KERALA HIGH COURT

Khan Bahadur Chowakkaran Keloth

Vs

Wealth-Tax Officer

(Velu Pillai J.)

21.03.1961

JUDGMENT

Velu Pillai J.

1. These writ petitioners impugn the constitutionality of the Wealth-tax Act, 1957, hereinafter referred to as the "Act", and the legality of their assessment to wealth-tax. The petitioner in O. P. No. 674 of 1958 is the karnavan of a Mappila marumakkathayam tarwad who was assessed to wealth-tax for the assessment year 1957-58, on the net wealth of his tarwad considered as an individual, and to whom a notice of demand, exhibit A-2, dated July 16, 1958, was issued for payment; the petition is to quash exhibit A-2. The petitioner in O. P. No. 538 of 1959 is the manager of a Hindu undivided family who was assessed to wealth-tax for the assessment year 1957-58, on the net wealth of his family as on March 31, 1957, the valuation date as defined in the Act, and had paid it, but against whom, proceedings were commenced by exhibit P-1 notice dated March 24, 1959, under section 17 of the Act, to reassess him, on the net wealth of the family and in particular, on an amount of 17,000 paras of paddy which was said to have escaped assessment; the petition is to quash exhibit P-1 and to restrain the Wealth-tax Officer from proceeding with the reassessment. The petitioner in O. P. No. 684 of 1959 was the karnavan of the Namboodiri illom which was partitioned by deed said to have been executed on March 30, 1958, but registered on July 25, 1958, and was assessed to wealth-tax for the assessment year

1958-59 by order exhibit G, dated April 30, 1959, on the net wealth as on September 16, 1957, the valuation date, of his family treated as undivided; the petitioner is to quash exhibit G. The petitioner in O. P. No. 824 of 1959 was the karnavan of another Namboodiri illom, which was said to have been partitioned by deed executed on August 17, 1958, and was assessed to wealth-tax for the assessment year 1958-59, by an order, exhibit A, dated June 18, 1959, on the net wealth, as on August 16, 1957, the valuation date, of his family treated as undivided; the petition is to quash exhibit A and the notice of demand pursuant to it. O. P. No. 1155 of 1960 is also by the petitioner in O. P. No. 824 of 1959, to prohibit the Wealth-tax Officer from continuing proceedings to assess his family to Wealth-tax for the assessment year 1959-60. When these petitions came on for hearing on January 30, 1961, we directed notice to go to the Attorney-General of India, and accordingly notice has been served.

In the light of the arguments advanced before us, without going into details, at this stage it does not seem necessary more than to notice the broad grounds which have been raised in these petitions and have been refuted on behalf of the respondent, the concerned Wealth-tax Officer in each case. The most important ground was that Parliament was not competent under entry 86 in the Union List in the Seventh Schedule in the Constitution of India to impose a tax, called the wealth-tax, on the capital value of the assets of Hindu undivided families and of Mappila marumakkathayam tarwads, and also on the capital value of the assets of any person, to the extent that they are or may be deemed to be made up of agricultural income. The assessment to wealth-tax made on the petitioners and the demands pursuant thereto were impugned on several grounds and, in particular, the assessment of the petitioner in O. P. No. 674 of 1958 as on a Mappila marumakkathayam tarwad, was contended to be not warranted by the provisions of the Act, and those of the petitioner in O. P. No. 684 of 1959 and O. P. No. 824 of 1959 were impeached as violative to section 20 of the Act, which prescribes the procedure for the assessment of a Hindu undivided family upon partition. At the hearing, it was urged for the petitioner in O. P. No. 684 of 1959, that under entry 86 in the Union List, Parliament could impose a wealth-tax only on individual human beings and on companies, and that too, only on the capital value of their assets to the exclusion of lands, buildings and of what may be deemed to be agricultural income, such a tax on lands and buildings being, according to the argument, covered by entry 49 and a tax on agricultural income being covered by entry 46 in the State List.

These entries may be set out here with advantage. Entry 86 in the Union List reads :

"Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies."

Entry 46 in the State List reads :

"Taxes on agricultural income."

And entry 49 in the State List reads :

"Taxes on lands and buildings."

It was argued, that the term "individuals" in entry 86 of the Union List cannot, on any reasonable view, comprehend joint families or tarwads of Hindus or Mohammedans, and that constructing the entries as they must be, in their widest amplitude, but so as to reconcile them in the event of conflict, if necessary, even by restricting the scope of any of them and applying the maxim generalia specialibus non derogant, entry 49 in the State List, which must be deemed to include a tax on the capital value of lands and buildings, and entry 46, which provides specifically for a tax on agricultural income, are special or particular provision in entry 86 in the Union List which authorises a tax on the capital value of assets generally. The rules for interpreting entries in a constitutional enactment conferring legislative power, on the basis of which the above argument was advanced, appear to be too well-settled to need a restatement by us at this time of the day, and all that is necessary is to see how far the argument based on them can be sustained.

In examining its soundness, the first attempt must be to ascertain, what is the pith and substance or the true nature and character of the tax imposed by the Act. Section 3 is the charging section and it imposes the wealth-tax as follows :

"Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule."

Under this section, the assessees are either individuals, as that term is employed in the Act or Hindu undivided families or companies, though, it may be mentioned, that companies have been exempted from the imposition subsequently. The "net wealth" of an assessee, as defined by section 2 (m) of the Act means. The amount by which the aggregate value of the assets, as computed, is in excess of the aggregate value of the debts, excluding those of specified categories, owed by the assessee. The term "assets" includes property of every description, movable or immovable, subject to specified exceptions. Sections 4 to 6 provide, what shall or shall not be taken into account in computing the net wealth of an assessee. Under section 7 (1) of the Act, assets have to be valued according to the market price prevailing on the "valuation date" which, in relation to an assessment year, is the last date of the previous year as defined in the Indian Income-tax Act, 1922. Generally speaking, the rest of the Act may be said to make provision for the machinery and the procedure for the levy, assessment and collection of the tax. The rates of the tax, as specified in Parts I and II of the Schedule of the Act, are different for

individuals, for Hindu undivided families, and for companies, and are graded according to the net wealth. These leave no room for the doubt in our minds, that the pith and substance or the true nature and character of the tax is that it is a levy on the capital value the term "assets", agricultural lands being one of the exclusions. To this extent, the wealth-tax is specifically and in substance covered by entry 86 in the Union List.

There is no difficulty in accepting the argument that "lands and buildings" can form part of assets and that "taxes on lands and buildings" within the meaning of entry 49 in the State List may include a tax thereon on the basis of their capital value. There is authority for the view that land tax can be related to the annual or capital or sales value of the land. (See Science of Public Finance by Findlay Shirras, page 208 and Encyclopedia Britannica, 1955 edition, volume XIII, page 675). A tax on the capital value of lands, as such, was not dealt with in the passage in these books which were relied on. Where, as in the present case, the content of two competing entries, entry 86 in the Union List and entry 49 in the State List, conferring legislative powers is under consideration, the distinction, real and vital as it is, between a tax on lands and buildings on the basis of their capital value, and a tax on such capital value itself treating lands and buildings as an item of asset, cannot be overlooked. This distinction was elucidated by the Bombay High Court in Municipal Commissioner v. Gordhandas, where Gajendragadkar J. expressed himself thus :

"I am disposed to hold that a distinction must be made between a rate or tax which is levied on land on the basis of its capital value and a tax which is levied on the capital value of the land treating it as an asset itself..... It seems to me that it is perfectly legitimate to the taxing authority to attempt to correlate its tax to the real value of the property.....

"It is possible to consider this question in another way. Under entry 55 in List I (in the Seventh Schedule of the Government of India Act, 1935, which corresponds to entry 86 in the Union List in the Constitution) if the Central Legislature were to levy a tax on the capital value of the assets, the levy would be made only after determining the capital value of the assets properly so-called. If the asset in question happens to be a land, its real capital value in the context would be determined after taking into account the encumbrances to which the land may be subject and the other liabilities which may be enforceable against it.... The position of the municipal corporation when it levies a rate on the same property, treating it as land, is not the same or similar. It would be open to the municipal corporation to take into account the value of the land as such, without reference to the encumbrances to which it is subject, and to levy the rate or tax would not be concerned to determine the real economic capital value of the asset in question, but to find out the market value of the land apart from its real capital value in the economic sense and levy its tax on it. In this way, the capital value of the open land determined by the municipal corporation

under rule 350A (which was impugned) would not always or necessarily be the same as the capital value of the same land if it was determined by the Central Legislature for the purpose of levying a tax under item 55 in List I."

His Lordship then noticed that in some cases the capital value may work out to be the same, whether it falls under entry 55 of List I or under entry 42 of List II of the Government of India Act, 1935, the former corresponding to entry 86 in the Union List, and the latter to entry 49 in the State List in the Constitution, and pointed out that :

"... the object with which the capital value is determined and the ultimate use which is proposed to be made of this capital value in levying a tax on lands under entry 42 of List II should not be confused with the object with which the capital value may be determined and the use which may be made of such capital value by legislation passed under entry 55 of List I. The two rates or taxes would, despite the apparent similarity in some features, be distinct and separate."

In the case of a tax whose base or object is lands and buildings, their annual or capital value is but a measure or standard adopted to ensure the justness and reasonableness of the levy, but in the case of a tax on capital value, such value is itself the base or the object of the levy. In the former, the imposition falls on one qua owner of qua occupier, but in the latter, as in the case of wealth-tax, it falls on him who is considered to posses more than ordinary wealth. In final analysis, both may fall on the same person and may thus appear to overlap, but "in law there is no overlapping", being distinct an separate imposts. To allocate the legislative power to impose a tax on the capital value of lands and buildings, treating them as assets, entirely to the field covered by entry 86 in the Union List is not, as contended, to rob entry 49 in the State List of its content, for even excluding taxes under entries 45 to 48 in the State List, which have some relation to lands or buildings or both, the field is still open under entry 49 for legislation for other taxes on lands and buildings. Instances of such legislation are not wanting, by which local or municipal bodies in several States have been authorized to levy taxes on lands and buildings on the basis of their annual letting value of their capital value of sometimes of the plinth area in the case of buildings. There is, therefore, really no conflict and no overlapping of jurisdictions in the case of the two entries in question.

It may be, that in one sense a tax on the capital value of non-agricultural lands and buildings as assets, under entry 86 in the Union List, by reason of its association, can be said to be a tax on lands and buildings under entry 49 in the State List. Even so, entry 49 must be held to be a general provision for taxes on lands and buildings and to yield to entry 86 which must be held to be a special provision for a particular tax, viz., a tax on the capital value of assets. As noticed, the incidence and the objects of the two imposts are different. The term "assets" in entry 86 in the

Union List may mean either the totality of the assets of an assessee, as Kania J. and Broomfield J. seemed to think, in Sir Byramjee Jeejeebhoy v. Province of Bombay, or may take in a part of such assets, as Chagla C.J. observed in Duggan v. Commissioner of Income-tax. Apart from the novelty of a tax on capital value in the history of taxation in this country, what is intended is to tax wealth which is perhaps concentrated in the hands of a few, in order to secure a socialistic pattern of society. The exclusion of agricultural lands from assets in entry 86 in the Union Lost seems to us to be almost conclusive, that the entry was intended to include all others, even non-agricultural lands. In our judgment, the emphasis in entry 86 is on "capital value" and not on "assets". We feel no hesitation in coming to the conclusion, that entry 86 in the Union List confers a special legislative power which overrides the general power under entry 49 in the State List.

Very strong reliance was placed on the decision of a Full Bench of the Allahabad High Court in Oudh Sugar Mills Ltd. v. State of U. P., in which the U. P. Large Holdings Tax Act, 1957, enacted by the U. P. Legislature was under challenge, in so far as it imposed a tax for each agricultural year on the annual value of each holding at a rate specified in the Schedule. The contention, that such legislation was outside the purview of entry 49 in the State List was negatived upon the finding that the tax was on the holding itself, its annual or capitalized value being only the basis and not the object of taxation. Jagdish Sahai J., who wrote the leading judgment, also examined the scope of entry 86 in the Union List, though, as observed by him, it did not arise; he came to the conclusion, that it is a general provision which has to be restricted by excluding non-agricultural lands also from its ambit in order to give full scope to entry 49 in the State List. Speaking with respect, we are unable to agree that the scope of entry 86 can be so curtailed. The distinction between a tax on the capital value of lands and buildings as an asset and a tax on lands and buildings on the basis of their capital value, which was expounded by the Bombay High Court in Municipal Commissioner v. Gordhandas was noticed by the learned judge. That distinction appears to us to go against the further reasoning by him, that on the wide definition of the term "taxation" in article 366 (28) of the Constitution, entry 49 in the State List must be deemed to include a capital levy on lands and buildings, and that "assets" in entry 86 being a general term, its import must be restricted. As observed, in our view, the exclusion of agricultural lands in entry 86 is itself a strong indication that non-agricultural lands were not meant to be excluded to be brought under the purview of entry 49 in the State List for imposing a capital levy. The learned judge also agreed with Kania J. in thinking that "assets" in entry 86 meant the totality of assets. On the distinction pointed out above, the proper view seems to us to be that, subject to the exclusion of agricultural lands as specifically provided, a tax on the capital value of all assets would fall within entry 86 in the Union List and not within entry 49 in the State List.

As stated above, the vires of the Act was impugned, also on the ground that a tax on the net wealth of an assessee to the extent that it is or may be said to be made up of his agricultural income, pertains to the legislative field marked by entry 46 in the State List. The charging section in the Act as quoted above does not purport to tax any "income" whatever, but only the net wealth of an assessee as defined in terms of his assets, as on the concerned valuation date. In law as well as in common parlance, income and wealth are distinct concepts, though they stand in some relation to each other; while income contributes to the growth of a mans wealth, the latter is very often one of the sources which produce income. In Commissioner of Income-tax v. Shaw Wallace & Co. the Privy Council described "income" as cannoting "a periodical monetary return coming in with some sort of regularity or expected regularity, from definite sources..... Thus income has been likened pictorially to the fruit of a tree or the crop of a field."

"In our view, a tax on the income of a person may be deemed to be a levy on his receipts, either actual or constructive, during a specified period, very often after making due allowance for expenses incurred by him in earning such receipts or it may be deemed to be a levy on his right to receive the same. In another view, it may be considered to be a levy on the person himself in relation to his income. The agricultural income of a person, to put briefly, is that which is received by him by way of rent or revenue in respect of land used for agricultural purposes or that which his derived by him from such land as a result of agricultural operations or both and may be in cash or in kind. A tax on agricultural income as its base or object would fall within entry 46 in the State List, while a tax on other categories of income as its base or object would fail within entry 82 in the Union List. Upon income being earned, excluding expenses incurred in the process, the balance may form part of his assets or of his wealth at that point of time. He may afterwards spend or save, the whole or part of it, or convert the same into some other form having a saleable or marketable value. To the extent of such saving or conversion, there is an addition to his wealth and to his assets, the amount of which may vary from time to time. A tax on income is on that which is received; a tax on net wealth is on net wealth may fall in part on what was originally received and had accumulated and it may fall in part on the same person as the tax on income does; but the two are different. The prohibition in article 246 of the Constitution is not against the imposition of more than one tax on or in relation to the same person or subject-matter, but is against a trespass by one legislature on a field reserved for another. The issue of trespass has to be adjudged on the doctrine of pith and substance of the impugned tax. Applying it, we feel no doubt that Parliament had committed no trespass whatever on the State field of legislation in imposing a tax on net wealth, part of which may have sprung from agricultural income. This applies not only to agricultural produce like paddy stored by some of the petitioners in their granary, but also to arrears of rent which had accrued due from their tenants. In the case of such arrears which stand in the position of debts due to the assessee, the

mode of computation of their capital value must, of course, have regard to various factors, such as, the solvency of the debtors, the difficulties including those which have arisen in consequence of certain legislative enactments, and expenses incidental to their realisation.

It has next to be considered, whether the legislative power of Parliament under entry 86 in the Union List can reach Hindu undivided families. In this State, there are joint families of Hindus, including tarwads of Ezhavas and Nairs who follow the marumakkathayam law, and illoms of Nambudiries, and joint families of Nadar converts to Christianity in the south who follow the Hindu law with modifications; in addition, there are Mappilas or Mohammedans in North Malabar who are presumed to be followers of marumakkathayam law, and in other parts of Malabar area and in Varkalai, Odetti and other parts of former Travancore State, who follow the marumakkathayam law in relation to their tarwad properties. The argument was that a tax under entry 86 could be imposed only on the assets of an individual human being and of a company, but not on those of a joint family, whether of a Hindu or of a non-Hindu, which is a juristic entity or a legal person and can in no sense be regarded as a mere group or collection, or body of individuals and never be comprehended in the term "individuals" in entry 86. It was not disputed that the term "individuals" is wide enough to include a group, or a collection or body of individuals, and perhaps also a partnership which, not being a juridical person, is, in, the words of the Supreme Court in Bacha F. Guzdar v. Commissioner of Income-tax. "An association of persons for carrying on business of partnership and in law the firm name is a compendious method of describing the partners". Corporations are undoubtedly legal persons and as observed by Salmond on Jurisprudence, 11th edition, at page 358, so too, are registered trade unions and friendly societies, which are made "legal entities distinct from their members" and are enabled to sue or be sued in their registered names by special statutory provisions concerning them. These, according to the learned author, are the only legal persons now recognized by the English law, but that is no reason why, if case is made out, the Indian law should not add to their number. As observed inChiranjit Lal v. Union of India, a corporation has a distinct personality of its own with rights and capacities, duties and obligations, separate from those of its individual members. For example, a company incorporated under the Companies Act is an entity distinct from the shareholders; the latter do not acquire any interest in the property of the company, though they have a right to participate in its profits when they are divided and in the assets which would be available after its winding up.

"A registered trade union is not a corporation nor an individual nor a partnership; but it becomes by registration a legal entity, distinct from an unregistered trade union. Its registered name is to be used and applied in all legal proceedings, unless there is any provision inconsistent with such use." (Halsburys Laws of England, Hailsham Edition, volume 32, page 486, paragraph 776).

It was held by Bhagwati J. in Satyavart Sidhantalankar v. Arya Samaj, Bombay, that unless a society is registered under the Societies Registration Act, it would only have the character of a club or other association and cannot sue or be sued except in the names of all its members or in accordance with the enabling provisions or Order 1, rule 8. In the case of a partnership, the provision of Order XXX, Civil Procedure Code, enable it to sue or to be sued in its name.

In popular language, a joint family may be spoken of as a unit, and it is also common experience to regard or visualise it as such. Many marumakkathayam tarwads are identified by their names, and a similar identification in the case of other joint families is by no means uncommon; but we venture to think that all this is only in a somewhat loose sense. Salmond says thus at pages 357 and 358 of his book :

"When strictness of speech is not called for, the device of personification is extensively used. We speak of the estate of a deceased person as if it were itself a person. We say that it owes debts, or has debts owing to it, or is insolvent. The law, however, recognizes no legal personality in such a case... So also... we personify as a single person, the group of individuals concerned, even though the law recognizes no body corporate... But legal personality is not reached until the law recognizes, over and above the associated individuals, a single entity which in a manner represents them, but is not identical with them."

The learned counsel suggested that, between an individual who is a natural person and a corporation which is a legal or artificial person in the contemplation of law, there can exist other entities who may well be regarded as persons, say, quasi-corporations or "near corporations", and he relied on National Union of General and Municipal Workers v. Gillian, where Uthwatt J., summarising the effect of Taff Vale Railway Co. v. Amalgamated Society of Railway Servants, said that "a registered trade union is recognized by the law as a body distinct from the individuals who from time to time compose it. It is not a corporation, but it is very much like one. The association is not merely the aggregate of the persons who compose it, and the presence of the corporate fiction is not necessary to secure its individuality. In an age of neologism it might be called a near corporation." Earlier in the same case, Scott L. J. had adverted to the effect of the Trade Union Act of 1871 as clothing a registered union with a "co-operative personality so as to give it the status of a person a juridica".

It seems to follow from what has been stated above that the crucial test is whether it can be predicated that a joint family has an existence apart from and independent of its members. If it has no such existence, notwithstanding the corporate nature of the enjoyment of its properties by its members, in law it can only be consider to be a group or body of individuals bound together by ties of Kinship and having rights in relation to the common properties as regulated by law or

by custom or by statutes. Mulla in his text-book on Hindu Law has described a joint Hindu family as comprising all males lineally descended from a common ancestor and as including their wives and unmarried daughters, and a Hindu coparcenary as consisting of those who acquire by birth an interest in joint property. The rights of the coparceners are found enumerated by Mulla on Hindu Law, 12th edition, at page 353, paragraph 235, and the rights of junior members of marumakkathayam tarwads are found collected by Sundara Iyer in his book on Malabar and Aliyasanthana Law at page 7. But what is most important to note for the present purpose is that the text-books agree (see Mulla on Hindu Law, page 318, paragraph 216, and Sundara Iyer on Malabar Law pages 7 and 8) that the ownership of the joint family properties is in the whole body of coparceners in the case of a coparcenary and of the members in the case of a tarwad or illom. A corporation or a company, as noticed by Salmond (page 372) may survive the last of its members, but a joint family cannot. A joint family has no right to sue or to be sued in its name unlike a legal or juridical entity, say, a corporation or a registered society. A joint family does not hold or convey property as a legal entity. In these respects, the manager of a joint family or the karnavan of a tarwad or illom has, subject to certain statutory requirements which have been engrafted, special powers of disposition and may act for all the members.

At this stage, it seems pertinent to enquire, how marumakkathayam tarwads and Nambudiri illoms have been defined in certain enactments. The Madras Marumakkathayam Act, 1932, has defined a tarwad as meaning "the group of persons forming a joint family with community of property governed by the marumakkathayam law of inheritance" and a tavazhi of a female as a "group of persons consisting of that female, her children and all her descendants in the female line". The Travancore Nair Acts of 1088 and of 1100, and the Cochin Nair Acts of 1075 and of 1113, have defined a Nair tarwad to mean and include all members of a joint family with community or property governed by the marumakkathayam law. The Travancore Ezhava Act of 1100, has similarly defined an Ezhava tarwad. The Travancore Malayala Brahmin Act of 1106, the Cochin Nambudiri Act of 1114, the Madras Nambudiri Act of 1932, and the Kerala Nambudiri Act of 1958, have defined an illom as meaning all the members of a Nambudiri joint family with community of property. The Mappila Marumakkathayam Act of 1939 has defined a tarwad as a joint family which includes all its members with community of property governed by marumakkathayam law. In none of these definitions, which may be considered to reflect the state of the law when they were enacted, is any indication to the found, that a tarwad or illom was considered to be an entity distinct from its members and having an independent existence. If, as argued, these definitions, which may be considered to reflect the state of the law when they were enacted, is any indication to be found, that a tarwad or illom was considered to be an entity distinct from its members and having an independent existence. If, as argued, these definitions are only descriptive and not determinative, it is not easy to understand why no definition of that

character was attempted. We do not think that the provision in some of these enactments, enabling tarwads or illoms, which desire to stand out, to register themselves as imputable or denying the right to the members to alienate their undivided shares, recognized also by judicial decisions, e.g., Antherman v. Kannan, have anything to do with the present question as to whether the tarwads or illoms can be regarded juridical entities. The precise nature of the constitution of a marumakkathayam tarwad was considered by a Division Bench of the former Travancore High Court in Thankamma v. Kesava Pillai, where Ramakrishna Iyer J. observed :

"No doubt in some of the decided cases loose language has been used and a tarwad has been referred to as a corporation. But the constitution of a Malabar tarwad is such that it can only be considered to be a group of individuals having diverse rights over tarwad properties and having a manager who is called the karanavan."

Lukose J., the other learned judge, after adverting to the definition of a tarwad in the Travancore Nair Acts of 1088 and 1100, and in the Travancore Ezhava Act of 1100, stated thus :

"... it is only a compendious name for the totality of the members of a family at any particular time... Thus, there is nothing immoral about the existence or integrity of a tarwad. Nor is there anything discernible, throughout the statutes referred to, from which one may gather, that any corporation aggregate or a juristic person (such as a tarwad) is created, preserved or dissolved. Nor is there a provision, made in the aforesaid Acts, by which this legal person is enabled to sue, or to be sued, or to hold properties, apart from the members constituting the tarwad. In these circumstances, I agree with my learned brother in his observation, that a tarwad is nothing more than a group of individuals, bound together by certain ties of kinship or of holding common property. A tarwad is probably similar to, and nothing more than, the group constituting an ordinary joint Hindu family."

In Sokkanadha Vannimundar v. Sokkanadha Vannimundar a Bench of the Madras High Court consisting of Subrahmania Ayyar and Boddam JJ. observed that a joint Hindu Family, at times referred to even in judgments as a corporation, is not to be taken as a legal person in the strict sense of the term. Observation can be found in text-books and decided cases where Hindu undivided families are spoken of as owning or enjoying properties, as if they are corporate bodies, but these, as explained by the Bombay High Court in a case to be referred to presently, are only by way of analogy. For example, in Chakkra Kannan v. Kunhi Pokker Srinivasa Ayyangar J. observed that "In India it is not uncommon for groups of persons though not incorporated to hold properties as if they were corporate entities. Castes and sub-castes hold properties as if they were corporate entities. Castes and sub-castes hold property as such, so also village communities." It is not possible to generalise from observations such as those that the law

has clothed joint families, whether of Hindus or non-Hindus, with legal personality. On the contrary, in Commissioner of Income-tax v. Sarwankumar Iqbal Ahmad C.J. described a family, though in a different context, as an association of people, a natural, as distinct from an artificial, association. In Commissioner of Income-tax v. Sodra Devi Bhagwati J. observed that, "there is authority for the proposition, that the word individual... is wide enough to include a group of persons forming a unit".

Quite recently, in Mahavirprasad Badridas v. M. S. Yagnik, a Bench of the Bombay High Court consisting of Shah and S. T. Desai JJ. has decided this precise question by holding that the term "individuals" in entry 86 in the Union List would "include an association of individuals such as a Hindu undivided family". The view that a Hindu undivided family is a corporation was rejected as unsound and the argument founded on the Indian Income-tax Act, 1922, that according to legislative practice, the term "individual" must exclude a Hindu undivided family from its connotation, was repelled as unsustainable, Shah J. observing that :

"... there is not only no settled legislative practice as to the meaning of the expression individual in taxing statutes, but there is not even unanimity of judicial opinion as to the meaning of that expression in the Indian Income-tax Act."

So far as we are aware, this was the first case in which the test for determining the true nature and the constitution of a Hindu undivided family, that is, whether "the property of such family can be shown to vest not in the individuals who are members or coparceners of the family, but in a jural entity which is in the eye of law distinct from its members or coparceners", was propounded : it was answered in the negative. The question was examined by S. T. Desai J. also in relation to marumakkathayam tarwads and was answered similarly. A learned single judge of the Andhra Pradesh High Court followed the above case in Subramanian v. Additional Wealth-tax Officer, Eluru. The argument as to the interpretation of the term "individual" based on what was stated to be the legislative practice, was further examined and was ultimately rejected by the learned judge as lacking in foundation.

The vires of the Act in relation to Hindu undivided families was examined quite recently by a Full Bench of three judges of the Allahabad High Court in Jugal Kishore v. Wealth-tax Officer and was upheld by a majority. Gurtu J. was of the view that the Act came within the residuary field of legislation marked for Parliament by entry 97 in the Union List read with article 248 in the Constitution, and Jadgish Sahai J. decided that it came within the field demarcated by entry 86; but Upadhya J. the third judge held that it came within neither. Having regard to its constitution, Jagdish Sahai J. considered that a Hindu undivided family is a group or body of persons or individuals comprehended in the term "individuals" in the legislative entry, on the

principle which was deduced from decided cases, that in a constitution "general words are intentionally used, so that a constitution may remain useful for all times and the progress of a nation be not halted" and that, if it were otherwise, "the subject-matter or the field of legislation might have been narrowed down within the restrictions imposed by the particular words". In his opinion, no legislative practice to the contrary has been established by the use of the term "individual" in the Indian Income-tax Act, 1922. Gurtu J. did not agree that Hindu undivided family is a corporation or "a corporate judicial entity", though at the same time, he was not prepared to lay down that it is "a mere collection of individuals"; according to him, it is "a peculiarity of Hindu society and it cannot be put into the framework of any of the well-known juridical concepts, namely individual person or corporation". The learned judge also derived support from what was considered by him to be the previous legislative practice in "taxation legislation", according to which a Hindu undivided family is a unit of assessment, as distinct from an individual. The Indian Income-tax Act, 1922, and the Business Profits Tax Act, 1947, were referred to in this connection; but the provisions in the latter are different. It was explained, however, that "if the legislative enactments in that particular field are few that would not establish that there was no legislative practice". Upadhya J. drew largely on legislative practice relying also on the Expenditure-tax Act, 1957, though a post-Constitution enactment, and also on the meaning of the term "individual" in the dictionary, and then surveyed the course of judicial decisions which have examined the two concepts, individual and Hindu undivided family, in other contexts. The learned judge did not hold that a Hindu undivided family is a juristic entity, but considered it to be "a collective body in which they owe certain obligations and which collective existence is a concept different from each of these individuals".

The conclusion of the Bombay High Court in Mahavirprasads case that "cadit questio, it (the joint family or coparcenary property) is not property which is of the ownership of any jural person or entity distinct from the individual coparceners, who as a group constitute the joint family", reached by applying the test adverted to earlier in this judgment, was considered by Upadhya J. to be not supported by the reasoning in that case.

If the above analysis of the judgments in Jugal Kishores case is correct, one thing seems to be clear, that the judges were unanimous in rejecting the view, now contended for before us, that a Hindu undivided family is a juristic entity. Gurtu J. did not invest it with legal personality, but was only prepared to hold that it is not a mere collection of individuals; we venture to doubt, whether the above conclusion would be sufficient to take it out of the scope of the constitutional entry. Upadhya J. seemed to think that if the reasoning of the Bombay High Court were accepted, "the liability to tax would fall on associations or individuals as such jointly, which is not even claimed by the department." We are not too sire, whether this concession, such as it was the Act,

rather than on the scope of entry 86. Before us, none of the counsel who appeared in these petitions contended, that the term "individuals" in entry 86, could not envisage a group or association of individuals. We also find ourselves unable to go the whole length with Upadhya J. that the "levy of tax on such groups of individuals would be an unfair hardship, subjecting the interest and property of some individuals who happen to be members of such groups to a greater liability than what may fall on individuals having separate properties" and that, therefore, "the framers of the Constitution, in their wisdom, sought to avoid such unfair hardship to a section of the citizens of the country when they did not provide for the imposition of a tax on a Hindu undivided family." On this aspect, speaking with respect, we agree with Jagdish Sahai J. that "it is impossible to believe that the Constituent Assembly could not conceive of the idea of imposing a capital levy on a Hindu undivided family". The argument based on the previous legislative practice which, as observed, had been discounted by the Bombay and the Andhra Pradesh High Courts, but which seems to have weighed with two of the learned judges in the Allahabad High Court, seems to us to rest on a slender foundation, being only the provisions of the Indian Income-tax Act, between an "individual" and a Hindu undivided family, is but the logical consequence of their possessing distinctive features, calling for distinctive treatment as units of assessment, in the matter of the levy, and collection of income-tax. Applying the test formulated above, and in respectful agreement with the view taken by the Bombay and the Andhra Pradesh High Courts, and by Jagdish Sahai J. of the Allahabad is not an entity distinct and separate from the members composing it, but that it is a group or body coming within the connotation of the term "individuals" in entry 86. To exclude such a group or body of individuals, on the ground that they are bound together by ties of kinship, or of common living or of common property, or on the ground that such property as distinguished from their separate property is the base of the levy, or on any other ground, would be to restrict the field of legislation, for which we see no warrant in the well-established canons of interpretation of constitutional entries. In this view, we think it unnecessary to consider the alternative argument advanced for the department, that even if entry 86 is not applicable, the Act is saved by article 248 read with entry 97 in the Union List in the Constitution.

The above disposes of the contention as to the competency of Parliament to enact the Act. The objection to the validity of the Act on other grounds remains to be considered. The petitioner in O. P. No. 674 of 1958, who is the karnavan of a Mappila marumakkathayam tarward, has taken the ground in his affidavit, that even if entry 86 authorises the levy of wealth-tax on Hindu undivided families, section 3 of the Act does not authorize such levy on an undivided Mappila Marumakkathayam tarward. The Wealth-tax Officer, the respondent, met this in the counter by contending, that the properties of such a tarwad are vested in the karnavan who must be regarded as the owner and is, therefore, liable to be assessed as an individual on the net wealth of the

tarward, and by alleging, that the petitioner himself had submitted a return as individual and had been assessed as such. As in the case of a Hindu undivided family, which, in a given case, may be a marumakkathayam tarwad, so too in the case of a Mappila marumakkathayam tarwad, there is no basis for holding that its properties vest in the karnavan as owner, not does it make any difference, as stated in the counter, that the tarwad is registered as impartible under the provisions of the Mappila Marumakkathayam Act, 1939, as is possible for some Hindu undivided families under the analogous statues mentioned earlier. The rule requiring entries conferring legislative powers to be construed in a very wide sense, has no such general application to other statues, particularly to taking statues which have always to be interpreted strictly. The term "individual" as employed in section 3 of the Act in juxtaposition with Hindu undivided families, and the other provisions in the Act, which differentiate between these two units of assessment, leave no room for doubt, that whatever be its connotation in entry 86, the term "individual" in the Act cannot comprehend a Hindu undivided family; if so, it cannot comprehend a Mappila marumakkathayam tarwad either. It was, however, stated before us by Shri G. Rama Iyer, the standing counsel for the department, that the practice has been for the karnavan of Mappila marumakkathayam tarwad to be assessed on their tarwad assets under the Act, and on their tarwad income under the Indian Income-tax Act, 1922. The Act came into force only on April 1, 1957. When the question is raised as to the applicability of the Act, it has to be answered on its true construction, and practice, if any, without more, cannot outweigh its provisions. The learned counsel for the petitioner in O. P. No. 674 of 1958 had a further contention, that if the term "individual" in the Act comprehends a Mappila marumakkathayam tarwad, the differential treatment accorded by the Act, including the schedule, to an individual as distinguished from a Hindu undivided family is sufficient to spell discrimination against it. In the view we are taking, this does not arise and we are content to leave it at that.

Basing on the true interpretation of the term "individual" in section 3 of the Act, as excluding non-Hindu undivided families, Shri. M. K. Nambiar, the learned counsel for the petitioner in O. P. No. 684 of 1959, has contended that the Act has denied equal protection of the law to Hindu undivided families. As stated in the affidavit of this petitioner dated July 9, 1961, in support of C. M. P. No. 3875 of 1961 to be adverted to presently, the learned counsel has formulated this, as one of his contentions, when he opened the case on January 30, 1961, and when, without further arguments we ordered notice to the learned. Attorney-General of India. Afterwards, at the final hearing of these petitions, the learned counsel dealt with this point fully, without any objection from the respondents to his taking it. Shri K. V. Suryanarayana Iyer, the learned counsel who appeared for the respondent in O. P. No. 538 of 1959, met his arguments on the merits, by contending principally that the presumption is in favour of the constitutionality of the Act, that Mappila marumakkathayam tarwads stand as a class by themselves distinct from Hindu

undivided families, that a classification need not be exhaustive or all-embracing to be saved from the vice of discrimination in article 14, and that such tarwads constitute but a negligible minority in the country compared to the large number of Hindu undivided families which may be found throughout India. Shri M. K. Nambiar replied and we heard Shri K. V. Suryanarayana Iyer again on June 27, 1961, when arguments were concluded, and judgment was reserved. However, on going through the affidavit in support of O. P. No. 684 of 1959, we felt that the objection under article 14 had not been taken in the form in which it was presented to us and had not, therefore, been met in the counter by the department. We then posted the case for being spoken to on July 7, 1961, when junior counsel for the petitioner in O. P. No. 674 of 1959 and counsel for the department were present. On the next court day, C. M. P. No. 3875 of 1961 was filed on behalf of the petitioner supported by an affidavit, stating that the matter had been fully argued by the opposing counsel, reiterating the stand taken at the hearing that the classification has no relation to the object of the Act and requesting the court "to place on record this (the) affidavit also and dispose of the matter in issue in the light of what is stated therein". Shri G. Rama Iyer, the standing counsel for the department, then wanted time till July 14, for filing a counter-affidavit. Granting the time asked for, we ordered that the counter-affidavit to be filed will deal with the objection raised under article 14. The counter-affidavit actually filed, purported to give a summary of the arguments already advanced on behalf of the respondent as set forth above, invoked the presumption in favour of constitutionality, affirmed that certain points of difference in the constitution of a Mappila family had been dealt with at the hearing and without stating a rational basis of classification having a relation to the object of the Act, suggested that it is a matter for investigation. Upon this, Shri G. Rama Iyer for the respondent and the junior counsel for the petitioner in O. P. No. 684 of 1959 stated that they had nothing more to urge and on C. M. P. No. 3875 of 1961 we ordered finally that the matter will be dealt with in our judgment. The issue as to discrimination having been fully argued on both sides, and the department having had sufficient opportunity to meet the objection under article 14, we shall now proceed to consider the same.

The objection that the State has denied equal protection of the law to Hindu undivided families, was rested on the absence of an intelligible differentia having a rational relation to the object of the Act, as the basis of such classification. It is undoubted, that a law of taxation is not immune from attack on the ground of discrimination, and this has been held quite recently by the Supreme Court in Thathunni Moopil Nair v. State of Kerala, though in another context. The rule was stated thus by Willoughby on Constitutional Law of the United States, second edition, page 836 :

"... it follows that while the legislature may, within its discretion, determine freely what

occupations, or classes of property or persons are to be taxed, it may not select out from the general mass of property, or general citizen body, particular pieces of property or particular individuals to bear the burden of the tax. When, therefore, a tax is laid upon certain classes or property or of persons, there must be some reasonable basis for the classification adopted. By this is meant, that there must be some substantial reason why the units, whether of property or of individuals, should be treated as distinct groups."

Relying on Ram Krishna Dalmia v. Mr. Justice Tendolkar, it was argued that the presumption being in favour of constitutionality, the burden is always upon him who impugns to establish his objection. But the case is also authority for holding that "if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

The wealth-tax as disclosed by the statement of objects and reasons "is a constituent of an integrated tax structure... Apart from the fact that a composite tax system of this type helps to satisfy the criterion of the ability to pay, it is consistent with the avowed goal of the attainment of a socialistic pattern of society". Apart from this, the only basis of classification which has a direct relation to the object of the Act as disclosed by it, is the possession of wealth; but that is a different classification. The Act does not disclose any basis having a relation to its object for the classification now sought to be maintained, between Hindu and non-Hindu undivided families; nor have we succeeded in discovering any, in the surrounding circumstances. Shri K. V. Suryanarayana Iyer has been able only to point out, that in certain respects the law governing the members of a Mappila marumakkathayam tarwad does not correspond in all respects to the members of a Hindu undivided family, but in our opinion, he has not succeeded in establishing any basis whatever for distinguishing for the purpose of the Act, wealthy undivided families of Hindus from similar families of non-Hindus. It was then urged by him that Mappila marumakkathayam tarwads constitute only a very small minority in comparison with the large number of Hindu undivided families throughout India; it is of course a matter of common knowledge that Hindu undivided families in India far out-number Mappila and Mohammedan marumakkathayam families in Malabar and in parts of the Travancore area, but we are not persuaded, that the latter constitute only such a microscopic minority as to be negligible. The Mappilas who follow the marumakkathayam law constitute a community for which the Madras Legislature found it necessary or expedient to enact the "Mappila Marumakkathyam Act" in the year 1939. In Koyyottan Sooppi v. Vaniyathi Kalliani a Division Bench of this court had held, on a survey of the course of decisions of the Madras High Court and on a study of the text-books on

the subject, that : "... the presumption is that the Mappilas in North Malabar are governed by the marumakkathayam law in the absence of evidence to the contrary". The former Travancore High Court had held in Mahammathu Umma Kani Ummal v. Mahammathu Kunju that there are Mohammedans in certain parts of the Travancore area, who are followers of customary marumakkathayam law. At the census of India of the year 1931. Muslims of the then Malabar district of the Madras Province numbered 1163453, of whom 292860 were in the talukas of Wynad, Kurumbranad, Kottayam and Chirakkal (see Census of India, 1931, Volume XIV, Madras, Part III, Provincial Tables, page 16). The figures pertinent to this case would of course be the number of Mappila or Mohammedan marumakkathayam tarwads in the State of Kerala, or at least in North Malabar area, possessing net wealth above the limit of four lakhs of rupees, which is the limit of exemption under Part I of the schedule of the Act in the case of Hindu undivided families. If the department set much store by the contention that such tarwads constitute such an insignificant number that their existence can be ignored, information as to their number at least in this State could easily have been furnished or collected; if, as the standing counsel stated at the hearing, and as the Wealth-tax Officer averred in the counter to C. M. P. No. 3875 of 1961, the practice of the department had been to assess such tarwads under the Act as individuals, or as might well be the case, as associations of persons or as individuals under the Indian Income-tax Act, 1922, such information must already be available with it. After all that had been argued by both counsel on the merits of this controversy, and after time had been granted to it by our order dated July 10, 1961, with a direction that the counter to be filed will meet the objection under article 14, we venture to think that it behoved the department to furnish at least this minimum information to sustain this contention. On the rule in Ram Krishna Dalmias case, we think, that "the presumption of constitutionality cannot be carried to the extent of holding" that the number of such Mappila or Mohammedan marumakkathayam tarwads is so insignificant as to be negligible. We are, therefore, of the view that the argument of the learned counsel for the department, based on mere numerical strength, cannot prevail.

The next contention was based on the following observations of S. R. Das J., as he then was, inChiranjit Lal v. Union of India :

"If there is a classification, the court will not hold it invalid merely because the law might have been extended to other persons who in some respects might resemble the class for which the law was made, for the legislature is the best judge of the needs of the particular classes and to estimate the degree of evil so as to adjust its legislation according to the exigency found to exist."

But it must be noticed, that after saying this, his Lordship proceeded to consider what would happen if there is no classification at all, and observed 2 :

"If, however, there is, on the face of the statute, no classification at all or none on the basis of any apparent difference specially peculiar to any particular individual or class and not applicable to any other person or class of persons and yet the law hits only the particular individual or class it is nothing but an attempt to arbitrarily single out an individual or class for discriminating and hostile legislation."

Earlier the learned judge said that :

"If the law deals equally with all of a certain well-defined class it is not obnoxious and is not open to the charge of a denial of equal protection on the ground that it has no application to other persons, for the class for whom the law has been made is different from other persons and, therefore, there is no discrimination against equals."

The need for classification, between those who are taken in by the legislation and those who are left out, is emphasised in the above passages in no unmistakable terms. Similar dicta are to be found also in some of the other judgments which were delivered in the same case. Patanjali Sastri J., as he then was, said :

"A legislature empowered to make laws on a wide range of subjects must of necessity have the power of making special laws to attain particular objects and must, for that purpose, possess large powers of distinguishing and classifying the persons or things to be brought under the operation of such laws, provided the basis of such classification has a just and reasonable relation to the object which the legislature has in view";

and Mukherjea J., as he then was, said :

"..... there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is the same."

The learned counsel then relied on the observations of Bhagwati J. in Sakhawat Ali v. State of Orissa that "legislation enacted for the achievement of a particular object or purpose need not be all embracing". In that case, legislation imposing a ban on a legal practitioner appearing against a municipality from standing for municipal election was held to be not bad for discrimination, although persons who had litigations against the municipality were not subject to it. It has to be observed, that the court treated the latter as pertaining to a category by themselves; it was on that basis, that the observations quoted above were made. The principle was stated thus :

"It is for the legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing..... are

left out would not render legislation... violative of... article 14 of the Constitution."

There is also the principle, that the "legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest", as recognised in Ram Krishna Dalmias case. In West Coast Hotel Company v. Parrish, applying the same principle, a legislation which provided for the establishment of minimum wages for women and minors but which did not extend to men, was held to be not bad, as it was considered to be enacted to hit "the evil where it was most felt". In that context, the court further observed, that "there is no doctrinaire requirement that the legislation should be couched in all embracing terms", and that the "relative nee" of women and particular classes of women "in the presence of the evil, not less than the existence of the evil itself, is a matter for the legislative judgment". In Bishnu Charan v. State of Orissa, which is almost similar to Sakhawat Alis case, Jagannadhadas J., then of the Orissa High Court, relied on the above rule. It also appears to us, that Sashibhusan v. Mangala, in which after finding a reasonable basis of classification in the impugned legislation, the court held against discrimination, though a class of petty tenure-holders was left out of its purview, was decided on the same principle. In Lakshmindra Theertha Swamiar v. Commissioner, Hindu Religious Endowments, Madras, a classification in relation to the object of the enactment, though based on religion, was found to be established; the court also proceeded to observe that "Article 14 does not prevent the legislature from taking up one set of institutions for legislative consideration at one tome and enacting laws in respect of them reserving the other types of institutions for consideration to a future date." If we may say so with respect, these remarks were so apposite in relation to the Madras Hindu Religious Endowments Act, 1951, which was impugned in that case. The principle has been endorsed in Ram Krishna Dalmias case, that "it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds", though a limit has also been set to this presumption in another passage in the judgment (clause (f) at page 297 of the report) which has been extracted above. It was on the above principle, that the American Court evolved the rule in Middleton v. Texas Power and Light Company that "the equal protection clause does not require that State laws shall cover the entire field of proper legislation in a single enactment", the court also holding, that the exclusion of certain categories of employees from the scope of the statute was for reasons which the legislature deemed sufficient and was neither arbitrary nor unreasonable.

We have discussed above the cases which were relied on by Sri K. V. Suryanarayana Iyer on this aspect of his contention. But we fail to see how the principles on which they were decided can have any application to a taxing statute, like the Act before us, the purpose of which, as far as we

are able to gather, is to tap what the legislature perhaps considered to be superfluous or excessive wealth in the hands of a few for the ultimate benefit of all. If, on the contrary, the contention were to prevail and were to be pushed to its logical conclusion unsupported by the above principles, nothing in article 14 might preclude the legislature from imposing a tax on, say Hindu Mitakshara families to the exclusion of Hindu marumakkathayam tarwads, e.g., of Ezhava and Nair tarwads, as are to be found in this State more than in others; such classification may perhaps be multiplied. In our view, this case has to be decided on the rule in Budhan Choudhry v. State of Bihar, decided by a Bench of the Supreme Court which consisted of the same learned judges who took part in the decision of Sakhawat Alis case and of Jagannadhadas J. the judgment in which was delivered within a few days of the judgment in the latter, and on the law as exhaustively laid down in Ram Krishna Dalmias case. We, therefore, come to the conclusion, that Hindu undivided families of wealth have been singled out by the Act from other similar joint families in the country and that the State has thereby denied equal protection of the law to the former. The provisions in the Act relating to Hindu undivided families are severable and to that extent the Act has to be struck down.

It only remains to state that the petitioners have also impugned the legality of the assessments as arbitrary on various grounds and as having been made in violation of the principles of natural justice, and, in particular, the petitioners in O. P. Nos. 684 and 824 of 1959 have contended that the assessments on them are null and void on the ground that they are contrary to the prescriptions, and were made without following the provisions, in section 20 of the Act. In the view we have taken, it is unnecessary for us to canvass these questions. We hereby order, that the assessment of the petitioner in O. P. No. 674 of 1958 be quashed on the ground that the Act is not applicable to him, that the assessments of the petitioners in O. P. Nos. 538, 684 and 824 of 1959 and the demands on them be quashed and that the respondent in O. P. No. 1155 of 1960 be prohibited from imposing the levy and making the collection on the petitioner therein, on the ground that the provisions in the Act as against Hindu undivided families violate article 14. As the petitioners have succeeded only partially in their contentions, we order that all parties shall bear their costs.