ALLAHABAD HIGH COURT

Notified Area Committee

Vs.

Sri Ram Singhasan Prasad Kalwar

Spl. Appeal No. 892 of 1968, against order of Mathur, J. in C.M.W. No. 1756 of 1968
(S.N. Dwivedi, Gyanendra Kumar, Satish Chandra and R.L. Gulati and Hari Swarup, JJ.)

13.08.1968. 28.04.1970

JUDGMENT

Dwivedi, J.

1. This appeal is filed against the judgment of a learned Single Judge allowing the writ petition of the respondent. The Bench of two Judges, by whom the appeal was at first heard, referred it to a larger Bench on account of a conflict between two Full Bench decisions. Hence the appeal is listed before us.

2. The Notified Area Committee of Mohammadabad, the first appellant, assessed the respondent with a tax of Rupees 281.25 on his circumstances and property. Rs. 250/- was the amount of tax on circumstances, and Rs. 31.25 on property. Annexure B to the writ petition suggests that he was carrying on some business and had a house. The tax was assessed on March 18, 1968. This assessment was quashed by the learned Single Judge.

3. Far back in 1872, Mohammadabad became a town area. Town areas are now governed by the Town Areas Act, 1914. Section 14 of this Act provided for the imposition of certain taxes including a tax on a man's circumstances till a part of the year 1948. In that year Section 14 was reshaped. The substituted section materially read:

> "(1) Subject to any general rules or special orders of the Local Government in this behalf, the taxes which a committee may impose are the following:
> (a) A tax upon rent payable under the provisions of the United Provinces Tenancy Act, 1939,.....
> (b) A tax upon rent received by proprietors or under-proprietors on account of land as defined in Section 3 of the United Provinces Tenancy Act, 1939. .....
> (c) A tax upon the assessed rental value of sir and khudkasht land.....
> (d) A tax on trades, callings or professions.....
> (e) A tax upon a building payable by the owner....."

4. It may be noted that the substituted enactment omitted the tax on a man's circumstances. So the State Legislature passed an amending Act (Act No. 23 of 1950) in July, 1950. Section 3 of this Act added Clause (f) to Section 14 in these terms:

> "A tax on persons assessed according to their circumstances and property .....
> Provided that such a person is not already assessed under Clauses (a) to (e) above."

5. Section 5 of the amending Act added Clause (ee) to Section 39(2) for enabling the State Government to make a rule fixing the rate of the "circumstances and property tax." In the exercise of this power the State Government issued a notification on July 20, 1950 fixing the rate of the tax. Clause 3(4) of the notification fixed a ceiling of Rs. 250/- on the rate of tax on circumstances; Clause 4 fixed a ceiling of Rs. 2,000/- on the rate of tax on circumstances and property. The Mohammadabad Town Area imposed and levied this tax in accordance with this notification.

6. On November 23, 1962 the State Government issued a notification under Section 3(1) (d) of the Town Areas Act cancelling the notification which declared Mohammadabad as a Town Area in 1872. The cancellation was made effective from December 1, 1962.

7. On November 23, 1962 the State Government also issued another notification. By this notification under Section 337 (1) of the Municipalities Act the State Government constituted the Notified Area of Mohammadabad with effect from December 1, 1962.
8. On March 18, 1968, the Notified Area assessed the 'circumstance and property tax' on the respondent. The quantum of the tax has already been mentioned earlier.

9. Seventeen days before the assessment, that is, on March 1, 1968, the State Government applied Section 333-A of the Municipalities Act to all Notified Areas.

10. Sri Ansari has raised a preliminary objection. It is said that no appeal lies from the judgment of a single Judge in a writ petition filed under Article 226 of the Constitution.

11. In the former High Court of Allahabad, upto July 25, 1948, an appeal from the judgment of a single Judge passed in the exercise of original civil jurisdiction lay to a Division Bench under Clause 10 of the Letters Patent. On July 26, 1948 the said High Court and the Chief Court of Oudh were amalgamated and a new High Court was constituted. The new High Court was named the Allahabad High Court. The amalgamation of the two Courts was brought about by the U. P. High Courts (Amalgamation) Order, 1948. This order was issued by the Governor-General under Section 229 of the Government of India Act, 1935.

12. From July 26, 1948 the Letters Patent ceased to have effect in virtue of Clause 17 (a) of the Order. Clause 9 of the Order, however, provided that the law in force on July 25, 1948 'with respect to practice and procedure' in the former High Court would apply in relation to the new

High Court. Clause 13 of the Order provided that the law in force on the said date 'relating to the powers of ..... division Courts' of the former High Court would apply in relation to the new High Court. Clause 9 or Clause 13 preserved Clause 10 of the Letters Patent for the new High Court. *National Sewing Thread Co. Ltd. v. James Chadwick*[1], till the commencement of the Constitution.

13. Article 225 of the Constitution provides that the jurisdiction of and the law administered in any High Court and the powers of the Judges thereof in relation to the

[1]1953 SCR 1028

administration of Justice in the Court shall be the same as immediately before the commencement of the Constitution. Article 225 keeps alive the U. P. High Courts (Amalgamation) Order and consequently Clause 10 of the Letters Patent.

14. Rule 5 of Chapter VIII of Rules of Court now provides for a special appeal from the judgment, of a single Judge in the exercise of original civil jurisdiction. Evidently Rule 5 is a reproduction of Clause 10 of the Letters Patent, and not a new provision. A Single Judge hearing a writ petition under Article 226 of the Constitution exercises original jurisdiction. His order deciding the petition is generally a judgment. So an appeal will lie from his judgment before a Bench of two Judges under Rule 5.

15. Coming to merits, Sri Ansari has submitted that under Section 337(1) and (2) of the Municipalities Act the State Government cannot create a notified area in a local area which is already a town area. Section 337(1) and (2) provide:

> "(1) The State Government, by notification, may declare that in respect of any local area, other than a municipality, town area or agricultural village, it is desirable to make administrative provision for some or all of the matters described in Sections 7 and 8 by extending thereto the provisions of this Chapter.
> (2) A local area in regard to which a notification has been issued under subsection (1) is hereinafter called a notified area."

16. The object of Section 337 is that one local area should be administered by one local body exclusively. There cannot be two local bodies in one local area. Section 337 does not enact a ban on creating a notified area in a local area which is already a municipality or a town area by abolishing the municipality or town area. It is not unlikely that a local area having a municipality may suffer a large scale reduction in population and importance and may no longer need a municipality. Similarly, a local area having a town area may grow in population and importance and may need a superior local body. In both of these circumstances a municipality or a town area may be replaced by a notified area if the State Government thinks it proper.

17. The argument of Sri Ansari, in effect, is once a town area, always a town area. It overlooks

the growing problem of urbanization in the country. The language of Section 337 is quite elastic to meet this problem.

18. Sri Ansari's next argument is that as according to Section 337 there should be some time-gap, however, minuscule, between the abolition of the town area and the creation of the notified area, Section 333-A of the Municipalities Act is not applicable. A notified area is not created in place of a town area. The chain of succession is town area - vacant local area - notified area. The notified area is created in place of vacant local area. So Section 333-A could not keep alive the imposition of the 'circumstance and property tax' made by the Town Area of Mohammadabad. The imposition became extinct as soon as the town area was abolished. Learned single Judge has accepted this argument and has quashed the levy of tax.

19. Section 333-A as applied to notified areas materially reads:

> "Where a municipality is created in place of a town area, the following consequences shall notwithstanding anything contained in Section 34 of the Town Areas Act 1914, follow as from the date of the creation of municipality: ....."

20. Section 2(1) and (9) of the Municipalities Act as applied to notified areas define 'Board' and 'municipality' as including a notified area committee and a notified area respectively. Section 333-A should be read in the light of these definitions.

21. There will always be a time-gap between the destruction of a thing at a spot and the creation of another thing at the same spot. For instance, there will be a time-gap between the demolition of an old building at a spot and the erection of a new building at the same spot. Nevertheless the common man and the law will be justified in saying that a new building has arisen "in place of" the old building. Similarly, when a town area is abolished in a local area and a notified area is created in that very local area, the law may legitimately say that a municipality is created 'in place of' a town area.

22. Counsel's chain of succession, town area - vacant local area - notified area - is constructed on the erroneous assumption that Section 333-A has used the words 'municipality' and 'town area' in the sense of spatial unit.

23. The words 'town area' and 'Municipality' may be used in two senses. In one sense they convey the idea of space; in another sense they stand for an institution of local self-government. In Section 337 and specially in Section 333-A they are used in the second sense. This is put beyond doubt by the use of the word 'created'. The local area is the spatial unit where there was a town area formerly and where there is now a municipality. It is not recreated. It remains there as it was. In that local area the institution of 'town area' is gone and the institution of 'municipality' is created. Clauses (iii) and (v) of Section 333-A also show that these words are used in the sense of

institutions of local self-government and not as a synonym for local area. Clause (iii) states that all property and rights 'vested in the town area' shall vest in the board. Clause (v) states that the 'fund of the town area' shall form part of 'the fund of the municipality.'

24. Between the institution of town area and the institution of municipality (notified area) in the local area of Mohammadabad there has never intervened any other institution. Accordingly it is legitimate to say that a municipality is created in place of a town area in that local area. Section 333-A is accordingly applicable to the facts of this case and will save the imposition of the 'circumstance and property tax' by the town area for the benefit of the notified area.

25. Sri Ansari has also urged that as the abolition of the town area and the creation of the notified area take place at one and the same moment, and there is no time-gap between the two events, the notifications are void. The argument proceeds on a misreading of the two notifications dated November 23, 1962. By one notification the State Government cancelled the notification creating the town area of Mohammadabad "with effect from December 1, 1962." By the other notification the State Government declared that "the area which was till November 30, 1962 comprised in Town Area, Mohammadabad" shall be called Notified Area Mohammadabad. The two notifications, conjointly read, clearly show that the Town Area Mohammadabad ceased to exist at the last moment of November 30 while the Notified Area Mohammadabad came into being at the first moment of December 1. In other words, the Town Area ceased exactly at 12 O'clock in the night of November 30, while the Notified Area came into being immediately after 12 O'clock the same night. So there is a temporal hiatus, howsoever close and fractional.

26. It is then urged that as Section 333-A was applied to notified areas on March 1, 1968, it cannot save the imposition of tax by the town area for the benefit of the notified area of Mohammadabad which was created in 1962. According to Sri Ansari Section 333-A cannot be read as being effective from 1962. It is not retrospective either in express language or by necessary implication. It is also said that a taxing statute should not be construed to be retrospective. According to Sri Ansari Section 333-A will apply only to notified areas created after March 1, 1968. This argument was also accepted by the learned single Judge.

27. The history of Section 333-A will throw light on this issue. It appears that some new municipalities were created in April 1949 and thereafter. The District Magistrate assumed control and exercised the powers of the board by virtue of Section 333 of the Municipalities Act as it then stood. But it was soon discovered that Section 333 as it then was did not empower the District Magistrate to act in that way. So the Governor issued the U. P. Municipalities (Amendment) Ordinance (No. III of 1949) on September 13, 1949. Section 1 (2) of the Ordinance provided that the Ordinance would be deemed to have come into force from June 1, 1949. Section 2 of the Ordinance substituted the old Section 333 by a new provision and added Section 333-A. The substituted Section 333 materially reads :

"When a new municipality is created under this Act, the District Magistrate or other officer appointed by him in this behalf, may, until a board is established, exercise the powers and perform the duties and functions of the board, and, he shall for the purposes aforesaid be deemed to be the board : ....."

The newly added Section 333-A pertinently reads:

"Where a municipality is created in place of a town area or notified area, the following consequences shall, notwithstanding anything contained in Section 34 of the Town Areas Act, 1914 ..... or Section 339 of this Act, follow as from the date of the creation of the municipality :

(i) all taxes, fees, licenses, fines or penalties imposed, prescribed or levied, on the date immediately preceding the said date, by the town area committee or the notified area committee. ..... be deemed to have been imposed, prescribed or levied by the board under or in accordance with the provisions of this Act and shall, until modified or changed, continue to be so realizable :

(ii) any expenditure incurred by the town area committee or the notified area committee, on or before the date immediately preceding the said date, from its funds shall continue to be so incurred by the board as if it was an expenditure authorized by or under this Act;

(iii) all property including the rights or benefit subsisting under any deed, contract, bond, security or chose in action vested in the town area or notified area, as the case may be, on the date immediately preceding the said date, shall be transferred to and vested in and enure for the benefit of the board;

(iv) all liabilities, whether arising out of contract or otherwise, which have accrued against the town area committee or the notified area committee and are outstanding on the date immediately preceding the said date shall 'thereafter' be the liabilities of the board;

(v) the fund of the town area or the notified area, and all the proceeds of any unexpended taxes, tolls, fees or fines, levied or realized, as the case may be, by town area committee or the notified area committee shall be transferred to and form part of the municipal fund of the municipality;

(vi) all legal proceedings commenced by or against the town area committee or the notified area committee and pending on the date immediately preceding the said date shall be continued by or against the board;

(vii) any officer or servant who on the date immediately preceding the said date was employed by the town area committee or the notified area committee in full time employment shall be transferred to and become an officer or servant of the board as if he had been appointed by it under the provisions of this Act." (emphasis (here in ' ') added).

Section 3 of the Ordinance reads:

"For the removal of doubts it is hereby declared that, in the case of any municipality

created on or after June 1, 1949, any orders made, actions or proceedings taken, directions issued or jurisdictions exercised by the District Magistrate or the officer appointed by him in that behalf in the purported exercise of the powers under or in pursuance of Section 333 of the Principal Act shall be deemed to be as good and valid in law, as if such orders, actions proceedings directions and jurisdictions had been made, taken, issued or exercised under the said section as amended by this Ordinance."

28. The Ordinance was repealed by the U. P. Municipalities (Amendment) Act (No. 11 of 1949). The Act came into force on March 16, 1950, Section 1(2) of the Act is not like Section 1(2) of the Ordinance. Section 1(2) of the Act declares that the Act shall come into force at once. So the Act, did not take effect from any back date. Section 333 substituted by the Act is substantially similar to Section 333 substituted by the Ordinance. Section 333-A as added by the Act is, with the exception of an addition, similar to Section 333-A as added by the Ordinance. Section 333-A as added by the Act introduced an eighth clause. It reads materially :

"anything done or any action taken, including any appointment or delegation made, notification, order or direction issued, rule regulation, form, byelaw or scheme framed, permit or licenses granted or registration effected under the provisions of the Town Areas Act ..... or the provisions of this Act as applied to the notified area shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force accordingly unless and until superseded by anything done or any action taken under this Act. "

29. Section 3 of the Act is similar to Section 3 of the Ordinance, but it substitutes April 1, for June 1.

30. When one looks at the Act in the context of the retrospective Ordinance, Section 333-A would seem to be retrospective, for otherwise the object of the Act would not be achieved fully.

31. A remedial Act is passed to correct defects, mistakes and omissions in a former law.*So the Act is a remedial Act. A remedial statute receives liberal construction. "If the rule of liberal construction is to be applied as it obviously should, then any doubt should be resolved in favor of retrospective operation, if such operation does not destroy or disturb vested rights, impair the obligation of contracts, create new liabilities, violate due process of law or contravene some other constitutional provision, and if such operation will carry out the intent of the legislature as ascertained through the application of the principles of liberal construction. In other words, a statute relating to remedial law may properly, in several instance, be given retrospective application. An Act made to correct an error by omission in a former statute of the same session, has relation back to the time when the first Act was passed. Even when mistakes in the legislative enactments are corrected by a later amending Act, the amending Act should be read as part of the Act which it was intended to correct. Similarly, the erratum should ordinarily take effect from the

date of the original publication.

* Crawford Statutory Construction, p. 105,
Ibid, p. 576.

Jagdish Swarup : Legislation and Interpretation, (1968 Edn.), p. 417.

32. The Act does not affect vested rights: indeed it preserves them against the municipality. It does not create new liabilities nor does it impose penalties. So the remedial nature of the Act would suggest that Section 333-A is retrospective.

33. The language and the purpose of Section 333-A clearly show that it operates retrospectively. The words 'where a municipality is created in place of a town area' mean also 'where a municipality has been created in place of a town area.' Again, the section clearly declares that the eight consequences enumerated therein shall "follow as from the date of creation of the municipality." This phrase manifests beyond doubt that the section takes effect from the date of creation of the municipality. Thirdly, the phrase 'on the date immediately preceding the said date' also points to the same result. By this phrase the legislature continues the state of affairs, prevailing in the replaced town area on the date immediately preceding the date of creation of the municipality. Fourthly, Clause (iv) of Section 333-A is also indicative of the same result. It provides that all liabilities against the Town Area which are outstanding on the date immediately preceding creation of the municipality "shall 'thereafter' be the liabilities of the board." The word 'thereafter' shows that the board shall bear the liabilities from the date of creation of the municipality. Fifthly, the phrase 'notwithstanding anything contained in Section 34 of the Town Area Act, 1914, or Section 339 of this Act is also significant. Section 34 of the Town Areas Act provides that when by reason of cancellation under Section 3(d) of an order under Section 3(a) a local area ceases to be a Town area, the unexpended proceeds of any tax levied therein shall be applied for the benefit of the inhabitants of the area as the State Government may think fit. Section 339 is a similar provision in relation to the abolition of a notified area. If Section 333-A does not relate back to the date of creation of the municipality, the non-obstante clause would become inoperative and the unexpended proceeds of any tax will have to be spent for the benefit of the inhabitants of the area as the State Government decides.

34. The purpose of Section 333-A is to ensure a smooth and orderly transition from the town area to the municipality. The failure to give retrospective effect to the section would not only frustrate this purpose but would cause severe prejudice and great hardship to the innocent public dealing with the town area. They would not be able to enforce their rights which have accrued to them against the town area. Their permits and licenses would become waste paper. Their legal proceedings against the town area would terminate. Officers and servants of the town area would be thrown out of employment.

35. In sum, the history, the nature, the purpose and language of Section 333-A clearly manifest the legislative intention of giving it retrospective operation from the date of creation of the municipality. Clause (1) of Section 333-A, which deals with taxes, cannot singly countervail the construction reinforced by the history, nature, purpose and language of the section. Further, it is not free from doubt that Section 333-A (1) is a taxing enactment. It does not impose, enforce, abolish or regulate any tax; it only continues the tax already imposed in the area.

36. Another argument of Sri Ansari is that Section 333-A (i), in as far as it continued taxes imposed by the Town Areas and Notified Areas in the State for the benefit of a municipality, is void as it conflicts with the provisions of Section 142 of the Government of India Act, 1935 read with Section 2 of the Profession Tax Limitation Act, 1941.

37. Section 333-A (i) does not specify the amount of tax on trade, profession, calling or employment or of tax on circumstances. The section also does not say expressly that these taxes, even if imposed in excess of the statutory limit by the replaced Town Areas and Notified Areas, will be deemed to continue in the succeeding municipality. Nor it is possible to read by implication this illegitimate effect in the language of the section. Section 333-A (i) says that

> "all taxes ..... impo
> sed ..... by the Town Area Committee or the Notified Area Committee ..... be deemed to have been imposed ..... by the board."

The words "all taxes imposed" should really mean 'all taxes validly imposed.' These words cannot be so read as to include taxes invalidly imposed. The legislature is presumed to have acted within its constitutional powers. And where, the wide statutory language is susceptible of two meanings, one constitutional and the other unconstitutional, Courts give the former meaning and salvage the statute from complete wreck.

38. Section 142-A (2) of the Government of India Act, 1935 provides that the total amount payable in respect of any one person to a local board or a local authority by way of taxes on professions, trades, callings and employments shall not after March 1, 1939 exceed Rs. 50/- per annum. Section 2 of the Professions Tax Limitation Act, 1941 provides that notwithstanding the provisions of any law and taxes payable in respect of any one person to a local board or a local authority by way of tax on professions, trades, callings or employments shall, from the commencement of the Act, cease to be levied to the extent to which such taxes exceed Rs. 50/- per annum. This Act was made in November, 1941.

39. It has not been shown to us that any Town Area or Notified Area has, after March, 1939, imposed tax in excess of Rs. 50/-. So Section 142-A (2) will not come into play at all.

40. Assuming that Town Areas and Notified. Areas had before March 1, 1939 imposed tax in

excess of Rs. 50/-, the proviso to sub-section (2) of Section 142-A and Section 2 of the Profession Tax Limitation Act, 1941 will come into play. It is significant to observe that Section 2 does not render void any law of an appropriate authority imposing tax in excess of Rs. 50/-. The section enacts only a ban against collection of tax in excess of Rs. 50/-. By the method of scissors-and-paste the law shall be read as authorizing imposition of Rs. 50/- only. So in September 1949 and March 1950 when the Ordinance and the Act enacted Section 333-A (1) there could be no law imposing tax of more than Rs. 50/-. In this way the argument will appear to be misconceived

41. Counsel has relied on *Harrison and Crossfield Ltd. v. Quilon Municipality*[2], *Mst. Jadao v. Municipal Committee, Khandwa*[3], *Municipal Committee, Akot v. Manilal 1967-2 SCR 100* and *Janapada Sabha, Chhindwara v. The Central Provinces Syndicate Ltd*[4]., None of these cases has any bearing on the issue before us.

42. It is also urged that while a Town Area Committee is not a legal person, a Notified Area Committee and a Board are legal persons. So there is no identity of person between a Town Area Committee and a Notified Area Committee. Accordingly the proviso to Clause (2) of Article 276 of the Constitution will not be applicable to Section 333-A (a) as applied to Notified Areas in 1968. As the tax imposed by the Town Area of Mohammadabad on trades, callings, professions and employments or on a man's circumstances is not more than Rs. 250/-, it is not necessary for the Notified Area of Mohammadabad to depend on the proviso to Clause (2) of Article 276. The question does not arise at all.

43. The last argument of Sri Ansari is that Clause (f) of Section 14 of the Town Areas Act is unconstitutional. It is maintained that the U. P. Legislature has no power to enact such a law. This question was squarely posed in *Zila Parishad Muzaffarnagar v. Jugal Kishore*[5], The Full Bench unanimously held that tax on circumstances was a tax on trades, professions, callings and employments enumerated in Item 60 of the State List in the VII Schedule to the Constitution. It was further held that tax on property was a tax on lands and buildings enumerated in Item 49 of the State List. It is necessarily implied in these holdings that tax on circumstances and property is a composite tax which can be dissected into its aforesaid two components.

[2] AIR 1962 Ker 185 [4] C. A. No 134 of 1967, D/-23-2-1970 (SC)
[3] 1962-1 SCR 633 [5] 1968 All LJ 665 : AIR 1969 All 40

44. The nature of the tax on circumstances and property came up for discussion again in *R. R. Engineering Co. v. Zila Parishad*[6], The Full Bench was directly concerned not with Section 14(f) of the Town Areas Act but with the notification imposing this tax under the District Boards Act in 1933.

45. In this case Sri Justice Pathak held that tax on circumstances and property is a composite tax in relation to his status and property. He was also of opinion that the tax is a single tax. He said:

Although the status of a person and the property of that person are the two intertwined strands which enter into the composition of the tax, it is not possible to say that the tax can be considered as two distinct taxes under a single denomination. It is a single tax possession a separate and distinct identity from all other taxes. It cannot be confused either with a tax on professions, trades, callings or employments nor with a tax on property. It is a composite tax, and the constituent elements which enter into its composition cannot be separated. Upon this view, the learned Judge held that tax on circumstances and property was covered only by Item 97 of the Union List. Item 97 is the 'residuary' field of legislation.

46. Sri Justice Beg was inclined to share the view of Sri Justice Pathak. Sri Justice Tripathi, the third member of the Bench, expressed no opinion on the nature of the tax.

47. The question of legislative power may be examined (1) with reference to the history of the tax and (2) upon the language and context of clause (f) of Section 14 of the Town Areas Act (hereinafter called the Act), keeping in mind certain principles of constitutional construction. It is made clear that we are not concerned with any law other than the Act.
48. The history of the tax may be divided into three stages (1) the pre-1935 Constitution Act, (2) the post-1935 Constitution Act, and (3) the post-Constitution.

49. (1) The pre-1935 Constitution Act. The Act came into force in 1914. It received the assent of the Governor-General. Section 14 then consisted of the main part and a proviso having five clauses.

50. The main part of the Section authorised the Town Area Committee to assess occupiers of houses and lands within the Town Area with a tax according to (1) their general circumstances or (2) the annual rental value of the houses or lands occupied by them.

51. Only three clauses of the proviso are pertinent. The first clause put a ceiling of Rs. 2000/- on the tax on circumstances where a person was assessed on his non-agricultural 'income'. Clause (ii) put a ceiling of Rs. 90/- in respect of 'agricultural income'-Clause (iii) provided that the tax shall not exceed five pies in the rupee on 'agricultural income' and nine pies in the rupee on other 'income'. This clause also fixed the rate of tax on lands and houses.

52. Section 14 did not impose a tax on circumstances and property as a composite tax. Instead, it provided for the imposition of either a tax on circumstances or a tax on lands and houses. The tax on circumstances was imposed only on 'income'.
61969 All LJ 829 : AIR 1970 All 316

53. Income is undoubtedly derived from trade, profession, calling or employment. It may be derived also from some other sources. So a tax on circumstances could be assessed on income derived from both these sources. In 1914 there was no demarcation of the legislative field

between the central legislature and the local legislature. So there could be little bother about the nature of the tax.

54. The Act did not provide for the imposition of a tax on trade, profession or calling. Section 128 of the U. P. Municipalities Act, 1916 is, however, modeled on a different scale. It provides for, inter alia, a tax on the annual value of lands and buildings, a tax on trades, callings and professions and a tax on inhabitants assessed according to their circumstances and property. It is material to observe that the Section forbids the simultaneous levy of the last two taxes on a person. It will follow from this Interdict that a tax on trades, professions and callings is included in a tax according to a man's circumstances and property, and double taxation is avoided.

55. Then came the Government of India Act 1919. Section 80-A of this Act provided that the local legislature of any province could not, without the previous sanction of the Governor-General, make any law imposing or authorizing the imposition of any new tax unless the tax was a tax scheduled as exempted from Section 80-A by rules made under this Act. The Governor-General in Council made the Rules known as 'The Schedules Tax Rules". Rule 3 provided that the Provincial Legislature could, without the previous sanction of the Governor-General, make 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. Schedule II enumerates, inter alia, a tax on land or land values, a tax on buildings, a tax on menials and domestic servants and a tax on trades, professions and callings. A law imposing or authorizing a local authority to impose any tax other than those mentioned in Schedule II could be made by the Provincial Legislature only with the sanction of the Governor-General.

56. In 1922 the U. P. Legislature passed the District Board Act, Section 108 of this Act authorized a District Board to impose a tax according to a man's circumstances and property. The Board could also impose a local rate. It is significant that the Board could not impose a tax on buildings nor a tax on trade, profession or callings. It seems that the tax on trades, callings and professions was regarded by the framers of this Act as comprehended in the tax on circumstances and property.

57. The foregoing discussion will show that a tax according to circumstances and property could have had a wide spectrum in the first stage. At one point of the spectrum there was the tax on trades, callings and professions; at another point there might have been a tax on other incomes.

58. This history and composition of the tax on circumstances and property was, it may be safely assumed, known to them who had a hand in the designing of the Government of India Act, 1935. We shall now see how they used this knowledge of theirs in the framing of this Act.

59. (2) Post-1935 Constitution Act: Appendix VI to the White Paper of December 1931 contained three legislative lists. Item 67 of the Provincial List was in relation to the raising of

provincial revenue, inter alia, by forms of taxation specified in the Annexure appended to this list. The annexure comprised 14 items, 7, 8 and 9 of them, are relevant here. These items read materially: "7. Taxes on land....."

> 8. Taxes on personal property and circumstances, such as taxes on houses, animals, hearths, windows, vehicles, chaukidari taxes, sumptuary taxes, and taxes on trades, professions and callings.
> 9. Taxes on employment, such as taxes on menials and domestic servants. Report of Joint Committee on Indian Constitutional Reforms Vol. 1, P. 371. (emphasis added (here in ' ').

60. The report of the Joint Committee on Indian Constitutional Reforms suggested radical modification of these items. Taxes on land were transferred from items 7 to 8. The modified items 8 and 9 read: "8. Taxes on land and buildings, animals, boats, hearths and windows; sumptuary taxes and taxes on luxuries. 9. Taxes on trades, professions, callings and employments." Ibid, P. 158.

61. The Committee did not explain the reasons for the changes. But in paragraph 241 of the Report they said: "It would extend this Chapter to an unreasonable length if we were to set out in detail all the changes which a revision of the three Lists has involved..... We think, however, that if the revised Lists are compared with the Lists in the White Paper, such changes as have been made in addition to those already mentioned will, for the most part, be found to speak for themselves." Report of the Joint Committee on Indian Constitutional Reform Vol. 1, p. 150.

62. Items 42 to 46 of List II of VII Schedule to the Government of India Act, 1935 read:-

> "42. Taxes on lands and buildings, hearths and windows.
> 46. Taxes on professions, trades, callings and employment .....".

63. Taxes on income other than agricultural income were assigned to List I. Taxes on a man's circumstances and property are not enumerated in any one of the three Lists.

64. The foregoing historical narrative will yield three important inferences: (a) The framers of the White Paper regarded 'tax on personal property and circumstance' as a distinct and independent impost, although some of the taxes included in it were enumerated in Item 8 of the Annexure. One of them was 'tax on trades, professions and callings.'

> (b) The Joint Committee on Indian Constitutional Reform did not regard 'tax on personal property and circumstance' as a distinct and separate head of taxation. They considered that it was a composite tax comprising the taxes mentioned in Item 8 of the Annexure. So they deleted it from Item 8 and recast Items 8 and 9 accordingly. They retained only the components. The explanation for the divergence between the White Paper and their

Report is so obvious that they called changes self-speaking.

(c) The British Parliament agreed with the Joint Committee and did not incorporate 'tax on property and circumstance' in any of the three Lists of VII Schedule to the Government of India Act. It was regarded as a composite tax, its components falling under one or the other taxing entry in the Lists.

(3) Post-Constitution: The legislative Lists of the Constitution follow the lists in the Government of India Act, 1935. So the makers of the Constitution also did not consider the tax on circumstances and property as a distinct and separate head of taxation. Whatever comprised it was considered by them to be covered by some of the enumerated taxing entries in the Lists.

65. To sum up, the history of the tax on circumstances and property after 1935 definitely shows that it was not a distinct and separate impost. The Government of India Act. 1935 and the Constitution treat it as a composite tax as its name suggests. As its constituents are already covered by one or the other entry in the legislative Lists, it is not enumerated as a category in the Lists as it was enumerated in the White Paper.

66. In *Pandit Ram Narain v. State of U. P*[7].. the Supreme Court held that the tax imposed by Section 14(1) (f) of the Act is a composite tax. In *District Board of Farrukhabad v. Prag Dutt*[8], a Full Bench of this Court has held that the tax on circumstances and property is a composite tax. It was split up into a tax on trades, professions, callings and employment and a tax on lands and buildings. 1948 All LJ 338 at pp. 342, 343, 346 : (AIR 1948 Allahabad 382 at pp. 386-87 and 389 : 90; see also *Devi Prasad v. Municipal Board, Kanauj*[9], Sri Justice B. B. Prasad also said that taxes under other entries of List II may also form part of the composite tax of circumstances and property. 1948 All LJ 338 at p. 346 : (AIR 1948 Allahabad 382 at pp. 389-90).

67. According to Sri Justice Pathak, the tax on circumstances and property is a composite tax 'possessing a distinct and separate identity from all other taxes'. We have already shown that the history of the tax does not bear out the latter attribute. With respect, it is difficult to conceive how a thing may be simultaneously a 'composite' and a 'compound'.

68. We are of opinion that the tax enumerated in Section 14(1) (f) of the Act is composite tax. Its components are varied but one of them is a tax on trades, callings, professions and employment. Another of them is a tax on lands and buildings.

69. Now we turn to the interpretation of Section 14(1) (f). In Ram Narayan's case, 1956 SCR 664 the Supreme Court observed: "(1) It is manifest from the proviso (to Section 14 (1) (f)) that there may be overlapping of the different clauses in sub-section (1) of Section 14; for example, a person may come under clause (f) if he carries on a trade.....". Various clauses of Section 14(1) are overlapping. But clause (f) is not the 'equivalent' of clause (d) or any other clause, for clause (f) will definitely comprehend also a tax on employments as well as a tax on non-agricultural land. Clause (f) is thus not redundant.

70. We have already shown that in the pre-1935 Constitution Act stage the tax on circumstances and property might have had a wide spectrum and might have enfolded a
tax which may now be imposed only by the Parliament. But that will not justify us in

[7]1956 SCR 664 [9]1949 All LJ 208 : AIR 1949 All 741

[8]1948 All LJ 338 : AIR 1948 All 382 (FB)

holding that Section 14(1) (f) has as wide spectrum. The words 'circumstances' and 'property' have no doubt a wide denotation. But it is a general principle of construction that the Legislature does not intend to exceed its powers. Accordingly it should be presumed that the U. P. State Legislature has used these words with reference to those kinds of circumstances and property with respect to which it is competent to legislate and to no others. In re, Hindu Women's Rights to Property Act, 1937 - 1941 FCR 12 . See also *Jothi Timber Mart v. The Corpn. of Calcutta*[10]. We should not construe them so expansively that they may spill over into the legislative domain of Parliament. It may also be emphasised here that resort to the residuary power of legislation should not be readily made until it is found that the subject-matter of the impugned legislation is not covered by any one of the subjects specifically enumerated in the three Lists.

71. We are also unable to agree with the view in Zila Parishad's case, 1969 All LJ 829 : AIR 1970 Allahabad 316 (supra) that these words refer solely to Items 49 and 60 in List II. They are spacious enough to cover some other items in List II, e.g. Item 58 "taxes on animals and boats." It is not necessary to give an exhaustive definition of these words with reference to List II. It is enough to point out here that they may cover some other Items in List II.

72. In our opinion the subject-matter of Section 14(1) (f) of the Act falls in List II and cannot be construed to have over crossed into Parliamentary domain of legislation.

73. Under Rule 3 the tax on circumstances and property cannot exceed Rs. 2,000/-. This rule also splits up the tax into a tax on circumstances and a tax on property. The tax on circumstances, it is laid down there, cannot exceed Rs. 250/- while the tax on property Rs. 1,750/-. Accordingly, Rule 3, in as far as a tax on circumstances includes a tax on trades, professions, callings and employments, does not exceed the limit of Rs. 250/- prescribed by Article 276(2) of the Constitution.

74. As we have not accepted any contention of Sri Ansari, we allow the appeal, set aside the judgment of the learned Single Judge and dismiss the writ petition of the respondent with costs.

Appeal allowed.

10 C. A. Nos. 1079 of 1966 to 1086 of 1966 and 1089 to 1099 of 1966, D/d. 18-7-1969 : (reported in AIR 1970 SC 264)