GUJARAT HIGH COURT

Lady Tanumati Girijaprasad Chinubhai

Vs.

Spl. Land Acq. Officer

C.R.A. No. 630 of 1964 with Spl. C.A. Nos. 979 of 1990

(P.N. Bhagwati, C.J., B.J. Divan and P.D. Desai, JJ.)

22.12.1972

JUDGMENT

P.N. Bhagwati, C.J.

1. I entirely agree with my brother Divan J., but in view of the importance of the question involved, I would like to add a few words of my own in regard to the last contention of the petitioners that the Court-fees levied on an application for a reference under Section 18 of the Land Acquisition Act, 1894, is not a fee but a tax and Article 15 of the First Schedule to the Bombay Court-fees Act, 1959, which provides for levy of such court-fees is, therefore, outside the legislative competence of the State Legislature. It was common ground between the parties, and in any event it cannot now be disputed in view of a recent decision given by the Supreme Court on 1lth November *The Secretary, Government of Madras, Home Department v. Zenith Lamp & Electrical Ltd*[1]., (yet unreported) it' Court-fee levied under Article 15 of the First Schedule is a tax and not a fee, it would be beyond the competence of the State Legislature to enact such an Article. The main question which, therefore, arises for consideration is, whether court-fee levied under Article 15 of the First Schedule is a tax or a fee. Whatever might have been the complexity of this question at one time, it is not now difficult of solution in view of the decision of the Supreme Court in *The Secretary, Government of Madras, Home Department v. Zenith Lamp & Electrical Ltd.* (supra) to which we have just adverted. There the test to be applied for the purpose of determining a question of this kind is laid down in clear and unmistakable terms and all that we have to do is to apply this test and arrive at the proper result.

2. The question which arose for determination before the Supreme Court in *The Secretary, Government of Madras, Home Department v. Zenith Lamp & Electrical Ltd.* (supra) was whether Rule 1 of the Madras High Court Fees Rules, 1958 and the provisions of the Madras Court-fees and Suits Valuation Act, 1955, were ultra vires and void in so far as they related to the levy of fees on ad valorem scale. The main ground of challenge was that the levy made under the

Madras Court-fees and Suits Valuation Act, 1955, was a tax and not a fee and the said Act was, therefore, outside the competence of the State Legislature and Rule 1 of the Madras High Court Fees Rules, 1958, which incorporated some of the provisions of the said Act by reference was also consequently

[1]1972 in Civil Appeal No. 293 of 1967

void. This challenge found favors with the Madras High Court and taking the view that the impost levied under Article 1 of Schedule I of the Madras Court-fees and Suits Valuation Act, 1955, was a tax and not a fee, the Madras High Court struck down that Article in its application to the High Court. The State of Madras thereupon preferred an appeal to the Supreme Court. The question as to what is the true nature of fee taken in Court and how it differs from tax was canvassed at great length before the Supreme Court and after referring to the historical background of the enactment of Court-fee legislation in England as well as India, the Supreme Court laid down certain propositions which may be regarded as finally settling the law on the subject. The Supreme Court first pointed out that "fees taken in Court' in Entry 3 of List II cannot be equated with taxes and then proceeded to discuss the question whether there is any essential difference between 'fees taken in Court' and 'other fees' and answered it by saying that there is no difference. What is the true nature of fee was then discussed by the Supreme Court and the following passage from the judgment of Hegde J., in *Indian Mica and Micanite Industries Ltd. v. The State of Bihar*[2], was relied upon by the Supreme Court as explaining the essential characteristics of fee:

> "From the above discussion it is clear that before any levy can be upheld as a fee, it must be shown that the levy has reasonable correlationship with the services rendered by the Government. In other words the levy must be proved to be a quid pro quo for the services rendered. But in these matters it will be impossible to have an exact correlationship. The correlationship expected is one of a general character and not as of arithmetical exactitude.

The Supreme Court, applying the test laid down in this passage observed, and what it said is very important for our purpose.

> "The fees must have relation to the administration of civil justice While levying fees the appropriate legislature is competent to take into account all relevant factors, the value of the subject matters of the dispute, the various steps necessary in the prosecution of a suit or matter, the entire cost of the upkeep of courts and officers administering civil justice, the vexatious nature of a certain type of litigation and other relevant matters. It is free to levy a small fee in some cases, a large fee in others, subject of course to the provisions of Article 14. But one thing the Legislature is not competent to do and that is to make litigants contribute to the increase of general public revenue in other words, it cannot tax litigation, and make litigations pay, say for road-building or education or other beneficial schemes that a State may have. There must be a broad correlationship with the fees

collected and the cost of administrative of civil justice.

The Supreme Court then dealt with the contention that Court fee is not in the nature of fee because the moneys realised from court-fee are not appropriated to a separate Fund but merged in the public revenues of the State. This contention had found favour with the High Court of Allahabad in *Khacherusing v. Sub-Divisional Officer, Khurja*[3] and the Bombay High Court in *Central Provinces Syndicate Ltd. v. Commissioner of Income-tax, Nagpur*[4] but the Supreme Court took the view that it is not a valid contention and the fact

[2] AIR 1971 SC 1182 [4] I.L.R., (1962) Bom 208

[3] I.L.R. (1960) 1 All. 429

that the collections from

Court-fee are not set apart to go into the Consolidated Fund is not at all conclusive because under Article 266 all revenues received by the State have to go to the Consolidated Fund. The Supreme Court then proceeded to summaries its conclusions by saying:

> "... the fees taken in courts and the fees mentioned in Entry 66 List I are of the same kind. They may differ from each other only because they relate to different subject matter and the subject matter may dictate what kind of fees can be levied conveniently, but the overall limitation is that fees cannot be levied for the increase of general revenue. For instance if a State were to double court fees with the object of providing money for roadbuilding or building schools, the enactment would be held to be void....

It seems to us that whenever the State Legislature generally increases fees it must establish that it is necessary to increase court fees in order to meet the cost of administration of civil justice. As soon as the broad correlationship between the cost of administration of civil justice and the levy of court-fees ceases, the imposition becomes a tax and beyond the competence of the State Legislature.

> "We agree with the Madras High Court in the present case that the fees taken in Courts are not a category by themselves and must contain the essential elements of the fees as laid down by this Court. We also agree with the following observations.
> "If the element of revenue for the general purposes of the State predominates, then the taxing element takes hold of the levy and it cease* to have any relation to the cost of administration of the laws to which it relates; it becomes a tax. Its validity has then to be determined with reference to its character as a tax and it has to be seen whether the Legislature has the power to impose the particular tax. When a levy is impugned as a colourable exercise of legislative power, the State being charged with raising a tax under the guise of levying a fee, courts have to scrutinize the scheme of the levy carefully, and determine whether, in fact, there is correlation between the services and the levy, or

whether the levy is excessive to such an extent as to be a pretence of a fee and not a fee in reality. If, in substance, the levy is not to raise revenues also for the general purposes of the State, the mere absence of uniformity or the fact that it has no direct relation to the actual services rendered by the authority to each individual who obtains the benefit of the service, or that some of the contributories do not obtain the same degree of service as others may, will not change the essential character of the levy.

"It seems to us that we cannot dispose of this appeal without giving opportunity to the respondents to file an affidavit or affidavits-in reply to the supplemental counter affidavit dated October 11,1966 because if we take the figures as given and explained by the Advocate-General we cannot say that the State if, making a profit out of the administration of civil justice.

The Supreme Court finally pointed out that "it is for the State to establish that what has been levied is court-fees properly so-called and if there is any enhancement the State must justify the enhancement".

3. The question which we have, therefore, to consider is whether in the present case there is broad relationship between the levy of court-fee and the cost of administration of civil justice or the levy of court-fee is excessive to such an extent as to be a pretence of a fee and not a fee in reality. Is the levy of court-fee, in substance, for meeting the cost of administration of civil justice or is it for raising revenues also for the general purposes of the State ? Or, in other words, is the State making profit out of the administration of civil justice ? The burden of establishing that the court-fee levied is court-fee properly so-called and not tax is, as pointed out by the Supreme Court in *The Secretary, Government of Madras, Home Department v. Zenith Lamp & Electrical Ltd.* (supra) on the State. Let us, therefore, see whether the State has succeeded in discharging this burden which rests upon it.

4. The State has produced the figures of the amount of court-fee realised and the cost of administration of civil justice for the financial years 1965-66 to J 969-70 in an affidavit filed by one A. I. Abrahan, Under Secretary to the Government of Gujarat, Legal Department. The affidavit contains Annexures "A" to "D". Annexure "A" gives particulars of items of revenue and receipts for the financial years 1965-66 to 1969-70 irrespective whether they relate to administration of civil justice or administration of criminal justice while Annexure "B" sets out the figures of revenue and receipts allocable to the administration of civil justice according to the principle laid down by the Law Commission in its Fourteenth Report regarding the reform of judicial administration. The total expenditure on administration of civil justice as well as criminal justice for the financial years 1965-66 to 1969-70 is to be found in Annexure "C" while Annexure "D" gives particulars of expenditure allocated to administration of civil justice according to the principles laid down by the Law Commission in its Fourteenth Report regarding reform of judicial administration. The following figures culled out from Annexures "A" to "D" show the revenue and receipts from collection of court-fee relatable to administration of civil justice and the expenditure incurred by the State in connection with the administration of civil

justice for the financial years 1965-66 to 1969-70.

Financial Year	Revenue & Receipts	Expenditure on administration of civil justice	Difference between Col. 2 and 3.
	Rs.	Rs.	Rs.
1965-66	99,45,101	53,01,086	46,44,015
1966-67	99,23,012	58,25,205	40,97,807
1967-68	1,12,60,247	66,55,243	46,05,004
1968-69	1,20,35,024	71,51,354	48,83,670
1969-70	1,17,82,413	80,86,361	36,96,052

It will be seen from these figures that there is no broad relationship between the levy of court-fee and the cost of administration of civil justice. Of course, as pointed out by Hegde J. in *Indian Mica and Micanite Industries Ltd. v. The State of Bihar (supra)*, the correlationship cannot by its very nature be exact. The correlationship expected is one of a general character and not as of arithmetical exactitude. But here it is not possible to all that there is even a broad and general correlationship between the levy of court-fee and the cost of administration of civil justice. It would have been possible to hold that there is sufficient correlationship between the levy of court-fee and the cost of administration of civil justice if the difference between the two had not been very large. It might be said on a rough and ready basis that if the amount of the difference were not more than, say, 15 to 20 per cent, the Court-fee levied could be regarded as bearing correlationship with the cost of administration of civil justice. Then it might be possible to say that the levy of court-fee is really for the purpose of meeting the cost of administration of civil justice and not for the purpose of raising revenues also for the general purposes of the State. But where, as in the present case, the court-fee levied is much in excess of the cost of administration of civil justice and the difference between the two is as much as 40 to 45 per cent of the cost of administration of civil justice, it is impossible to hold that there is even broad correlationship between the levy of court-fee and the cost of administration from the figures given in the over table that the levy of court-fee is so excessive as compared to the cost of administration of justice that it must be held to be a pretence of a fee and not a fee in reality. The levy of the court-fee is, in substance not for the purpose of meeting cost of administration of civil justice but for the purpose of raising revenues also for the general purposes of the State. It is indisputable from these figures that the State is making profit out of the administration of civil justice. It must, therefore, be held that the court-fee levied under Article 15 of the First Schedule to the Bombay Court-Fees Act, 1959, is not court-fee properly so-called but is tax and Article 15 of the First Schedule is consequently beyond the competence of the State Legislature and hence null and void.

5. I may observe that it is a matter of regret that the State Government is making profit out of the administration of civil justice. There are so many requirements of administration of civil justice where moneys can be properly and usefully spent by the State Government with a view to improving the quality and efficiency of administration of civil justice and making it cheap and easily available to the litigating public but unfortunately, the State Government does not appear to be making such expenditure on the administration of civil justice though sufficient revenues by way of court-fee are realized by the State Government and instead of utilizing these revenues for the purposes of streamlining the administration of civil justice and making it really efficient and responsive to public need, the State Government appears to be diverting a sizeable part of these revenues for other purposes. This is indeed a sorry state of affairs. The court-fee can be levied only for the purpose of meeting the cost of administration of civil justice and, 1, therefore, hope and trust that the State Government will make available every paisa out of the court-fee realized by it for meeting the cost of improvements in the administration of civil justice.

B.J. Divan, J.

6. The point which arises for determination in all these three matters is about the constitutional validity of Article 15 of the First Schedule of the Bombay Court Fees Act, 1959. By this Article on application to the Collector for a reference to Court under Section 18 of the Land Acquisition Act, 1894, in its application to the Bombay or Kutch area of the State of Gujarat or Section 18 of the said Act as adapted and applied to the Saurashtra area of the State of Gujarat by the Land Acquisition Act, 1894 (Adaptation and Application) Ordinance, 1948, (the rest of the words are not necessary so far as the applicability to the State of Gujarat is concerned), under the third column of Schedule I, one half of ad-valorem fee on the difference, if any, between the amount awarded by the Collector and the amount claimed by the applicant, according to the scale prescribed under Article 1 of Schedule I subject to a minimum fee of Rs. 15/- is required to be paid. Under Section 5, Sub-section (1) of the Bombay Court Fees Act, 1959, no document of any of the kinds specified as chargeable in the first or second Schedule to the Act shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there has been paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document, and it is by virtue of this charging section that the court fee on the application referred to in Article 15 in the First Schedule, is being collected in respect of the application to the Collector, appointed under the Land Acquisition Act for a reference to Court under Section 18 of the said Act.

7. Under the Land Acquisition Act of 1894, as is well known, the scheme is that first a notification under Section 4 is to be issued by the Government of its proposal to acquire the land referred to in the notification for the purpose mentioned in the notification. The purpose may be either a public purpose or purpose for a company as referred to in Chapter VII of that Act. Thereafter the procedure under Section 5A, if necessary, is followed and Government issues a notification under Section 6, specifying the purpose for which it wants to acquire the land.

Thereafter under Section 9 procedure for inviting claims for compensation from persons having interest in the land is laid down and under Section 11, the Collector has to make his award and has to make an offer of compensation to the person interested in the land. When the compensation offered is accepted, nothing further requires to be done. The person interested in land may ask the Collector by an application under Section 18 to make a reference to the Court as defined in the Land Acquisition Act and if the application is within time the Collector is bound to make a reference to Court. Prior to enactment of Article 15 in the First Schedule of the Bombay Court Fees Act, 1959, no court-fee was payable on such application asking for reference under Section 18 of the Land Acquisition Act and the question before the Full Bench is whether this enactment & Article 15 of the First Schedule is constitutionally valid.

8. The challenge to the constitutional validity in these three matters arises under the following circumstances:

9. In Civil Revision Application No. 630 of 1964, the petitioners before the High Court are the owners of S. Nos. 29/A, 122 to 142 and 242 of Sherkotda, Taluka City, Ahmedabad. The Bilingual State of Bombay issued several notifications between 1957 and 1959, under Sections 4 and 6 of the Land Acquisition Act, compulsorily acquiring 49147 Sq. Yds. out of these lands of the petitioners. These lands formed part of the estate belonging to the petitioners, known as Madhubhai Mills Colony, and the lands were acquired for remodelling of Ahmedabad Railway Yard. Acquisition proceedings were thereafter started and on February 27, 1961, the Special Land Acquisition Officer gave his award and by that award Rs. 33/-lacs and odd were awarded as compensation to the petitioners in respect of their lands. The petitioners did not accept this award of the Land Acquisition Officer who was Collector for the purposes of the Land Acquisition Act, and on April 6, 1961, the petitioners applied under Section 18 calling upon the Land Acquisition Officer to make a reference to the Court and the petitioners paid court-fees of Rs. 22,300/ - on their application. In the month of June 1961, the Special Land Acquisition Officer made a reference to the Court and forwarded the case paper under Section 19 of the Land Acquisition Act. These papers were duly received by the Court on June 23, 1961 and the case was registered as Compensation Case No. 144 of 1961 and was subsequently re-numbered as Compensation Case No. 127 of 1961. The State of Gujarat had appointed an Inspecting Officer for the purpose of court fees under Section 12(i) of the Bombay Court Fees Act, 1959. On February 1, 1962, the Inspecting Officer gave his report under Section 12, Sub-section (3) to the Presiding Officer of the City Civil Court, as he found that the fees payable on the application under Section 18 had not been paid in full. According to the Inspecting Officer, there was a deficit of Rs. 2950/-, in the amount of court fees paid by the petitioners on the application under Section 11 of the Land Acquisition Act. On September 7, 1962, the learned Judge of the City Civil Court passed a provisional order determining the amount of the deficit court fees as Rs. 2950/- and directed that notice be issued to the petitioners to show cause why this amount should not be paid by them. On the notice being served on the petitioners on September 6, 1962, they filed objections in Court against the notice issued to them and they challenged the competence of

the Court to investigate the question of deficit court fees. On December 11, 1962, Shri N. G. Shelat, who at that time was a Judge in the City Civil Court, Ahmedabad, discharged the notice as he held that the Court had no jurisdiction to issue such a notice. Thereafter on January 21, 1963, the Land Acquisition Officer applied to the City Civil Court urging that the application made to him under Section 18 of the Land Acquisition Act was insufficiently stamped and, therefore, the reference was not competent and the ground on which he asked for decision in this behalf from the Court was that the appropriate amount of court fees had not been paid by the petitioners on the application under Section 18 of the Land Acquisition Act. The Land Acquisition Officer also demanded the amount of Rs. 2950/- as deficit court fees. To this application the petitioners filed objections on February 16, 1963, and February 23, 1963. Ultimately on August 13, 1963, Shri D. P. Desai, who at that time was one of the City Civil Court Judges, held that the Court was competent to look into the question of deficit court fees and decided the preliminary point raised by the petitioners. Thereafter notices were directed to be issued to the Advocate General as the constitutional validity of Article 15 of Schedule 1 of the Bombay Court Fees Act was challenged before the City Civil Court. After hearing all the parties concerned, Shri D. P. Desai held on February 24, 1963 that Article 15 of the First Schedule was intra vires and was within the competence of the State Legislature. He rejected the prayer of the present petitioners for refund of the court fees paid by them and he held that no additional court fees were payable by the present petitioners. Against this judgment and order of the learned Judge in the City Civil Court, Revision Application No. 630 of 1964 has been filed. The matter came up for hearing before a Single Judge of this High Court, V.R. Shah J., and he referred it to a larger Bench by his order dated February 17, 1969. The matter was thereafter placed before the Division Bench consisting of J. B. Mehta and S.N. Patel, JJ. and by the order of the Division Bench passed on September 9, 1969 the matter was referred to a Full Bench as the question involved was of wide public importance. Under these circumstances this Civil Revision Application has been placed before us for final hearing.

10. In Special Civil Application No. 979 of 1979, the petitioners are the very persons who are the petitioners in Civil Revision Application No. 630 of 1964. In this Special Civil Application filed under Article 226 of the Constitution of India the petitioners have challenged the constitutional validity of Article 15 of the First Schedule of the Bombay Court Fees Act, 1959. This Special Civil Application has been filed out of abundant caution and the challenges to the constitutional validity have been properly formulated in this Special Civil Application. The petitioner have prayed in this Special Civil Application for a declaration that Article 15 of Schedule 1 of the Bombay Court Fees Act is void and ultra vires and beyond the legislative competence of the State Legislature and they have also asked for an appropriate writ, direction and order under Article 226 of the Constitution for quashing the order dated February 24, 1964, passed by the Ahmedabad City Civil Court and directing the respondents i.e. the Special Land Acquisition Officer and the State of Gujarat to refund the amount of Rs. 22,300/- paid by the petitioners as court-fees on their application under Section 18 of the Land Acquisition Act. The contention of the petitioners in this behalf is that the amount of court fees Rs. 22,300/- has been illegally

collected from them.

11. In Special Civil Application No. 287 of 1967, the same point about the constitutional validity of Article 15 of the Schedule I to the Bombay Court Fees Act, 1959, arises under the following circumstances. The petitioner was the owner of land situated along the National Highway No. 8 and bearing S. No. 130/2, of Abrama village in Bulsar Taluka of Bulsar District in the State of Gujarat. The petitioner had a mango grove on the said land and had built therein a wood and brick structure and a culvert and enclosed her land with a thickly grown hedge comprising of several "Karen" and other big trees. A portion of her land was acquired by the State of Gujarat for the purpose of building a new bridge over Vanki river for the purpose of National Highway No. 8 at mile 205/3 and also for the purpose of approach roads on both the sides of the bridge. The requisite notification under Section 4 of the Land Acquisition Act was issued on December 23, 1963, and under the urgency clause possession of the land of the petitioner was taken before the issuance of the notification under Section 6 of the Land Acquisition Act. Apart from other disputes relating to the valuation of the land, after the notification under Section 6 of the Land Acquisition Act was issued on September 19, 1965, proceedings for ascertainment of the amount of compensation went on before the Special Land Acquisition Officer and the award was made on January 27, 1966. On January 27, 1966, an application was made by the Advocate on behalf of the petitioner requesting that a reference be made to the Court under Section 18 of the Land Acquisition Act and he also applied for the certified copy of the award in order to draw up detailed grounds of objections to the award. The Land Acquisition Officer subsequently declined to accept the detailed grounds of the objections which were submitted by the petitioner's Advocate on February 19, 1966. Exhibit 'F' is a copy of the letter, dated January 29, 1966 setting out the grounds on which the Land Acquisition Officer declined to entertain the application under Section 18 of the Land Acquisition Act for reference to the Court, and the ground for rejection was that the petitioner had not affixed court fee stamp on additional amount of compensation claimed by her. Hence there was a hitch in making reference which the petitioner was asked to note. In paragraph 21 of the petition the petitioner has challenged the validity of Article 15 of the First Schedule of the Bombay Court Fees Act, 1959, and contended that the Article is ultra vires, invalid and inoperative.

The petitioner has contended that the refusal of the Land Acquisition Officer to make a reference on the ground mentioned in his reply, annexure 'F' to the petition, is untenable, void and inoperative in law and amounts to a failure and avoidance on his part of performance of his statutory duty. The petitioner has inter alia, prayed for a declaration that the Bombay Court Fees Act in so far as it requires her to pay court fees on application for reference and the relevant provisions of that Act in that behalf are invalid, void and ultra vires, inter alia, Article 31 of the Constitution of India. Since Special Civil Application No 787 of 1967 also challenges the constitutional validity of the same Article as has been challenged in other two matters referred to above, this matter was also placed before the Full Bench so that the learned Advocate for the parties might urge their arguments if so desired. It may be mentioned that the matter first came

up for admission before a Division Bench of this High Court and by the order passed by the Division Bench on March 14, 1967, notice was directed to be issued to respondents Nos. 1 2 and 3 The learned Additional Government Pleader Mr. Talsania appeared at that stage on behalf of the State of Gujarat and waived notice of the order Thereafter an affidavit has been filed on March 13, 19/0 on behalf of respondents Nos. 1 and 2 i.e. State of Gujarat and the Special Land Acquisition Officer, Tapi Canal Works, Bulsar, and the appropriate affidavit-in-rejoinder has been filed on April 5, 1971. Mr. S C Shah the petitioners in Special Civil Application No. 287 of 1967 has a doubt the arguments of Mr. K. H. Kaji, who appeared for the petitioners in Civil Revision Application No. 630 of 1964 and Special Civil Application No. 979 of 1970.

12. Mr. Kaji urged the following contentions in support of his challenge to the validity of Article 15 of the First Schedule of the Bombay Court Fees Act 1959 (hereinafter referred to as "the impugned Article"):

> (1) Article 15 violates Article 31(2) of the Constitution of India inasmuch as this Article of the Court Fees Act operates as a clog or restating on the right to receive compensation conferred by Article 31(2) of the Constitution. It has been contended in this connection that right to claim compensation is restricted or cut down and it was conveyed that the right of the atizen is to get compensation determined but he has not to pay for the machinery for the determination of compensation and the impugned Article 15 acts as a fetter on the right of the citizen to get the compensation.
>
> (2) The impugned Article violates Article 14 of the Constitution inasmuch as the class of persons whose lands are taken away consists of persons similarly situated but the court fee has to be paid ad valorem and hence varies from case to case. Thus levy of court fees on the grant of the compensation claim has no rational nexus with the object of providing justice.
>
> (3) The impugned Article 15 violates Article 19(1)(f). of the Constitution in as much as the procedural provisions do not meet the test of reasonableness.
>
> (4) It was not competent to the State Legislature to enact a law under which fees have to be paid when no quid pro quo in the form of services rendered is forthcoming from the State.

13. As regards the first contention based on Article 31(2) of the Constitution, it was contended that under Article 31(2) of the Constitution no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given. It was emphasized that under the Land Acquisition Act the principles on which and manner in which the compensation payable for the compulsory acquisition of land is determined and given are both laid down and it is emphasized that it is a right conferred upon the citizen to get the compensation for the land determined but he should not be called upon to pay for the machinery for determining such compensation and it was

contended that an application made to the Collector under Section 18 of the Land Acquisition Act for making a reference to the Court, is also a part of the machinery for determination of compensation. It was further contended that under Article 15 the procedure, mostly in aid of the compensation or the machinery, was laid down for determination and anything which prevents a party from availing himself of the procedure laid down by law, amounts to a clog on it. It was alternatively contended in this behalf that payment of court fees was an unreasonable restriction on the right to receive compensation and would render the procedure into something which is not, to use the words of the Constitution, "a manner for determination of compensation." Reliance was placed in this connection on the decision of the Supreme Court in *Prem Chand Garg and Anr. v. Excise Commissioner*[5], In that case the question arose whether Rule 12 of order 35 of the Supreme Court Rules and Orders, in so far it related to petitions under Article 32 of the Constitution was valid or invalid and it was held by the learned Judges who heard the matter that Rule 12 regards the assertion or vindication of the fundamental right to move the Supreme Court under Article 32 of the Constitution and constituted its infringement. It was held that the rule was invalid and could not be sustained either under Article 142(1) or 145(1)(f) of the Constitution. Gajendragadkar J. as he then was, delivered the majority judgment and he has pointed out that the conclusion was inescapable that the order for security retards the assertion or vindication of the fundamental right under Article 32 of the Constitution and in that sense must be held to contravene the said right. It was found that the impugned rule of Supreme Court Rules in so far as it related to security for costs impaired the content of the fundamental right guaranteed to a citizen under Article 32 of the Constitution and must be struck down as unconstitutional. It was observed in paragraph 15 at page 1004:

> "If a rule or an order imposes a financial liability on the petitioner at the threshold of his petition and that to for the benefit of the respondent, the non-compliance with the said rule or order brings to an end the career of the said petition; that must be held to constitute an infringement of the fundamental right guaranteed to the citizens to move this Court under Article 32. That is why we think Rule 12 in respect of the imposing of security is invalid.

Relying on this passage from the Supreme Court judgment, Mr. Kaji contended that in the instant case Article 15 of the First Schedule of the Bombay Court Fees Act, imposes a financial liability before the right of a party to get the amount of compensation under the Land Acquisition Act determined by an appropriate Court can be exercised and at the

[5] AIR 1963 SC 996

very threshold of the proceedings he may be denied the right of approaching the Court if he does not pay the court fees under that Article and it was, therefore, contended that this must be held to be an infringement of the fundamental right guaranteed under Article 31 of the Constitution. It was pointed out in this connection that the Government may not take possession for a long time and award money cannot be paid to the claimant till the possession is taken over. There may be a combined reference under Sections 30 and 18 and this may also delay payment of the

compensation to the claimant and further that there is no procedure for a pauper to move the Collector for a reference under Section 18 of the Land Acquisition Act.

14 As against this contention urged on behalf of the petitioners, it must be borne in mind that Article 31 Clause (5) restricts the operation of the provisions of Article 31(2) regarding ascertaining the extent of the amount of compensation for compulsory acquisition of property. Article 31(5)(b)(i) provides:

> (5) Nothing in Clause (2) shall effect:
> (b) the provisions of any law which the State may hereafter make:
> (i) for the purpose of imposing or levying any tax or penalty.

Article 366 is the definition Article in the Constitution and by clause 28 of that Article word "taxation" has been defined to include the imposition of any tax or impost, whether general, local or special, and "tax" shall be construed accordingly. A fee is an import even though it may not amount to tax and, therefore, it would fall within the inclusive definition of the word tax and taxation occurring in Article 31(5)(b)(i). Article 110 defines money bills and for the purposes of Chapter II of Part V of the Constitution, a money bill has been defined to mean in Clause (1)(a); a bill which contains only provisions dealing with the imposition, abolition, remission, alteration or regulation of any tax. Under Clause (2) of Article 110, a bill is not deemed to be a money bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licensees or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any lax by any local authority or body for local purposes. Thus, though the Constitution-makers in Article 110 were clearly aware of the distinction between a tax and a fee being either for a license of for the services rendered, yet when it came to Article 366 all imposts were included within the word "taxation" by virtue of Article 366, Clause (a).

15. Moreover in *Chhotabhai Jethabhai Patel and Co. v. Union of India*[6] the question of a taxing law infringing fundamental right was considered by the Supreme Court. In paragraph 36 at page 1020, Ayyangar J. has observed:

> "Mr. Sanyal is right in his submission that the levying of taxes though it might involve taking private property for a public use is entirely distinct from the power of eminent domain which is covered by Article 31(1)(2) and that the saving in Article 31(5)(b)(i) of such laws is really by way of abundant caution. It has been stated that where-
> 'property is taken under a taxing power, the persons so taxed may be said to be compensated for their contribution by the general benefits which they receive from

[6] A.I.R. 1962 S.C. 1036

> the existence and operation of Government, but this is not to say that the burden of & tax that may be constitutionally laid upon an individual needs to be justified by a showing

that he individually will receive benefit from the expenditure of the proceeds of the tax, and much less that the degree of that burden may be measured by the amount of benefit that the tax-payer is expected to receive.' It would,
therefore, be obvious that a tax law need not satisfy the tests of Article 31(2).

Again in that case the Supreme Court held:

"The broad proposition that no law imposing a tax can be impugned on the ground of violation of Part 111 of the Constitution in general and in particular of Article 19(I)(f) or Article 31 and that the validity of such law is governed solely by Article 255 cannot be accepted as correct. Article 265 merely enacts that all taxation-the imposition, levy and collection, shall be by law, the Article beyond excluding purely executive action does not by itself lay down any criterion for determining the validity of such a law to justify any contention that the criteria laid down exclude others to be found elsewhere in the Constitution for laws in general. If by reason of Article 265 every tax has to be imposed by 'law' it would appear to follow that it could only be imposed by a law which is valid by conformity to the criteria laid down in the relevant Articles of the Constitution. These are that the law should be (1) within the legislative competence of the legislature being covered by the legislative entries in Schedule VII of the Constitution; (2) the law should not be prohibited by any particular provision of the Constitution such as for example, Articles 276(2), 286, etc. and (3) the law or the relevant portion thereof should not be invalid under Article 13 for repugnancy to those freedoms which are guaranteed by Part III of the Constitution which are relevant to the subject matter of the law. It is true that a tax law need not satisfy the tests of Article 31(2) but it does not follow that every other Article of Part III is inapplicable.

16. In *Raja Jagannath Baksh Singh v. State of Uttar Pradesh and Anr*[7]*.,* Gajendragadkar J. (as he then was) delivering the judgment of the Supreme Court has pointed out in Para 18, at page 1571:

"Article 31(2) would be inapplicable to a taxing statute because the taxing statute does not purport or acquire or requisition any property. It may be that the imposition of the tax levied by the statute is excessive and may ultimately lead to the loss of the assessee's property, but even so, it cannot be said that by virtue of the Act, the property has been acquired or requisitioned. Article 31(2A) clearly brings out the limits of the application of Article 31(2). Similarly, Article 31(5)(b)(i) specifically provides that nothing in Clause (2) shall affect the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty. Thus it is clear that the provisions of Article 31(2) cannot be invoked in impeaching the validity of a taxing statute and so, we come back to the position that a taxing law which does not offend against any of the fundamental rights guaranteed by Part III, would justify the imposition of a taxed would

meet the requirements of Article 31(1).

[7] AIR 1962 SC 1563

It was also pointed out in the said judgment in para 17 at page 1571:

> "Whenever the validity of a taxing statute is challenged on the ground that it contravenes Article 14 or Article 19, the challenge cannot be thrown out on the preliminary ground that a tax law is beyond such challenge, but its merits must be carefully examined.

In our opinion in view of the clear language of Article 31(5)(b)(i), this particular provision of statute which imposes tax as defined by Article 366 cannot be challenged on the ground of the alleged violation of Article 31(2).

17. That takes us to the next contention urged on behalf of the petitioner, viz., challenge to the impugned Article of the Bombay Court Fees Act on the ground that it contravenes Article 14 of the Constitution. It was contended in this behalf that persons whose lands are taken away form a class but the impugned Article 15 of the Bombay Court Fees Act charges fees on ad valorem basis and hence amount of Court fee varies from case to case. It was contended in this connection that the levy of court fees depending on the amount of the compensation claimed has no rational nexus with the object of the levy, namely, rendering services by providing machinery for justice. As against this we have to bear in mind the scope of a challenge to a taxing statute on the ground of alleged violation of Article 14 of the Constitution. In *V. Venugopala Ravi Varma Rajah v. Union of India and Anr*[8]*.,* Shah J., as he then was, delivering the judgment of the Supreme Court has pointed out the scope of such a challenge; he has observed in paragraph 14 at page 1098:

> "Equal protection clause of the Constitution does not enjoin equal protection of the laws as abstract propositions. Laws being the expression of legislative will intended to solve specific problems or to achieve definite objectives by specific remedies, absolute equality or uniformity of treatment is impossible of achievement. Again tax laws are aimed at dealing with complex problems of infinite variety necessitating adjustment of several disparate elements. The Courts accordingly admit, subject to adherence to the fundamental principles of the doctrine of equality, a larger play to legislative discretion in the matter of classification. The power to classify may be exercised so as to adjust the system of taxation in all proper and reasonable ways : the Legislature may select persons, properties, transactions and objects, and apply different methods and even rates for tax, if the Legislature does so reasonably. Protection of the equality clause does not predicate a mathematically precise or logically complete or symmetrical classification: it is not a condition of the guarantee of equal protection that all transactions, properties, objects or persons of the same genus must be affected by it or none at all. If the classification is rational, the Legislature is free to choose objects of taxation, impose different rates,

> exempt classes of property from taxation, subject different classes of property to tax in different ways and adopt different modes of assessment. A taxing statute may contravene Article 14 of the Constitution if it seeks to impose on the same class of property, persons, transactions or occupations similarly situate, incidence of taxation, which leads to obvious inequality. A taxing statute is not, therefore, exposed to attack on the ground of discrimination merely because different rates of taxation are prescribed

[8] AIR 1969 SC 1094

> for different categories of persons, transactions, occupations or objects.

In the instant case the legislature has provided for a fee being levied on ad valorem basis depending upon the amount of the claim which the claimant puts forward in his application under Section 18 of the Land Acquisition Act, but it cannot be said that this impunged Article 15 of the Bombay Court Fees Act imposes on the same class of property, incidence of taxation which might lead to an inequality. Merely because ad valorem court fee is fixed, it cannot be said that persons belonging to the same class have to bear burden of taxation which is unequal either in the case of the properties or in the case of persons. Under these circumstances and in the light of the law laid down by the Supreme Court in V.V.R. Varma's case (supra), this challenge under Article 14 of the Constitution must fail.

18. As regards the third ground of challenge of the impugned Article, the contention is that the procedural provisions regarding the award of compensation are in violation of Article 19(1)(f) of the Constitution. Relying upon the observations of the Supreme Court in *Rustom Cavasjee Cooper v. Union of India*[9], it was contended that the impugned Article in the instant case violates Article 19(1)(f). of the Constitution. The relevant passages on the strength of which this challenge on the ground of alleged violation of Article 19(1)(f). is formulated, are to be found in paragraphs 45 and 46 on page 594 and paragraphs 58 and 60 on page 596 of the report. Shah J. (as he then was) delivering the judgment of the Supreme Court observed:

> "The constitutional scheme declares the right to property of the individual and then delimits it by two different provisions : Article 19(5) authorizing the State to make laws imposing reasonable restrictions on the exercise of that right, and Clauses (1) and (2) or Article 31 recognizing the authority of the State to make laws for taking the property. Limitations under Article 19(5) and Article 31 are not generically different, for the law authorizing the exercise of the power to take the property of an individual for a public purpose or to ensure the well-being of the community and the law authorizing the imposition of reasonable restrictions under Article 19(5), were intended to advance the large public interest. It is true that the guarantee against deprivation and compulsory acquisition operates in favors of all persons, citizens as well as non-citizens, whereas the positive declaration of the right to property guarantees the right to citizens. But a wider operation of the guarantee under Article 31 does not alter the true character of the right it protects. Article 19(5) and Article 31(1) and (2), in our judgment operate to delimit the

exercise of the right to hold property.

It was pointed out at page 593:

> "Impairment of the right of the individual and not the object of the State in taking the impugned action, is the measure of protection. To concentrate merely on power of the State and the object of the State action in exercising that power is therefore to ignore the true intent of the Constitution.

In paragraphs 58-60 at page 596, Shah J. has pointed out:

[9] AIR 1970 SC 564

> Limitations prescribed for ensuring due exercise of the authority of the State to deprive a person of his property and of the power to compulsorily acquire his property are, therefore, specific classes of limitations on the right to property falling within Article 19(1)(f). Property may be compulsorily acquired only for a public purpose. Where the law provides for compulsory acquisition of property for a public purposes it may be presumed that the acquisition or the law relating thereto imposes a reasonable restriction in the interest of the general public. If there is no public purpose to sustain compulsory acquisition, the law violates Article 31(2). If the acquisition is for a public purpose substantive reasonableness of the restriction which includes deprivation may, unless otherwise established, be presumed but enquiry into reasonableness of the procedural provisions will not been excluded. For instances, if a tribunal is authorised by an Act to determine compensation for property compulsorily acquired without hearing the owner of the property, the Act would be liable to be stuck down under Article 19(1)(f).

This is the scope of procedural unreasonableness being invoked for the challenge to the impugned Article on the ground of violation of fundamental rights under Article 19(1)(f). of the Constitution. In the case before us we find that the Land Acquisition Act lays down the procedure for compulsory acquisition of a citizen's property and that too for a public purpose and the Land Acquisition Act has laid down the principle on which compensation for compulsory acquisition of the property is to be paid and the manner in which the compensation is determined and given and hence would clearly not violate Article 31(2) of the Constitution. It is contended that in so far as the impugned Article 15 asks a citizen to pay ad valorem fee on the application made to the Collector to make reference to the Court, procedural unreasonableness arises. In our opinion there is no procedural unreasonableness if the citizen is asked to pay such a fee under Article 15 of the Bombay Court Fees Act. Every litigant under Court Fees Act has to pay court fee when he approaches the Court. It cannot be said that in asking a citizen to pay a court fee for services rendered to him by the State, there is procedural unreasonableness. If there is imposition of fee for a service rendered, it cannot be said to be unreasonable. Under Section 27 of the Land Acquisition Act whenever the Court makes an award it shall also state the amount of costs incurred in the proceedings under Part III, which deals with the reference to the Court and

procedure thereon, and by what person and in what proportion the costs are to be paid. Sub-clause (2) of Section 27 provides that when the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that same deduction from his costs should be made or that he should pay a part of the Collector's costs. Therefore, if the claimant's contention in his application for reference to the Court under Section 18 of the Land Acquisition Act is upheld in the court whatever court fees he pays in the first instance will ultimately be paid to him by the Collector by virtue of an order passed in his favour by the Court under Section 27 of the Land Acquisition Act. The provisions of the Bombay Court Fees Act in so far as they enact impugned Article 19, for payment of ad valorem fees read with Section 18 of the Land Acquisition Act are clearly meant to prevent claimants from putting forward exorbitant claims and they cannot be said to be unreasonable. Hence this challenge on the ground of procedural unreasonableness leading to violation of Article 19(1)(f). of the Constitution, must fail.

19. The fourth and the last contention which now remains to be considered is about the competency of the Legislature to enact the particular piece of legislation set out in Article 15 of the First Schedule of the Bombay Court Fees Act. The argument in this connection was on three grounds. It was first contended that this particular type of court fee is not a tax but is a fee as understood in constitutional parlance. It is not a tax because it is not covered by any of the taxation entries in the State list in the VIIth Schedule of the Constitution. It was next contended that fee was being collected by the Collector when the application for reference was made under Section 18 of the Land Acquisition Act and hence it is not a fee in the Court covered by entry 3 in the State list in the 7th Schedule. It was contended that Court fee collected under impugned Article 15 cannot be said to be a fee taken in a public office. In this connection it was pointed out that the Bombay Court Fees Act, 1959, as shown by preamble to the Act, was an Act to consolidate fees taken in the Court and public offices and the Land Acquisition Officer not being a Court nor even a quasi-judicial officer, the Court fee under the Article in question was not covered by entry 3 in the State List of the 7th Schedule of the Constitution. And lastly it was contended that even if it was regarded as fee taken in Court, it is wholly disproportionate to services rendered by the State to the person who paid court fee under Article 15, and therefore, it ceases to be a fee and amounts to a tax and since it is not covered by one of the entries in List II of the Seventh Schedule of the Constitution, it is not competent for the State Legislature to enact this impugned Article.

20. As regards the scheme of the entries of the List in the 7th Schedule, we can do no better than quote extensively from the judgment of Ayyangar J. who was speaking for himself and Subba Rao J. in *The Corporation of Calcutta and Ann v. Liberty Cinema*[10], These observations explain the principle laid down in the earlier decision in *M.P.V. Sundararamier & Co. v. The State of Andhra Pradesh and Anr*[11]., In the Corporation of Calcutta's case (supra), Ayyangar J. in paragraphs 44 and 45, has analyzed the scheme of classification of the entries in the three Lists In paragraph 44, Ayyanger J. has pointed out:

> "It is common ground that the Constitution recognizes a clear distinction between a tax and a fee. The several entries in the lists in the seventh Schedule which enumerate the legislative powers and distribute them between Parliament and the State Legislatures point to this distinction. The scheme underlying the Lists may shortly be summarized thus. Each of the Union or the State Lists which are Lists I and II start by enumerating first the entries conferring general legislative power as distinct from taxation powers. In other words, the taxation entries, that is entries conferring taxing power, are separately enumerated after entries conferring general legislative power. Thus items 1 to 81 of List I deal with the exclusive general legislative powers of Parliament while 82 to 92 enumerate the taxes which Parliament may impose. Item 86 empowers Parliament to legislate in respect of 'fees in respect of any of the matters in this List, but not including fees taken in any Court.' This would clearly demonstrate that which 'fees' may be levied in respect of or as incidental to legislation on the topics set out in the other entries in the list, the power to levy a tax is not to be taken as conferred by entries conferring general legislative power. Thus though a fee may be levied as incidental to

[10] AIR 1965 SC 1107

[11] AIR 1958 SC 468at pages 493-494

> legislation-be it general as in respect of entries 1 to 81 or the entries conferring taxing powers-entries 82 to 92, or in respect of the miscellaneous matters enumerated by such an entry like 94, no taxes may be imposed by virtue of the general legislative power under entries 1 to 81.

Then the passage from the decision of the Supreme Court in *M.P.V. Sundararamier and Co. v. State of Andhra Pradesh*, is set out and incorporated. It has been emphasized in paragraph 45:

> "The same pattern of classification and conferment of general legislative as distinguished from taxing power is adopted in the State List, List II. Entries 1 to 44 of this List deal with general legislative power while items 43 to 63 deal with specific taxes which might be imposed exclusively by the State Legislatures. The last entry in this List is in the same terms as Entry 96 of List I and reads 'fees taken in respect of any of the matters in this List but not including fees taken in an Court'. So far as the Concurrent List is concerned, it contains no entry conferring the taxation power but by its last entry, Entry 47, it enables the Legislatures to impose 'fees in respect of any of the matters in that List but not including fees taken in any Court' and this is in terms identical with entries 96 of List I and 66 of List II. It is, therefore, quite obvious that the Constitution proceeds on a basis of clear line of demarkation between the power to tax and the power to levy a fee.

We may point out that though on other points there was a difference of opinion between Ayyangar and Subba Rao JJ. and the Majority of the Judges who decided the case, on this point

and of limitation of taxing power and distinction between power to tax and power to levy fee, there was no difference between the majority and minority of the learned Judges and it is on this clear line of demarkation between the two powers namely (i) the power to levy a fee; and (ii) the power to levy a tax, that the entire matter has to be looked at. It is clear that in the instant case the impugned Article 15 of the First Schedule of the Bombay Court Fees Act can fall only under entry 3 of List II of 7th Schedule. The entry states : "Administration of Justice, constitution and organisation of all Courts except the Supreme Court and the High Court, officers and servants of the High Court, procedure in rent and revenue courts, fees taken in all Courts except the Supreme Court." Under the residuary entry 66 in List II, fees in respect of any of the matters in this List do not include fees taken in any Court, Similarly entry 47 in the concurrent list mentions fees in respect of any of the matters in the Concurrent List but not including fees taken in any Court. Acquisition and requisition of property is shown at item 42 in the concurrent list and, therefore,, if this particular fee were in connection with acquisition of property it would be covered by Entry 47 of the concurrent list. If on the other hand it were to be taken as fee taken in Court, it can only be covered by item 3 of the State List in the 7th Schedule.
It is true that fees are not actually collected in Court so far as court fees paid on application under Section 18 of the Land Acquisition are concerned, but it is equally clear when we go to Section 18 of the Land Acquisition Act that they are paid in connection with what is going to be agitated in Court. Under Section 18, Sub-section (1) of the Land Acquisition Act, any person interested who has not accepted the award may, by written application to the Collector require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. Application under Section 18 of the Land Acquisition Act is the first step for approaching the Court for determination of one or the other of the questions referred to Section 18, Sub-section (1) of the Land Acquisition Act. It is this application which by otherwise competent and maintainable opens the doors of the Court to the claimants concerned but what it really amounts to is an application for setting in motion the machinery for the purpose of getting justice. Under these circumstances it cannot be contended that the court fee paid in respect of application under Section 18 of the Land Acquisition is not to be taken in Court.

21. In order to appreciate the last of the arguments of the petitioners in connection with this question of fees, it is necessary to refer to a few authorities. The distinction between a tax and a fee was pointed out by the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shri Shirur Mutt*[12], and the basis of distinction between a tax and a fee was pointed out by the Supreme Court in that case. Mukherjea J. (as he then was) quoted the definition of "tax" as given by Latham C.J. of the High Court of Australia in *Matthews v. Chicory Marketing Board*[13] where Latham C.J. observed:

> "A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and it is not payment for services rendered.

The distinction between a tax and a fee was pointed out by Mukherjea J. in The Commissioner, Hindu Religious Endowments Madras's case, in these terms:

> "It is said that the essence of taxation in compulsion, that is to say, it is imposed under statutory power without the tax-payer's consent and the payment is enforced by law.

The second characteristic of tax is that it is an imposition made for public purposes without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of 'quid pro quo' between the tax payer and the public authority, see Findlay Shirras on 'Science of Public Finance,' Vol. I, p. 203. Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the tax-payer depends generally upon his capacity to pay.

> Coming now to fees, a 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the flees are uniform and no account is taken of the varying abilities of different recipients to pay, vide Lutz on 'Public Finance', p. 215. These are undoubtedly

[12] AIR 1954 SC 282

[13]60 C.L.R. 263 at p. 276

> some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.

The Supreme Court also pointed out in that case:

> "if as we bold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should, on the face of the legislative provision, be correlated to the expenses incurred by the Government in rendering the services.

It is important to note that in this decision in ., the Supreme Court emphasised that co-relation between the fees and the services rendered or the expenses incurred in rendering the services should be apparent on the face of legislative provision itself or the legislative provision itself must co-relate the fee with the expenditure incurred by the Government in rendering services. In *The Hingir Rampur Coal Co. Ltd. and Ors. v. The State of Orissa and Ors*[14]*.,* again the question of fee was considered and it was pointed out by the Supreme Court that there was no generic

difference between a tax and a fee, both are compulsory exactions of money by public authorities. Whereas a tax is imposed for public purposes and requires no consideration of service rendered in return, a fee is levied for services rendered and there must be element of quid pro quo between the person who pays the fee and the public authority which imposes it. While tax invariably goes into the consolidated fund which ultimately is utilised for all public purposes, a cess levied by way of fee is not intended to be a part of the consolidated fund, for the public purpose, whether cess is one or the other will naturally depend on the element of quid pro quo. It is for the Court to scrutinise the scheme of levy very carefully and determine whether in fact there is a co-relation between the service and the levy or whether the levy is either not co- related with service or is levied to such an excessive extent as to be a pretence of a fee and not a fee in reality. The distinction between a tax and a fee is recognised by the Constitution. Several entries in the three Lists empower the appropriate Legislatures to levy taxes, but apart from the power to levy taxes thus conferred each List specifically refers to the power to levy fees in respect of any of the matters covered by the said List excluding of course the fees taken in any Court. The test laid down for determining the character of the impugned levy is that fees must be levied for machinery to render specific service to a specified area or to a specified class of persons, it is of no consequence that the State may be indirectly benefited by it. In *Sudhindm Tirtha Swamiar and Ors. v. The Commissioner for Hindu Religious and Charitable Endowments, Mysore and Anr*[15]*.,* the question of a fee as against tax was considered by the Supreme Court. In *Corporation of Calcutta v. Liberty Cinema* (supra), the question was again considered by the Supreme Court. There it was found that as a matter of fact the Act did not provide for any service of a special kind being rendered to the persons paying the fees and since there was no question of co-relating the amount of the levy to the costs of any service, the fee was held to be a tax. This decision in *Corporation of Calcutta v. Liberty Cinema's* case is important from this point of view that in absence of co-relation between the payment of fee and the services rendered to the persons paying the fee the Supreme Court held that it

[14] AIR 1961 SC 459

[15] AIR 1963 SC 966

was not collected for the purpose of rendering any service of a special kind. The majority of the learned Judges consisting of Sarkar, Raghubar Dayal and Mudholkar JJ. held that levy was a tax and not a fee for services rendered by the Corporation. The Act did not provide for any services of special kind being rendered resulting in benefits to the person on whom it was imposed. The work of inspection done by the Corporation which was only to see that the terms of the licence were observed by the licence, was not a service to him, and hence there was no question of correlating the amount of the levy to the costs of any service. In *The Delhi Clothand General Mills Co. Ltd. v. The Chief Commissioner, Delhi and Ors*[16]*.,* the question before the Supreme Court was a question of a fee payable for the renewal of the licence issued under the Factories Act and the Rules made thereunder. The Supreme Court held in that case that the levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct

relation to the actual services rendered by the authority to the individual who obtains the benefit of the services. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected, there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax. The Supreme Court there held that the levy of license fee for renewal of license under the Delhi Factories Rules is not wholly unrelated to the expenditure incurred out of that total realisation. And, therefore, it was held that the amount was not a tax but was a fee. The Supreme Court there held that in each case where the question arises whether the levy is in the nature of a fee the entire scheme of the statutory provisions, the duties and obligations imposed on the inspecting staff and the nature of work done by them will have to be examined for the purpose of determining the rendering of the services which would make the levy a fee. All these earlier cases were considered by the Supreme Court in *Indian Mica & Micanite Industries v. The State of Bihar and Ors*[17]*.,* The Supreme Court there analysed the position thus:

> "From the above discussion it is clear that before any levy can be upheld as a fee, it must be shown that the levy has a reasonable co-relationship with the services rendered by the Government. In other words the levy must be proved to be a quid pro quo for the services rendered. But in these matters it will be impossible to have an exact co-relationship. The co-relationship expected is one of a general character and not as of arithmetical exactitude.

Further on in the course of that judgment the Supreme Court pointed out that in that case the State was rendering no service to the consumer but was merely protecting its own rights, it was rendereding no service in return for the fees, in that particular case, according to the Supreme Court, the State was in a position to place materials before the Court to show what services had been rendered by it to the licensees, the costs or at any rate the probable costs that can be said to have been incurred for rendering those services and the amount realized as fees but had failed to do so. The co-relationship between the services rendered and the fee levied is essentially a question of fact. Prima facie, the levy

[16] AIR 1971 SC 344

[17] Civil Appeal No. 770 of 1967, decided on April, 2 1971

appeared to be excessive even if the State could be said to be rendering some service to the licensees. The State ought to be in possession of the material from which the co-relationship between the levy and the services rendered can be established at least in a general way, and in that case it was bound to place materials before the Court and, therefore, the levy under the impugned Rule could not be justified. The Supreme Court has emphasized in that case, that the power of any Legislature to levy a fee is controlled by the fact that it must be by and large quid pro quo. If levy is imposed without doing any service or if it is found that levy is wholly protecting state's own rights then the levy becomes invalid.

22. We may also point out that this question of levy being wholly disproportionate to the services being rendered and thus the levy being invalid was touched by the Supreme Court in Delhi Cloth and General Mills Co. Ltd.' case (supra). The Supreme Court there observed that it could hardly be contended that levy of licence fee was wholly unrelated to the expenditure incurred out of the total realisation and since the co-relation between this collection and the services rendered was established, it was held that levy of the license fee was valid. In Sudhindra Thirthe Swamiar and Ors.' case (supra) at page 974 in paragraph 18 it was observed:

> "No attempt was made before the High Court to establish that the levy of contribution at the rate of five per cent was so exhorbitant that it could be said to have no true relation to the value of the services rendered to the endowments by the administration.

23. Before we go to the actual facts of the present case we may point out that before three different High Courts namely, Bombay, Allahabad and Madras one or the other provision of Court Fees Act was challenged at one time or another. In *Khacheru Sing v. S.D.O. Khurja*[18], a Full Bench of the Allahabad High Court considered the provisions of the Court Fees Act as applied in Uttar Pradesh and the challenge was to Article l(e) of the Second Schedule of the Court Fees Act as amended by the Court Fees (U. P. Amendment) Act, 1959. The Full Bench of the Allahabad High Court there held that the definition of fee to be found in the three Supreme Court cases considered by the Full Bench was not intended to be exhaustive. The Full Bench held that under the Constitution fees taken in Court form the type of fee which the Supreme Court had under consideration. Though the fees realised under the Court Fees Act are not appropriated for any specific purpose but form part of the general revenue of the State, it would fall within the expression 'fee' in the Constitution. Raghubar Dayal J. observed that the court fee is charged for services rendered. There can be no monetary measure for the service rendered. The first element essential to make a payment a fee was present. The second element of the fee not going to the general revenues but being credited to a separate fund did not exist in the case of court-fee collected by the State, but that factor did not make court-fee a tax. The decision of the Bombay High Court is in *The Central Provinces Syndicate (Private) Ltd. v. Commissioner of Income-tax, Nagpur*[19], where the validity of Article 16 of the First Schedule of the Bombay Court Fees Act, 1959, was considered by

[18] AIR 1960 All. 462

[19] AIR 1962 Bom. 106

a Division Bench, consisting of Tambe and V.S. Desai JJ. The
Division Bench held that levy imposed by Article 16 of the First Schedule of the Bombay Court Fees Act is neither a tax nor a fee in strict sense of the term as used in the Constitution but is covered by entry 3 of List II in the 7th Schedule of the Constitution and as such is within the competence of the State Legislature. The only feature of the court fee which distinguishes it from a tax is that unlike a tax, which is an imposition made for public purposes without any reference

to any special benefit to be conferred upon the payers of the tax, the court fee is imposed on persons who want to file documents in Court or obtain certified copies from the Court and the imposition can thus be said to have reference to the special benefit of getting documents filed or receiving copies which is obtained, by, the persons from whom payment is asked. There is however no monetary measure of the fees charged for the services rendered and the levy, of fees can also not be said to be in proportion to the service rendered. It may be pointed out that at the time when this decision in C. P. Syndicate (Pvt). Ltd., was delivered, the Division Bench of the Bombay High Court did not have the benefit of the observations of the Supreme Court in *Calcutta Corporation v. Liberty Cinema* (supra) and particularly of the analysis made by Ayyangar J. of the items in 3 Legislative Lists in Schedule 7. We have already referred to this analysis of the scheme of the items in the 3 legislative lists and in view of that analysis it is clear that any imposition which is not covered by the taxation powers of Parliament or the State Legislature must be justified by the power to levy a fee under one or the other of the items in the Legislative lists and even court fees covered by item 3 in the State List in the 7th Schedule of the Constitution must be considered as a fee meaning thereby a payment for services rendered by the State. Under these circumstances we are unable to agree with this decision of the Bombay High Court.

24. In *Zenith Lamps and Electrical Ltd., and Ors. v. The Registrar, High Court, Madras and Ors*[20]. the question was, whether the High Court Fees and Rules, which incorporated the provisions of the Madras Court Fees and Suits Valuation Act, 1955, which had been statutorily made applicable for suits and proceedings instituted In the High Court in its Original Jurisdiction also were constitutionally valid insofar as uniform ad valorem fee without limit at 7/4 per cent on all plaints or written statements, pleadings, a set off or counter claim or memoranda of appeal was valid, and the Division Bench held that these provisions were invalid. The Division Bench held that the levy of court fees under the Original Jurisdiction of the High Court under Rule 1 of the Madras High Court Rules, 1956, as provided in the Madras Court-fees and Suits Valuation Act, was invalid and unconstitutional.

25. In *The Secretary, Government of Madras, Home Department and Anr. v. Zenith Lamps & Electrical Limited*[21], the; Supreme Court decided the appeal against the decision of the Madras High Court in *Zenith Lamps and Electricals Ltd. v. The Registrar, High Court, Madras* (supra), and after considering the historical background and also the relevant authorities, the Supreme Court held that 'fees taken in Court' cannot be equated to "Taxes". If this is so, there is no essential difference between fees taken in court and other, fees. It was further held that what is fee in a particular case depends on the subject-

[20]I.L.R. Madras I, 247

[21] Civil Appeal No. 293 of 1967, decided on November 11, 1972

matter in relation to which fees are imposed. In the case of court, fees that question arises in connection with the administration of civil justice in a State; and the Supreme Court held that the

court fees must have relation to the administration of civil justice. While levying fees, the appropriate Legislature is competent to take into account all relevant factors, the subject-matter of a suit or matter, the entire-cost of the upkeep of courts and officers administering civil justice, the vexatious nature of a certain type of litigation and other relevant matters. It was held that the Legislature is free to levy a small fee in some cases, a large fee in others, subject of course to the provisions of Article 14. But it is not competent to the Legislature to make litigants contribute to the increase of general public revenue. In other words, the Legislature cannot tax litigation, and make litigants pay, say for road-building or education or other beneficial scheme that a State may have. There must be a broad correlationship with the fees collected and the cost of administration of civil justice. We may point out that in this case the Supreme Court rejected the view taken by the Full Bench of the Allahabad High Court in *Khacheru Sing v. S.D.O., Khurja,* , and also the view taken by the Division Bench of the Bombay High Court in C. P. Syndicate (Pvt). Ltd.

26. In view of this decision of the Supreme Court which is the latest pronouncement on the subject, what we have to consider is whether in the instant case, there is a broad co-relationship between the fee under the impugned article of the Bombay Court fees Act and the cost of administration of civil justice. It must be borne in mind that this particular fee which is sought to be collected is but a part of the court fees collected by the State and the question that we will have to consider is whether there is such a broad relationship between the fee collected and the cost of administration of civil justice. The Supreme Court further held that whenever the State Legislature generally increases Court fees, it must establish that it is necessary to increase court fees in order to meet the cost of administration of civil justice. As soon as the broad co-relationship between the cost of administration of civil justice and the levy of court fees ceases, the imposition becomes a tax and beyond the competence of the State Legislature.

27. In the instant case the State has placed before us a break up income and expenditure as per budget of different years in connection with collection of court fees and expenditure which in incurred by the State of Gujarat in connection with administration of justice. The relevant figures are found in Annexure "A" to the Affidavit of A.I. Abrahan, Under Secretary to the Government of Gujarat, Legal Department. In his affidavit, dated April 26, 1971. Statement "A" covers revenue and receipts for the year 1969-70 and they are taken in verbatim from the Budget estimates for the year. Annexure "B" is statement indicating the figures of revenue and, receipts for Civil Administration of Justice allocated according to the principles laid down by the Law Commission in its 11th report regarding the reforms of Judicial Administration. Annexure "C" shows the State expenditure for the year 1965-66 to 1969-70 and they are taken verbatim from the Budget Estimates of the said years. And lastly Annexure "D" is the statement allocating expenditure for Civil and Criminal Administration under the Administration of Justice and the said statement is prepared according to the principles laid down by the Law Commission in its 14th report, regarding the reform of judicial administration.

28. Now when one compares the relevant figures for the comparable years, say for the year

1967-68, one finds that the receipt from court fee stamps came to Rs. 86, 26, 411/- and from Miscellaneous judicial stamps etc. and other items, the income was Rs. 35, 462/-, along with these items of income other items like income from sale of unclaimed and escheated property, court fee realised in cash and in connection with process fees and general fees, fines and forfeiture fees, Insolvency Registrar and even in the High Court and District and Civil Court and fine imposed by the Civil and Sessions Court and Magistrate Court and limited societies and show a total receipt of Rs. 27,92,074/-. The aggregate income comes to Rs. 1,24,87,125/ -. When one turns to statement "C" for the same year one does not find the actual expenditure for (civil and criminal) Administration of Justice, but the comparative figures for the year 1968-69 are total receipts on the income side is Rs. 1,29,99,743/- and on the expenditure side Rs. 1,14,58,704/ -. The expenditure includes not merely expenses in connection with the High Court and Civil and Sessions Courts and other Courts as such but also an item of Rs. 10,00,000/-, for law officers and for Sheriff and for law reporter a sum of Rs. 17,000/- and odd. For the year 1969-70, the total receipts from stamps etc. were Rs. 1,43,97,326/-, whereas the total expenditure incurred for Administration Civil and Session Court the amount comes to Rs. 1,42,16,697/-. 'throughout these figures both in Statements "C" and "D" one finds that the expenses for law officers are included in the total figures but when one turns to break up of expenses on Civil and Criminal sides as indicated by the principles laid down by the Law Commission, one finds that the expenses, in connection with the Civil side came to Rs. 66,55,243/- for Civil Administration and Rs. 64,28,435/- from the criminal side. Roughly, same state of affairs prevails in all years. An amount slightly more than 50 per cent of total expenditure goes for Civil Administration of Justice and slightly less than 50 per cent is devoted to the Criminal Administration of Justice. As has been pointed out by the Law Commission in its report, it is the duty of the State to maintain machinery for criminal administration of justice and the State cannot charge citizens for maintenance of the machinery for administration of criminal justice. On the other hand one elementary duty of the State is to maintain Courts so that the rule of law may prevail and people may resort to courts of law, for the settlement of disputes inter se; when the State makes its machinery of administration of justice available for the use of the ordinary citizens, it is entitled to charge a reasonable fee for making that machinery available. It is also true that in order to prevent frivolous litigation as a controlling measure some amount of higher court fee may be justified but the State cannot levy an exorbitant court fee for making available the administration of civil justice nor can it make suitors pay for the entire administration of justice when by providing the machinery the State performs one of its essential function, as the existence of the courts sometimes serves a deterrent to parties from taking the law in their own hands. It is possible that the law laid down by the superior Court in one or two cases will be followed throughout the State or throughout the country and to that extent the rest of the litigants will not be compelled to approach the court of law. Under these circumstances, it is extremely difficult to say as to when a particular levy of court fees can be said to be a reasonable levy looking to the quid pro quo which has to be satisfied. We find in the instant case that from the amount of court fees realized by the State, substantial part of the expenses for the machinery of administration of criminal law is being paid; similarly the salaries of law officers are at present being charged

against this head of income. And lastly we find that as regards the particular function namely, of determination of proper amount of compensation to be paid to the claimants when his land is being compulsorily acquired under the Land Acquisition Act, the services rendered to the litigant are but a part of the larger services for the rendering of which Civil Courts are maintained.

29. It was contended on behalf of the petitioners that there was nothing to show on the record as to how much was being spent by the State for rendering services to the claimants in compensation cases arising under the Land Acquisition Act. But this approach, to our mind, is not permissible. The determination of questions arising under the Land Acquisition Act is a part of the several functions performed by the Civil Courts while discharging their function as Civil Courts and if it can be shown by the State, the burden being entirely on the State to show this, that by and large the amount which the claimant is called upon to pay is not exorbitant or wholly disproportionate to the services rendered to him, the State can in meeting the challenge, succeed. However, in the instant case the State has not discharged the burden by putting before us the appropriate figures which would go to show that there is a reasonable broad co-relationship between the amount of court fee paid under Article 15 of the First Schedule of the Bombay Court Fees Act and the services rendered by the State to such applicants as a part of the maintenance of the general machinery for the administration of the civil justice. We agree with the observations of the Division Bench of the Madras High Court in Zenith Lamps and Electricals Ltd., and Ors.' case (supra) at page 372:

> "If the financial capacity of the suitor is assumed, because of the heavy claims he makes and the levy is related to it, then again the characteristic of fee is ignored. For the same kind of service why should one contribute more than the other ? Differences in the nature of litigation may justify different charges. Law is the same for the rich and the poor. No different law is given to the rich to make them pay more. Special concessions may be, and are, shown to those who do not have the means to pay the Court-fee in the first instance. But the fees is then realised from the opposite party or from the fruits of the litigation. A fee in its technical sense a levy on a principle just the opposite of tax-a tax is paid for the common benefits conferred by the Government on all tax payers; a fee is a payment made for some benefit sought for by the payer. When a suitor is singled out to bear a disproportionately heavy part of the cost of the administration of justice, he is to a certain extent called upon to pay for a State activity in which he is no more interested then any other citizen. The suitor shares the benefit of the existence of the Courts, the Magistracy and the administration of law and order by the State like every other citizen. Any levy on a suitor in the civil Court whereby revenues are realised generally and unrelated to his cause will to that extent, be an impost in the nature of a tax.

It is true that as observed by the Gujarat High Court in *Dalpatbhai Hemchand and Ors. v. The Municipality of Chanasma and Anr*[22]*.,* it is not necessary for a particular impost to amount to a fee that it should be credited in a separate fund. So long as a reasonable co-relationship between

fee charged and the services rendered to the person paying the fee can be shown to exist, the State will be able to meet the challenge to the validity of the levy. Setting up of a separate fund merely prima facie helps the Court in determining the nature of the impost. If separate fund is maintained and all collections of the fees are credited in that fund and expenses in connection with the services rendered are met from

[22]8 G.L.R. 225, at page 239

that fund then obviously the task of the State to satisfy the Court that the levy is for services rendered becomes much easier. Even otherwise it must be pointed out that it is open to the State to satisfy the Court by placing materials before it that the payment is for the services rendered to the person paying the fees.

30. In this connection, we once again emphasize what we have earlier mentioned, viz., that the State on the face of the legislation must show the co-relationship between the fee paid and the services rendered but no such relationship can be shown to exist in the instant case. Under Section 548(2) of the Calcutta Municipal Corporation Act, in the case of Corporation of *Calcutta and Anr. v. Liberty Cinema* (supra), the Supreme Court struck down the levy of the fee for renewal of licence. Even if the strict view of the co-relationship being apparent on the face of the statute were not to be adopted and even if it were permissible to the Court to look into materials otherwise placed before the Court, in the instant case we find that the State has not been able to satisfy as about a reasonable co-relationship between the amount of the Court fee paid under Article 15 of the Schedule 1 of the Bombay High Court Fees Act and the cost of administration of civil justice in the State. It may be pointed out that ad valorem fee in cases like the present one fail to make out a distinction between rich and poor though the services rendered by the State to all applicants to apply under Section 18 of the Land Acquisition Act are the same and part of the same administration of civil justice. In our opinion, from the materials placed on the record, it is not possible to say that there is any reasonable co-relationship between fees collected under Article 15 of the First Schedule of the Bombay Court Fees Act and the cost of administration of civil justice. From the materials placed before us by the State on affidavit, it is not possible for us to say that the amount of levy is not wholly disproportionate to the services rendered to the applicant to approach the Collector under Section 18 of the Land Acquisition Act, for making a reference to the Court or to the cost of administration of civil justice. Applying any one of these tests laid down by the Supreme Court, it is clear that in the instant case the Court fees paid under Article 15 of the First Schedule of the Bombay Court Fee Act, 1959, cannot be upheld as quid pro quo for services rendered to persons even though there may not be an arithmetical exactness between the amount paid and the services rendered even by approximation, no such co-relationship is shown to exist.

31. Under these circumstances we have come to the conclusion that Article 15 of the Schedule I of the Bombay Court Fees Act, 1959, imposed a tax in the guise of a fee and is not covered by one of the taxation entries in the State List of the 7th Schedule of the Constitution of India. Hence it was not competent to the State Legislature to enact this particular Article in the

Schedule of the Bombay Court Fees Act.

32. The result, therefore, is that we must hold this particular Article of the Bombay Court Fees Act, 1959, as incompetent and beyond the powers of the State Legislature and, therefore, invalid and unconstitutional.

33. We, therefore, hold that Civil Revision Application No. 630 of 1964 must be allowed and the rule must be made absolute so far as the present petitioners are concerned.

34. Special Civil Application No. 979 of 1970 filed by the present petitioners, therefore, is allowed and it is declared that Article 15 of First Schedule of the Bombay Court Fees Act, 1959, is void, ultra vires and beyond the legislative competence of the State Legislature. A direction is consequently issued under Article 226 of the Constitution quashing and setting aside the order dated February 24, 1964, passed by the Ahmadabad City Civil Court and we direct the respondents in Special Civil Application No. 979 of 1970 to refund to the petitioners of the Special Civil Application the sum of Rs. 22,300/- being the amount paid in the first instance at the time of making the application under Section 18 of the Land Acquisition Act.

35. In Special Civil Application No. 287 of 1967, we hold that the L petitioner was not liable to pay the amount of court fees at the time of the making an application under Section 18 of the Land Acquisition Act and we, therefore, issue a Writ of Mandamus to the Special Land Acquisition Officer, Respondent No. 2 in that Special Civil Application, directing him to make a reference to the Court under Section 18 of the Land Acquisition Act even though no court fees were paid at the time when the application for making reference under Section 18 of the Land Acquisition Act was presented by the petitioner.

36. The respondents in each of these three matters will pay the costs I of the respective petitioners,

37. Order accordingly.

P.D. Desai, J.

38. I am in whole-hearted agreement with the view taken by my Lord the Chief Justice and brother Divan J. on the questions raised for our decision in this group of matters and have nothing more to add.
Order accordingly