was sought to be raised was in the nature of a capital levy and the Bombay Legislature was not authorized to allow the levy of such a rate under entry No. 42 of List II as the relevant entry was No. 55 of List I and the Central Legislature alone had the power to enact the impugned law. The case was heard by Gajendragadkar and Vyas, JJ. and both the learned Judges came to the conclusion that the impugned rule was intra vires. While doing so the Bench drew a distinction between a rate or tax which is levied on land on the basis of its capital value and a tax which is levied on the capital value of land treating it as an asset itself, and the learned Judges remarked that if the object of taxation was the capital value of land as an asset itself any encumbrances on the land would have to be taken into consideration and the amounts of encumbrances deducted from the value of the land. Holding that there being no provision to take into account the encumbrances on the land in the Bombay rule the Bench held that the object of taxation was not the capitalized value of the land as an asset but only the land though the basis of taxation of land was its capital value. The learned Judges while dealing with this aspect relied upon the passage in the judgment of Fazl Ali, J., in the case of AIR 1949 FC 81, which I have quoted above. The learned Judges noticed the provisions of Section 98A of the Madras City Municipal Act and Section 128(1) of the U. P. Municipalities Act, and observed that under both these Acts tax on land or buildings or on both could be imposed by some of the Indian Municipalities on the basis of capital valuation of the land or buildings which were sought to be taxed. The learned Judges further held that considering the provisions of the two Acts mentioned above it could be said that the legislative practice prevailing in the country was to permit a tax on land or building or on both on the basis of its capital value and, therefore, further held that the Parliament while enacting the 1935 Act must have been aware of this legislative practice and must have intended to permit under entry No. 42 of List II a tax on land or building or on both on the basis of its capitalized value. Having said that, they held the Bombay rule to be intra vires.

29. The considerations which governed the learned Judges of the Federal Court as also of the Bombay High Court in the two cases mentioned above are also present in the case before us and even if it be assumed in our case that the annual value is the capitalized value of land, the capitalized value is only the basis and not the object of taxation. In this view of the matter there is no difficulty in holding that the U. P. Legislature was competent to have passed the impugned Act.

30. I will now deal with the submission made on behalf of the petitioners that the impugned Act purports to impose a capital levy. It may straightway be mentioned that the argument that the impugned Act purports to tax capitalized value is based on assumptions. In this connection the argument that has been advanced before us is that 60 per cent of the amount arrived at after multiplying the rates mentioned in Section 5 of the Act by twelve and a half times (the multiple fixed by the State Government for the whole of the State) would amount to the capitalized value of the land. In the first place 60 per cent is chargeable only from the biggest assessees and not from all and, secondly, having carefully perused the affidavits filed in the various petitions it must be said that there is no material to justify the conclusion that what is being charged is the capitalized value as facts and figures necessary for such a conclusion are missing from those affidavits and the facts stated therein do not provide a foundation on which the argument of the learned counsel could be built. It must be remembered that there is a very strong presumption in favor of the constitutionality of the Act and a heavy burden lay on the petitioners to show that what was being charged was in fact the capitalized value of land. This the petitioners have not done. As it is I see no reason to believe or hold that the result of the calculations as provided in Section 5 of the Act would be that the amount payable even by the biggest assessees would be equivalent to the value or the capitalized value of the land holding or the land.

31. There is another assumption in the argument of the learned counsel that the capitalized value of non-agricultural land as a unit by itself can be taxed only under entry No. 86 of List I and not under entry No. 49 of List II. In this connection what has been submitted on behalf of the petitioners is that entry No. 49 of List II must be so read as to mean taxes on lands and buildings but not on their capitalized value. The argument progresses that if it is intended to tax the capitalized value of non-agricultural land that can be done only under entry No. 86 of the Union List and not under entry No. 49 of the State List because it is contended that that would be taxing the capital value of non-agricultural land. In other words the submission is that the State Legislature is not competent to impose a tax on the capitalized value of non-agricultural land. It is further submitted that under entry No. 49 of List II the extent of the power of the State Legislature in respect of agricultural and non-agricultural land is the same and inasmuch as considering the effect of entry No. 86 of List I there can be levied no tax on the capitalized value of non-agricultural land under entry No. 49 of the State List, it must be held that the State Legislature is not competent to levy a tax on the capitalized value of agricultural land also under the cover of that entry. Entry No. 86 of List I speaks of taxes on capital assets. The question is whether the words 'capital assets' mean the total assets of all the properties in the hands of a person or even the value of one unit of a person's property. In the case of AIR 1940 Bombay 65, Kania, J., (as he then was) expressed his clear opinion that under entry No. 55 of List I of the 1935 Act (equivalent to entry No. 86 of the Union List of the Constitution) the tax contemplated by that entry was on the total capital assets and not on individual portions of a person's capital. The other learned Judge who was a member of the Bench, Chief Justice Beaumont, said that it was unnecessary to consider the argument based on entry No. 55; but nevertheless he observed that an analysis of the language employed in entries Nos. 54 and 55 respectively affords scope

for the argument that the assets mentioned in entry No. 55 must mean the totality of the assets. Mr. Pathak has placed reliance upon a decision of the Bombay High Court in the case of *J. N. Duggan v. Commissioner of Income-tax*[35], where the learned Chief Justice made the following observations with regard to entry No. 55 in List I and contrasted it with entry No. 42 of List II of the 1935 Act :

> "Whereas the Provincial Legislature is competent to impose a tax on lands and buildings, the Central Legislature is empowered under entry 55 of List I to impose a tax not on lands and buildings as such but on the capitalized value of lands and buildings," and that "therefore, the power of the Provincial Legislature is restricted to tax on lands and buildings without taking into consideration the capital value of lands and buildings."

32. It would be noticed that Tendolkar, J., who was the other learned Judge sitting with the Chief Justice did not expressly take the view which the learned Chief Justice took. In fact, as the judgment of that case would show, Chief Justice Chagla and Tendolkar, J.,

[35] AIR 1952 Bom 261

arrived at the same conclusion but for entirely different reasons. The learned Chief Justice took the view that the Act impugned before them was intra vires because it fell within entry 55 of List I of Schedule VII, whereas according to Mr. Justice Tendolkar it was intra vires because it fell within entry 54 of the same List. That case came up for consideration before another Division Bench of the Bombay High Court in the case of AIR 1954 Bombay 188. Gajendragadkar, J., who was the learned Judge presiding over the Bench, with regard to the observation of Chief Justice Chagla quoted above in J. N. Duggan's case, AIR 1952 Bombay 261, observed as follows :

> "With very great respect, I am unable to agree with this last observation. It is clear that the scope of Entry 42 in List II was not argued fully before the learned Chief Justice and, in fact, the Court was not directly called upon to consider the proper construction of the said Entry at All. Therefore, the attention of the learned Chief Justice was not drawn to the legislative history on the topic and it was not pointed out to him that in many Provincial Municipal Acts power has been expressly given to the Municipalities to impose a tax on lands after adopting the basis of the capital value of the said lands.

As I have already pointed out, I have come to the conclusion that even if the capital value of lands is taken into consideration by the Municipal Corporation in determining the amount of tax to be levied on the open land, the tax does not become a tax on the capital value of the assets. But, with respect, I do not read these observations of the learned Chief Justice as expressing his considered decision that under Entry 42 in List II it would not be competent to the local Legislature to consider the capital value of lands at All. Therefore, I must hold that the learned trial Judge was wrong in coming to the conclusion that Rule 350A framed by the Municipal

Corporation of Ahmedabad was ultra vires'."

Vyas, J., who was the other learned Judge sitting with Gajendragadkar, J., in the Ahmedabad case, AIR 1954 Bombay 188 (201), observed as follows :

> "However, in support of their contention that the capital value of the lands and buildings cannot be taken into consideration at all for the purpose of levying a tax under Entry 42 of List II, the plaintiffs have relied on certain observations of the learned Chief Justice in the abovementioned case of ' AIR 1952 Bombay 261' and those observations are (p. 263); 'whereas the Provincial Legislature is competent to impose a tax on lands and buildings the Central Legislature is empowered under Entry 55 of List I to impose a tax not on lands and buildings as such but on the capitalized value of lands and buildings' and that 'therefore, the power of the Provincial Legislature is restricted to tax on lands and buildings without taking into consideration the capital value of lands and buildings'. With very great respect, the observations are 'Obiter' and I do not think the learned Chief Justice laid down a principle that no regard whatever should be paid to the capital value of the lands and buildings while levying a tax on them under Entry 42 of List II. The point with which his Lordship was directly concerned in the case was as to the scope of Entry 55 of List I, and not as to the scope of Entry 42 of List II. As no question arose in that case regarding the competence of the Provincial Legislature to levy a tax on lands and buildings due regard being had to their capital value, the attention of the learned Chief Justice was not drawn to the legislative practice on that subject in, India prior to 1935. In these circumstances, I do not think that the above observations of the learned Chief Justice can help the plaintiffs in their contention that the levy of the impugned tax is outside the competence of the Provincial Legislature and therefore of the municipality." I have perused Duggan's case, AIR 1952 Bombay 261, with care and in my opinion the observations made by Chief Justice Chagla which have been quoted above cannot amount to the decision of the Bench bearing that case and the same views cannot be attributed to the other learned Judge (Tendolkar, J.). Apart from it, they are in the nature of obiter dicta as the interpretation of Entry 42 of List II was not up for consideration before that Bench. As at present advised I with the greatest respect am inclined to agree with Kania, J., (as he then was) that "assets" in Entry 86 mean all the assets.

33. Though it is really not necessary to decide the question as to by which entry would a tax on I the capitalized value of non-agricultural land be covered, that being not the question before us, it may be said in answer to the argument of the learned counsel which has been very seriously pressed that it appears to me that even such a tax would fall under entry No. 49 of List II and not under entry No. 86 of List I of the Seventh Schedule.
It was held by the Federal Court in the case of *Subrahmanyan v. Muttuswami*[36], relying upon the case of *Great West Saddlery Co. v. The King*[37], that the rule of construction is that the general language in the items of the Federal Legislative List in Section 100(1) of the 1935 Act yields to

particular expressions in the Provincial Legislative List. The Supreme Court in the case of *Amar Singhji v. State of Rajasthan,*[38] observed as follows :

> "It was argued that the heads of legislation mentioned in the Entries should receive a liberal construction, and the decision in AIR 1941 FC 16 at p. 25, was quoted in support of it. The position is well settled and in accordance therewith, it could rightly be held that the legislation falls also under Entry No. 18. But there being an Entry No. 36 specifically dealing with acquisition, and in view of our conclusion as to the nature of the legislation, we hold that it falls under that Entry." (See also the case of *Saligram v. Emperor*[39], It cannot be denied that entry No. 49 specifically provides for lands of all kinds and no distinction between agricultural and non-agricultural land is indicated in that entry. It may be that the general word "assets" occurring in entry No. 86 may include in a remote sense capitalised value of non-agricultural land also. The general language of entry No. 86 must yield place to the expression "land" used in entry No. 49 of List II and in that view of the matter it also appears to me that taxation even on the capitalised value of non-agricultural land would fall under entry No. 49 of List II. In this connection the case of AIR 1945 PC 98 at p. 100, may be cited, where it was observed by their Lordships of the Privy Council as follows :
> "But it appears to them that it is right first to consider whether a fair reconciliation cannot be effected by giving to the language of the Federal Legislative List a meaning which, if less wide than it might in another context bear, is yet one that can properly be given to it, and equally giving to the language of the Provincial Legislative List a meaning which it can properly bear."

[36] AIR 1941 FC 47
[37] AIR 1921 PC 148
[38] AIR 1955 SC 504 at p. 520
[39] AIR 1943 All 26 at p. 32 (FB)

34. In the C.P. Motor Spirit Act case, AIR 1939 FC 1, it was held that

> "a general power ought not to be so construed as to make a nullity of a particular power conferred by the same Act and operating in the same field, when by reading the former in a more restricted sense, effect can be given to the latter in its ordinary and natural meaning."

Restricting the literal meaning of the words defining the powers vested in the Federal Legislature in order to afford scope for powers which are given exclusively to the Provincial Legislatures "is not to ignore the non obstante clause, still less to bring into existence, as it were, a non obstante clause in favour of the Provinces; for if the two legislative powers are read together" in this manner, "there will be a separation into two mutually exclusive spheres, and there will be no overlapping between them". In my opinion it is permissible on the authority of these cases to

restrict the meaning of the word "assets" in entry No. 86 by excluding land, both agricultural as well as non-agricultural, from its ambit in order to give full scope to the expression "Taxes on land" occurring in entry No. 49 of List II.

35. If we examined the three lists carefully we find that in the present Constitution land, both agricultural and non-agricultural, is the exclusive preserve of the State Legislature and there are no entries in List I directly dealing with land. On the basis of the rule that in case of doubt all the entries in the three Lists must be carefully scanned to see as to in which particular entry the impugned legislation fits in or in which List that subject falls, it would appear that even with regard to a tax on the capitalised value of non-agricultural land the only relevant entry would be No. 49 of List II and not entry No. 86 of List I. I have already said above that it is really not necessary for us to decide as to under what head would a legislation taxing the capitalised value of non-agricultural land fall because that is not the point which we have to decide in the present case. In fact it was observed by the Federal Court in the case of C. P. Motor Spirit Act, AIR 1939 FC I at p. 31, following *Citizens Insurance Co. v. Parsons*[40], as follows :

> "In performing this difficult duty, it will be a wise course for those on whom it is thrown to decide each case which arises as best they can, without entering more largely upon an interpretation of the statute than is necessary for the decision of the particular question in hand."

36. It may be stated that when confronted with the question as to under what entry would the impugned Act fall, if not under entry No. 49 of List II, Messrs. Pathak and Jagdish Swamp stated that it would fall under the residuary power i.e., entry No. 97 of List I read with Article 248 of the Constitution. In my opinion there is no substance in this contention. It is well known that "resort to that residual power should be the very last refuge. It is only when all the categories in the three lists are absolutely exhausted that one can think of falling back upon a nondescript" (see AIR 1941 FC 47 at p. 55).
It is a matter of common knowledge that both at the time of the enactment of the 1935 Act as also at the time when the present Constitution was passed an attempt was made to

[40] (1882) 7 AC 98

include in one list or the other all sorts of conceivable subjects which human mind could at that time foresee and there was an attempt to make the lists exhaustive and to avoid a final assignment of residuary powers. What I say finds ample support from the following quotation from the judgment of the Privy Council in the case of AIR 1945 PC 98 :

> "The Indian Constitution is unlike any that have been called to their Lordships' notice in that it contains what purports to be an exhaustive enumeration and division of legislative powers between the Federal and Provincial Legislatures."

Chief Justice Gwyer in the C. P. Motor Spirit Act case, AIR 1939 FC 1, observed as follows :

> "The attempt to avoid a final assignment of lesiduary powers by an exhaustive enumeration of legislative subjects has made the Indian Constitution Act unique among federal Constitutions in the length and details of its Legislative Lists."

To the same effect are the observations of Sulaiman, J., in the case of AIR 1941 FC 47 - What was true of the 1935 Act is truer still of the Constitution because it would be seen that the lists under the Constitution have been made more elaborate and the chances of leaving anything for residuary legislation eliminated as far as human ingenuity could devise. It may be stated that in List I of the Constitution there are 97 entries against 59 in List I of the 1935 Act. Similarly in List II of the Constitution there are 66 entries as against 54 in List II of the 1935 Act, and in List II of the Constitution there are 47 entries as against 36 in the 1935 Act. It cannot be supposed for a moment that the Constitution-makers could not conceive the idea of a tax on capitalized value of agricultural land, because, as will appear from entry No. 86 of List I itself, while providing for taxation on the assets of other forms of property they excluded the assets or capitalized value of agricultural land from its operation expressly. The tax on the capitalized value of agricultural land was, therefore, within the conception of the Constituent Assembly. The possibility therefore, of its falling under the residuary powers has got to be completely excluded.

37. If the present Act cannot fall under the residuary powers then it must fall under some entry in one of the three lists, and the only entry under which it can fall is 49 of the State List to the exclusion of all other entries in all the three lists. The words in Article 246 (3) of the Constitution are "in respect of" an expression borrowed from the Australian Constitution, and not "in relation to" which expression has been used in the Canadian Constitution. The words "in respect of" connote the idea of pith and substance. The pith and substance of the present tax being a tax on land it was within the competence of the State Legislature to pass the impugned Act.

38. The argument that Mr. Khare advanced in this connection that the power to tax the capitalized value of agricultural land is forbidden by the Constitution can also not be accepted. The argument is based on the supposition that a capital levy on agricultural land is not provided in any of the entries in the three Lists. I say "supposition" because I have already held that it is provided by Entry No. 49 of List II. The State Legislatures have been given under Article 246 (3) of the Constitution sovereign powers to legislate in respect of matters assigned to them in the State List. It is well known that

> "the entries in the Lists of the Seventh Schedule are designed to define and delimit the respective areas of legislative competence of the Union and State Legislatures, and such context is hardly appropriate for the imposition of implied restrictions on the exercise of legislative powers, which are ordinarily matters for positive enactment in the body of the Constitution" (see *State of Bihar v. Kameshwar Singh*[41]*,*). In other words :
>
> "the entries in the lists are merely legislative heads and are of an enabling character. Duty to exercise legislative power and in a particular manner cannot be read into a mere head

of legislation" (See Kameshwar Singh's case AIR 1952 Supreme Court 252 cited above).

It is absolutely clear that the various entries in Lists I to III do not denote the powers of legislation but only the fields of Legislation. The only limitations on the powers of the Legislatures created by the Constitution are those specifically mentioned in the enacting part of the Constitution, e.g., the provisions with regard to fundamental rights. Therefore, restrictions which are not mentioned in the body of the Constitution itself cannot be assumed upon the powers of the State Legislatures, and a restriction of the powers cannot be inferred from a supposed omission in the Lists, because the Lists are not the source of power, the source being Article 246 of the Constitution of India.

39. In *Attorney General for Ontario v. Attorney General for Canada*[42], it was observed by their Lordships of the Privy Council as follows :

> "In the interpretation of a completely self-governing Constitution founded upon a written organic instrument......if the text is explicit, the text is conclusive, alike in what it directs and what it forbids. When the text is ambiguous, as, for example 3 when the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular power within either, recourse must be had to the context and scheme of the Act. Again, if the text says nothing expressly, then it is not to be presumed that the Constitution withholds the power altogether. 'On the contrary, it is to be taken for granted that the power is bestowed in some quarter' unless it be extraneous to the statute itself (as, for example, a power to make laws for some part of His Majesty's dominions outside of Canada) or otherwise is clearly repugnant to its sense. For whatever belongs to self-government in Canada belongs either to the Dominion or to the provinces, within the limits of the British North America Act." (Underlined by me; here in ' ').

These observations apply with greater force to our Constitution.

40. The next submission of Messrs. Pathak and Jagdish Swarup is that the various provisions of the Act as also the Schedule would show that it is not a tax on land but on the person who holds the lands. The argument is supplemented by the submission that a person having a small area of land has to pay a small amount of tax but if the same area of land is transferred by him to a person who already holds a vast area of land, even the unit which is being transferred to the latter would be assessed to a higher amount of tax.
It is contended that if the tax were a tax on land the tax would be based on some other

[41] AIR 1952 SC 252 at p. 264
[42](1912) AC 571 (at pp. 583-584)

principle than this e.g., on the quality of land or the area of the land and not on the basis
of a particular area held by a particular person. On the basis of this argument it is contended that

such a tax cannot be a tax on land and cannot, therefore, be covered by entry No. 49 of List II. In my opinion there is no substance in this argument. The Act imposes a tax on land which is to be calculated on its annual value. The annual value has got to be determined in the manner provided by the Act and while determining the annual value the principle adopted is of progressive scale of taxation and not of equal taxation. Progressive taxation has now come to be recognized as a well-accepted principle of taxation by economists and statesmen. In the present case the tax is on the land but the scale is a progressive one and is based not on the principle of equal tax on all persons but on the principle that tax equal to the capacity of a person. Land tax on a progressive scale has been introduced in some countries as would appear from the following passage in the Encyclopaedia Britannica, Vol. 13 (1949 Ed.) at p. 676 :

> "In Australia the new land taxes took the form of taxes on the unimproved value of land, the value of buildings and other improvements being excluded from assessment. The taxes were partly designed to break up large holdings and to this end the rates of tax were usually graduated so as to bear heavily on large landowners. Victoria introduced a tax on land values in 1877 and was followed in course of time by other states."

41. This would show that taxes on land in a graded scale are one of the recognized methods of taxation. Again in Vol. 21 of the same book, same edition, at p. 839 it has been stated as follows :

> "The pervading objective of taxation, in concert with other Government policies, is to minimize the general welfare. Ideally, taxes promote this end in both a passive and an active manner. Passively, their role is to underwrite the substantive functions of Government by providing the necessary funds as equitably, conveniently and economically as possible, and with the minimum restrictive effect on production. Actively, they have become an engine of social and economic betterment, capable of reducing extreme inequalities of wealth of checking inflation and profiteering in wartime, and of contributing to stable employment at high levels in peace time ...... The sense of social responsibility and, with it, the role of Government have steadily grown.

In response to these changes, it was inevitable that the functions of taxation should be broadened and its standards recast .... Equality in taxation is now generally conceived in terms of ability to pay. Deceptively simple in appearance, this concept involves many difficulties of application. At the outset one notes that ability to pay as such is subjective, an attribute of persons not things. Yet its measure for tax purposes is necessarily objective, an external quantity such as income or wealth. 'Ability to pay' thus equips the policy-maker, not with a specific rate-making formula, but with a general guide to tax relationships among individuals.......progression is, in practice, essentially a 20th century phenomenon......but later economists, interpreting ability to pay in terms of the sacrifice involved in paying taxes, have concluded that equity demands progression in tax rates."

Therefore the mere fact that the tax is on a progressive scale does not make the tax any the less a

tax on land. It may also be stated that whatever may be the object of the tax payment will have to be made by some individual. Consequently the mere fact that the landholder pays the tax would not change the nature of the taxation.

42. I shall now take the second submission of Mr. Pathak i.e., the one relating to his challenge on the ground of delegation of essential legislative functions. The argument is that the power to fix the multiple contemplated by sub-section (1) of Section 5 and that of laying down principles in cases where there are no hereditary rates has been left to the State Government, the words used in sub-section (2) being "as prescribed". "Prescribed" has been defined in Section 2, clause (19) as follows :

> "prescribed" means prescribed by rules made under this Act.

Section 29 deals with the power to make rules and provides that the State Government may, by notification in the official Gazette and subject to the condition of previous publication, make rules for carrying out the purpose of this Act. Sub-section (2) of Section 29 provides that in particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the matters mentioned in clauses (a) to (n). It is contended that the expression, "as prescribed" occurring in Section 5 means as prescribed by the rules, and it is further contended that inasmuch as by virtue of the provisions of Section 25 of the Act the State Government has power by notification in the official Gazette to delegate to any officer or authority any of the powers conferred by the Act to be exercised subject to any restrictions or conditions as may be specified in the notification, even the rule-making power can be delegated to any officer or authority.
It is further submitted that inasmuch as the officers and the authorities have not been specified in Section 25 it is open to the State Government to delegate the rule-making power to the inferior most officer and to the lowest of authorities. Learned counsel has strenuously contended that if an Act allows the State Government to delegate the power of laying down principles it would amount to delegation of essential legislative functions. While examining this argument it will be noticed that the multiple contemplated by sub-section (1) of Section 5 has been fixed by the State Government itself as 12? times for the whole of the State. That power has not been delegated to any one. As regards the principles which have got to be adopted in cases where there are no hereditary rate the Legislature has left it to be prescribed as to what should be the basis of fixing the amount which is to be multiplied by the multiple mentioned in Section 5 (1) of the Act. It is beyond doubt that it was not possible for the State Legislature to fix any principle for the whole of the State under Section 5 (2) of the Act because local conditions vary and in order to make the incidence of taxation reasonable regard must be had to the nature of the soil, the district in which the land falls and its potentialities. So far as hereditary rates are concerned all these considerations were fully given effect to before the same were fixed but with regard to those areas where the hereditary rates are not fixed it was natural that the rates which were to be multiplied should be on some rational basis. It was not possible for the Legislature to take into

account the diverse conditions prevailing in different parts of the State in minutest details and had naturally, therefore, to leave it to the State Government. Inasmuch as it appeared to the Legislature that the State Government itself may not be able to deal with the problem in all cases due to want of knowledge of local conditions it was made permissible to delegate those powers to the authorities who were fully conversant with it. But actually it appears that this power has also not been delegated by the State Government to any one. Therefore in the first place the power either to fix the multiple or the principles in cases where there are no hereditary rates fixed has not been delegated to any one and consequently the petitioners can have no cause of complaint. Secondly the so called delegation of authority is not unguided or uncontrolled inasmuch as there is a clear directive that the multiple should not exceed 12? times and with regard to the 'principles' mentioned in sub-section (2) the context in which that expression is used would indicate that the 'principles' should be akin to the principles adopted in fixing the hereditary rates. Besides, it would be noticed that sub-section (3) of Section 29 provides that

> "all rules made under this Act shall be laid for not less than 14 days before the State Legislature as soon as they are made and shall be subject to such modifications as the Legislature may make during the Sessions in which they are so laid," with the result that the multiple fixed as also the principles which may be prescribed under sub-section (2) of Section 5 of the Act would come up for scrutiny before the Legislature and inasmuch as the Legislature has kept in itself the control to change them it must be held that there is no excessive delegation of essential legislative functions.

43. In the case of *D.S. Garewal v State of Punjab*[43], their Lordships were considering the effect of Sections 3 and 4 of the All India Services Act, 1951. In that Act also there was a provision similar to Section 29 (3) of the Act. Their Lordships observed as follows :

> "At the same time Parliament took care to see that these rules were laid on the table of Parliament for fourteen days before they were to come into force and they were subject to modification, whether by way of repeal or amendment on a motion made by Parliament during the session in which they are so laid. This makes it perfectly clear that Parliament has in no way abdicated its authority, but is keeping strict vigilance and control over its delegate. Therefore, reading Section 4 along with Section 3(2) of the Act it cannot be said in the special circumstances of this case that there was excessive delegation to the Central Government by Section 3 (1). We are, therefore, of opinion that the Act cannot be struck down on the ground of excessive delegation."

On the authority of that case it must be held that in the case before us also there was no excessive delegation.

44. Apart from it, what has been left in the present Act to the rules in general and rule 5 in particular is not relating to the determination of the policy of law and legal principles but only to

provide the details and the manner in which to execute the law, the policy of law and legal principles having been enacted into a binding rule of conduct by the Legislature itself. Thus matters, like the deciding of the multiple or the principles contemplated by Section 5 (2) of the Act are not essential legislative functions. The following observations of their Lordships of the Supreme Court in the case of *Banarsi Das v. State of Madhya*

[43] AIR 1959 SC 512

Pradesh [44]may be quoted with advantage :

> "Now the authorities are clear that it is not unconstitutional for the Legislature to leave it to the executive to determine details relating to the working of taxation laws such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like."

After saying that, their Lordships rejected the contention with regard to the invalidity of the impugned provisions of the Act before them. If matters like the selection of persons on whom the tax is to be imposed and the rates at which it is to be charged have not been considered to be delegation of essential legislative functions it appears to me that the power to fix the multiple within the limits of 12? times and the 'principles' contemplated by sub-section (2) of Section 5 cannot amount to delegation of any essential legislative function. In my opinion, therefore, there is no substance in the submission of the learned counsel that the Act, suffers from the defect of delegation of essential legislative functions.

45. The next contention of the learned counsel is that the incidence of taxation is so high that the tax is confiscatory in nature, destroys the property and imposes unreasonable restrictions on the rights conferred by clauses (f) and (g) of Article 19 (1) of the Constitution of India. Mr. Pathak has conceded that in view of the provisions of Article 265 of the Constitution and the decisions of their Lordships of the Supreme Court in the cases of *Ramji Lal v. Income Tax Officer*[45], and *Laxmanappa v. Union of India*[46], it was not possible to urge that the petitioners were deprived of any property and complain of the infringement of Article 3.1 of the Constitution because it has been held by their Lordships in the above two cases that inasmuch as there is a special provision under Article 265 of the Constitution that no tax shall be levied or collected except by authority of law clause (1) of Article 31 must be regarded as concerned with deprivation of property otherwise than by the imposition or collection of tax. He has, however, contended that the amount of tax assessed at least on the petitioners would be excessive and inasmuch as in addition to the payment of the tax the petitioners will have to pay the land revenue also, the total sums made payable would amount to the value of the land itself. He has relied upon the case of *Arunachala Nadar v. State of Madras*[47], and has placed before us the following observations of their Lordships :

"Before we scrutinize the provisions of the Act, the law on the subject may be briefly noticed. Under Article 19 (1) (g) of the Constitution of India ali persons have the right to practice any profession, or to carry on any occupation, trade or business. Clause (6) of that Article enables the State to make any law imposing in the interest of general public reasonable restrictions on the exercise of the light conferred by sub-clause (g) of clause (1). It has been held that in order to be reasonable, a restriction must have a rational relation to the object which the legislature seeks to achieve and must not go in excess of that object (See *Chintaman Rao v. State of Madhya Pradesh,.*) The mode of approach to ascertain the reasonableness of restriction has been succinctly stated

[44] AIR 1958 SC 909
[45] AIR 1951 SC 97
[46] AIR 1955 SC 3
[47] AIR 1959 SC 300
[48] 1950 SCR 759

by Patanjali Sastry C. J. in *State of Madras v. V. G. Row*[49], thus :

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases The nature of the right challenged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.' "

But the difficulty in the way of the petitioners is, as I have already said in an earlier part of this judgment, that there is no data on the basis of which it can be known as to what amount of tax or the total of the tax and land revenue the petitioners would have to pay. In the absence of necessary facts and figures it is not possible to accept the argument of the learned counsel that in the present case the incidence of taxation is so high as to amount to unreasonabe restrictions on the rights guaranteed by Article 19(1) clauses (f) and (g) of the Constitution, I, therefore, reject this contention of the learned counsel also. That exhausts all the submission made by Messrs. G.S. Pathak and Jagdish Swarup.

46. I will now take the submissions made by Mr. Rama Shanker Prasad which are to the effect that the tax really is land revenue and inasmuch as Sections 251 and 267 of the U. P. Zamindari Abolition and Land Reforms Act provide that the land revenue of a Bhumidar cannot be increased, the effect of the Act would be that the same would be increased and thus there will be clear violation of the two sections mentioned above. In this connection it may be stated that the learned counsel has not challenged the competence of the U. P. Legislature to pass the impugned Act because even if the tax is nothing but land revenue it was within the competence of the State Legislature to have passed it. In my opinion, however, the present tax is a tax on land and not land revenue.

The land revenue may in a very wide sense be a tax on land but for the purpose of the Constitution the two have been considered as quite separate and totally different. Whereas Entry No. 49 of List II provides for a tax on land, Entry No. 45 provides for land revenue. In the face

of there being two clear and distinctly different entries in List II it cannot be assumed that they relate to the same tax. Whereas the land revenue is the share of the Government or the sovereign power in the surplus profit after defraying the expenses of cultivation of the land, a tax on land is not a tax on profits and has got nothing to do with it. That being so the argument of the learned counsel that the tax is nothing but land revenue fails. Apart from it, even if it be assumed that a tax on land is land revenue, the impugned Act having been passed by the State Legislature after the Zamindari Abolition and Land Reforms Act, the latter would be deemed to be repealed by the former to the extent that there is any inconsistency between the two, assuming there to be one. However, I have already said above that the two taxes are different and there is no conflict between the two Acts. The ether contention of Mr. Rama Shanker Prasad that the authority who issues the notice under Section 7 of the Act becomes a judge of his own cause is also not correct. Reliance was placed upon the case of *Nageswara Rao v. Andhra Pradesh State Road Transport Corporation*[50]*,* In my opinion the facts of that case are different from those of our case. Under the impugned Act by means of Section 11 an appeal and by means of Section 12 a revision have been

[49] 1951 SCR 597 at p. 607: (AIR 1952 SC 196 at p. 200)

[50] AIR 1959 SC 308

provided against the order of assessment. Both the appellate and the revising authorities are independent persons, the former being the Commissioner of a Division and the latter being the members of the Board of Revenue of the State. Neither of them can be said to have a bias in favor of the assessing authority and against the assessee. The orders of the authority who issues notice under Section 7 of the Act are not final and are subject to scrutiny by two other independent authorities. That was not the position in the Andhra case mentioned above. There neither an appeal nor a revision was provided and therefore though in that case the Secretary of the Transport Department had the last say in the matter, in cases of assessment under the impugned Act the last word does not lie with the assessing authority. That being so it cannot be said that in the case before us the authority who issues notice is the judge of his own cause. In *Jai Kishen Srivastava v. Income-tax Officer*[51]*,)*, the right of the Income-tax Officer who issues a notice calling for a return under the provisions of the Indian Income-tax Act to make the assessment himself was challenged before a Full Bench of this Court. The Full Bench on 15-5-1959 held after considering the Andhra case mentioned above that the Income-tax Officer who issues a notice calling for a return is not precluded from making an assessment, and dismissed the writ petitions. That case is similar to our case on facts and I am bound by that decision. In my opinion, therefore, there is no substance in this submission of the learned counsel either.

47. The only submission that now remains to be considered is the one made by Mr. S. C. Khare that the impugned Act is hit by Article 14 of the Constitution of India. It is contended that there is a discrimination between large and small holdings and between agricultural and non-agricultural land as also land and other forms of property. In my opinion the argument has only got to be mentioned in order to be rejected. The agricultural land is a class by itself. If the Legislature did not think it proper to tax non-agricultural land but only agricultural land the Act

cannot be said to be discriminatory. It is a matter of policy which is not justifiable. Similarly, the mere fact that there is a graded scale of lax and the large land holdings are assessed to a larger tax does not make the provisions of the Act discriminatory. There is, in my opinion, a clear classification and that is based on a reasonable basis. I am also of the opinion that there is no substance in the contention that whereas the agricultural land is made the object of taxation other property, as for example buildings etc., have not been so made liable. There again there is a clear classification and there is a rational basis for it.

48. After having carefully considered the various submissions made by learned counsel I am of the opinion that the impugned Act has been validly passed and is intra vires of the State Legislature. I, therefore, hold there are no merits either in the petitions before us or in the special appeal. I would, therefore, dismiss all the petitions and the special appeal with costs.

49. It may be stated that in some of the petitions before us some questions other than those of the constitutionality of the Act have been raised. We have not heard learned counsel in respect of those matters. We have confined our attention only to the consideration of the question relating to the validity of the Act leaving it open to the petitioners to raise questions other than those which affect the constitutionality of the Act

[51] W. P. Nos. 397 and 469 of 1955 : AIR 1960 All 19

before appropriate authorities.

R. Dayal, J.

50. I agree.

51. BY THE COURT :
We accordingly dismiss all these writ petitions and the Special Appeal with costs.
Petitions and appeal dismissed.