

# KERALA HIGH COURT

M.T. Joseph

Vs.

Gift Tax Officers

O.P. Nos.323 and 1339 of 1959; 117 of 1960 and 131 of 1961

(M.S. Menon and C.A. Vaidialingam, JJ.)

29.08.1961

## JUDGMENT

### **Vaidialingam, J.**

1. The common question that arises for decision in all these 4 original petitions is regarding the competency of Parliament to enact the the Gift Tax Act, 1958, viz. Central Act 18 of 1958, levying tax- on gifts of agricultural land. In O.P. Nos.323 of 1959, 1339 of 1959 and 117 of 1960, the respective petitioners seek the issue of a writ of prohibition restraining the respective Gift Tax Officers from enforcing the provisions of the Gift Tax Act, in respect of certain gifts of agricultural land admittedly made by them. In O.P. No.131 of 1961 there has been an actual order of assessment passed against the petitioner levying gift tax by the Gift Tax Officer concerned, and the relief asked for is to have the order of assessment quashed. The petitioners have not challenged the competency of Parliament to levy gift tax in respect of properties, movable or immovable, other than agricultural lands.

2. According to the petitioner in each of these writ petitions, the scheme of the various lists in VIIIth Schedule of the Constitution, will indicate that power to legislate and levy tax regarding agricultural properties and income therefrom is solely and exclusively vested in the State Legislatures and that Parliament has no power to levy tax on gifts of agricultural lands. In particular, Entry 18 in List II of the 7th Schedule has been very strongly relied upon as giving exclusive jurisdiction to the State Legislature over such matters.

3. According to the Revenue, levy of gift tax on agricultural lands, is not provided either in the State List or in the Concurrent List; and, therefore, it falls under the residuary power vested in Parliament under clause (2) of Article 248, read with Entry 97 in the Union List; and therefore Parliament is competent to enact the legislation in question, even regarding agricultural lands.

4. Before we consider the various contentions that have been raised by Sri T.N. Subramonia Iyer, learned counsel appearing for the petitioner, in two of the original petitions, and Mr. K.V. Surianarayan Iyer, learned counsel appearing for the Revenue, it is desirable to state broadly the scheme of the Gift Tax Act, 1958, which came into force on 1st April 1958.

5. Section 1(3) of the Act states that the Act shall be deemed to have come into force on the 1st day of April 1958. Section 2 defines certain expressions, and it is not necessary for disposing of these writ petitions, to advert to very many of the definitions contained therein. But in particular, we would like to refer to the definitions of the term 'assessee' as well as certain other expressions. Section 2, clause (iii) defines 'assessee;' Section 2, clause (ix) again defines the expression 'donor'. Section 2(xii) defines 'gift' as the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer of any property deemed to be gift under Section 4. It will be seen that under the definition of 'gift,' under this Act, acceptance by or on behalf of the donee is not necessary. As per the definition the expression, 'gift' in Section 122 of the Transfer of Property Act, such acceptance is essential. Again Section 2, clause (xxiii) defines 'taxable gifts,' as 'gifts chargeable to gift tax under this Act.' Section 2, clause (xxiv) defines 'transfer of property' as 'any deposition, conveyance, assignment, settlement, delivery, payment or other alienation of property' and it also includes certain other matters.

6. The charging section is Section 3 and is to the effect:

"Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the 1st day of April, 1958, a tax (hereinafter referred to as gift-tax) in respect of the gifts, if any, made by a person during the previous year (other than gifts made before the 1st day of April 1957) at the rate or rates specified in the Schedule."

Section 4 treats certain other transfers also as coming, within the scope of the expression 'gifts.' There are again exemptions provided in Section 5, in respect of certain gifts, and therefore other provisions regarding the manner in which the assessment to gift tax is to be made. There are also officers appointed for the purpose of assessing and levying gift tax; and there are also provisions for taking up the orders of these officers in appeal. It is not really necessary to consider all these several provisions, excepting to refer to Section 13, in Chapter IV to the effect:

"Every person who during a previous year has made any taxable gifts shall, before the thirtieth day of June of the corresponding assessment year furnish to the gift-tax officer a return in the prescribed form and verified in the prescribed manner. (2) If the Gift-tax officer is of opinion that in respect of the gifts made by a person during any previous year he is liable to gift-tax under this Act, then notwithstanding anything contained in sub-section (1) he may serve a notice upon such person requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner."

Sub-section 3 gives power to the Gift Tax Officer to extend the date of submission of the return.

7. As learned counsel appearing on both sides have referred to certain Articles of the Constitution, as well as to certain entries in the Lists in the VIIth Schedule, it is desirable that we advert to those Articles and entries. The Articles referred are 245, 246 and 248 in Part XI of the Constitution dealing with relations between the Union and the States, as also Distribution of

Legislative powers. Article 245(1) provides:

"Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State."

We omit Clause 2 of Article 245. Article 246(1) provides:

"Notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule in this Constitution referred to as the "Union List." Clause (2) again provides:

"Notwithstanding anything in clause (3) Parliament, and, subject to Clause (1) the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'Concurrent List) Again, Clause (3) of Article 246 provides:

"Subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws, for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List")."

We are omitting Clause (4) of Article 246. Article 248, on the basis of which the Revenue in this case, read with Entry 97 of List I in Seventh Schedule, claims competency for Parliament to enact this measure, is as follows:

"248(1). Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those lists."

Entry 97 in List I is as follows:

"Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."

8. We may also mention at this stage that the leading arguments in these writ petitions have been advanced by Sri T.N. Subramonia Iyer, learned counsel for the petitioners in O.P. Nos.323 and 1339 of 1959 and his contentions have been adopted and accepted by Sri Mani J. Meenatur, learned counsel in O.P. No.117 of 1960 and by Sri. V.K.K. Menon, learned counsel in O.P. No.131 of 1961.

9. We will now refer to the entries, in Lists I and II, which have also been relied upon by the learned counsel for the petitioners in support of the contention that the scheme of distribution of legislative powers in Lists I and II will clearly show that the power to legislate regarding agricultural lands, which power according to them includes also the power to levy taxation, lie solely within the exclusive province of a State. The particular entries that have been relied upon

in List I are entries 82, 86, 87 and 88. Entry 82 refers to "taxes on income other than agricultural income," Again entry 86 provides for "taxes on the capital value of assets, exclusive of agricultural land, of individual, and companies; taxes on the capital of companies." Again Entry 87 deals with "Estate duty in respect of property other than agricultural land." Entry 88 deals with "Duties in respect of succession to property other than agricultural land." Mr. Subramonia Iyer's contention is that these Entries clearly show that there is a definite exclusion of the power of Parliament to levy taxes regarding agricultural land or agricultural incomes which power, according to the learned counsel is exclusively vested in the State Legislatures. For this purpose the learned counsel again relied on Entries 14, 18, 45, 46, 47 and 48 in List II to show that such powers to legislate regarding agricultural lands and agricultural income have been given exclusively to the State Legislature.

10. Entry 14 in List II deals with "Agriculture, including agricultural education and research protection against pests and prevention of plant diseases." Entry 18 we will leave out for the present as it is considered later in this judgment. Entry 45 deals with "Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue." Entry 46 deals with "Taxes on agricultural income." Again Entry 47 deals with "duties in respect of succession to agricultural land" and Entry 48 deals with "Estate Duty in respect of agricultural land."

11. The entries referred to above in List No.1, as we have already mentioned, have been relied upon by the learned counsel for the petitioners to show that the power to levy tax or duty on agricultural lands or income or to legislate regarding agricultural lands has been omitted or taken away from the powers of Parliament. Similarly, the entries referred to earlier in List II have been relied upon to show that such powers of either legislation or taxation in respect of agricultural income or agricultural lands, have been exclusively vested on the State Legislature. No doubt, these entries referred to in List I will clearly show that the Parliament's power to levy tax or duty has been restricted only to certain matters excluding agricultural income and agricultural lands. It is also equally correct to state that the various entries referred to in List No.2 will show that the State Legislatures have been given power to legislate and a so levy tax in respect of such matters referred to therein.

12. The learned counsel Sri T.N. Subramonia Iyer found considerable difficulty in convincing us that levy of a gift tax can be brought within the powers of the State Legislatures on the basis of entries 14, 45, 46, 47 and 48 of List II. But he relied very strongly on entry 18, in List II, as giving the State Legislature not only power to legislate over matters mentioned therein, but also to levy tax on "transfer and alienation of agricultural lands." In fact, the learned counsel urged that 'gift' has been defined in the Gift Tax Act as the transfer of property and that such transfer of agricultural land is taken in and provided in entry 18 and therefore a power to levy a gift tax on such transfers of agricultural land has been specifically conferred on State Legislature. The learned counsel also urged that even a single power given to State Legislature to legislate on the heads mentioned in Entry 18 also includes a power to levy a tax on such matters.

13. The question will be whether the counsel for the petitioner is well founded in this contention based upon entry 18.

14. Before we go into the merits regarding the various aspects that have been presented before us

by the learned counsel for the petitioner, it is also desirable to state the principles applicable to constructions of the various entries occurring in the Constitution. No doubt, various decisions have also been placed before us. But it is not necessary to refer to these decisions because the principle appears to be fairly well settled, and there cannot be any controversy. One such principle is that none of the entries in the lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. *United Provinces v. Atiqa Begum*<sup>1</sup>, *tma Ram v. State of Punjab*<sup>2</sup>. The principle is also well settled, so far as we can see that entries in the Lists in constitutional enactments should be given their fullest and widest effect and should not be interpreted in a narrow or pedantic sense and that power to legislate on general subjects extends to ancillary matters which can be said to be comprehended in that power.

15. In this case, we are well aware that the Revenue does not seek to find any support for this legislation from any express entry in List I conferring a specific power on Parliament to levy gift tax. It is really, as we have mentioned earlier, by virtue of the residuary power given to Parliament under Article 248(2), read with entry No.97 in List I, that the Revenue seeks support for the legislation that has been enacted by the Parliament. So far as this is concerned, the position is also now clear that the resort to residuary power should be the very last refuge and it is only, when all the categories in three Lists are absolutely exhausted, that one can think of falling back upon a non-descript.

16. The learned counsel Mr. T.N. Subramania Iyer also urged that under Article 246" clause (3) the Legislature of the State has been given, subject to clauses 1 and 2, exclusive power to make laws for the State or any part thereof with respect to any of the matters enumerated in List II of the Seventh Schedule. "Matters enumerated in list" also relate to taxation. "Transfer and alienation of agricultural land" is a matter enumerated in Entry 18 of List II. As it is a matter enumerated in List II', State Legislature alone is competent to legislate and levy tax regarding transfer of agricultural land. As it is a matter enumerated in List II, the residuary powers of Parliament cannot be invoked. Residuary powers under Article 248 read with entry 97 of List I can come into play, if at all, only when any matter is not enumerated either in List II or List III. So ran the counsel's argument.

17. The learned counsel also pointed out that the heading is also given in Chapter I, Part XI as "Distribution of Legislative Powers". On this basis, the learned counsel

<sup>1</sup>AIR 1941 FC 16

<sup>2</sup> AIR 1959 SC 519

urged, that in view of the supremacy of the State Legislature under clause (3) of Article 246 in respect of matters enumerated in List II, the power to levy any tax in respect of a transfer of agricultural land must be considered to vest only in the State Legislature, in view of entry 18 in List II.

18. Mr. Subramania Iyer further urged that Article 248 cannot be invoked by the Revenue in the circumstances of this case. According to the learned counsel clause (1) of Article 248 must be considered to give exclusive power to Parliament to legislate only in respect of any matter not enumerated in the Concurrent List or State List. It is the further contention of the learned counsel that Clause 2 of Article 248 gives again exclusive power to Parliament to levy tax only in respect of those matters which are not enumerated in List II or List III and which are taken in by Article 248(1) of the Constitution.

19. On the other hand, Mr. K.V. Surianarayana Iyer, learned counsel appearing for the Revenue, urged that the approach to be made by this court is to find out whether levy of gift tax regarding agricultural land is a 'matter enumerated in the State List' or in the Concurrent List. If there is no such provision either in the Concurrent List or the State List, then Mr. K.V. Surianarayana Iyer urged that the residuary power of Parliament under Article 248 comes into play. The counsel also urged that the exclusive power of Parliament to make law over such matters has been preserved under Article 248(1) and similarly the exclusive power of Parliament to make law imposing a tax over such matters has also been preserved under Article 248(2) of the Constitution. Mr. Surianarayana Iyer also urged that a mere conferment of legislative power in respect of the various heads enumerated in the concerned list will not also ipso facto confer a power to tax in respect of those matters unless a power to levy tax has also been expressly given. In particular, the learned counsel also urged that the contention of the petitioners that a general power to legislate will also take in a power to levy is against the scheme of our Constitution, and in particular against the scheme of distribution of legislative powers and taxing powers as could be gathered and ascertained by the meticulous provision made in Lists I and II of the VIIth Schedule.

20. The learned counsel drew our attention to certain foreign constitutions to show that power to legislate on certain topics and power to levy tax have been separately conferred. Mr. K.V. Surianarayana Iyer also placed considerable reliance on Article 248(2) of our Constitution to show that residuary power to legislate is given under Clause (1) of Article 248 and residuary power to impose tax is given under Clause (2). Clause (2) of Article 248, Mr. K.V. Surianarayana Iyer urged, will be wholly redundant and unnecessary if power to legislature given under Article 248(1) over any matter includes by itself if a power to impose tax. This is also the scheme adopted in the Lists also.

21. Quite naturally, learned counsel Mr. Surianarayana Iyer, very strongly relied on the decision of the Supreme Court in *Sundaramier and Co. v. State of Andhra Pradesh*<sup>3</sup> According to Mr. Surianarayana Iyer, the judgment of his Lordship Mr. Justice Venkatarama Iyer, who spoke for the majority of the court, in that matter, really concludes these petitions as against the respective petitioners. We will advert to

<sup>3</sup> AIR 1958 SC 468

that decision a little later. We are also aware that it is the contention of Mr. Subramania Iyer that the learned Judges of the Supreme Court had no occasion to consider the scope and ambit of the residuary power vested in Parliament under Article 248(1) or (2) of the Constitution. We may also state that Mr. Surinarayana Iyer referred to the decision of the Andhra Pradesh High Court in *Sesharatnam v. Gift Tax Officer, Palacole, West Godavari Dist.*<sup>4</sup>, where the Andhra Pradesh High Court has upheld the validity of the Gift Tax Act, in its applicability to agricultural lands. That decision was rendered by the learned Chief Justice, Chandra Reddi C. J., and Mr. Justice M.A. Ansari, as he then was. The learned Judges after a consideration of the various entries and the scheme of the Constitution, have come to the conclusion that the Gift Tax Act is within the competence of Parliament.

22. Mr. V.K.K. Menon, learned counsel for the petitioner in O.P. 131 of 1961, while adopting the contentions of Mr. Subramania Iyer, has also urged that even in respect of taxation on analogous matters, both the Parliament, as well as the States have been given power to tax. For instance

learned counsel drew our attention to Entries 82, 86 and 87 in List I as also the Entries 46, 47 and 48 of List II. Learned counsel urged that levying of tax regarding agricultural lands or income from agricultural lands, has been given to State legislature and therefore the learned counsel urged that the scheme of the Constitution is clearly to vest such power in the State Legislature and not in Parliament, at any rate. Learned counsel also urged that if any other construction is placed and if the power of Parliament is accepted in such matters the position will be that the States will have a very narrow sphere to operate and and therefore resort to the provisions of the residuary entry should not be made in such matters. Though these contentions may be attractive, in our opinion, the short point that arises for consideration will be as to whether, in view of the scheme of our Constitution, the power to levy tax is incidental or ancillary to a Power to enact legislation in respect of the particular matters enumerated in the list, especially Entry 18 of List II on which considerable reliance has been placed. We have already pointed out that the other entries in List I or List II, referred to earlier, were relied on only to show that the scheme of distribution is to vest in the State Legislature powers of legislating or levying tax over agricultural lands or income. It is only according to Entry 18 in List II that there is a power in the State Legislatures to levy tax on transfers of agricultural lands.

23. We are not inclined to accept the contention of Mr. Subramania Iyer that power to enact legislation over the broad heads indicated in Entry 18 in List II, carries with it, without anything more, also a power to tax. In this connection we must bear in mind that it is our Constitution that we are to interpret and that interpretation must depend on the context and setting of the particular provision which has to be interpreted. We must also have due regard to the scheme of the List in the Seventh Schedule, and the principles underlying the enumeration of heads of legislation.

24. In fact, the provisions of Article 248, taken along with the distribution adopted in the Lists will clearly indicate that the particular scheme of the Constitution itself is to confer powers of legislation in certain matters and also to confer powers for imposing tax in respect of certain matters indicated in the lists themselves. If really the power to

<sup>4</sup> AIR 1960 And Pra 115

legislate on a particular matter takes along with it a power to levy tax, in our view, the provisions of Clause 2 of Article 248 will be wholly redundant and unnecessary and no separate entries need be made giving power to levy a tax. It is also interesting to note that in all the three lists, namely Union List, State List and Concurrent List, there is a specific entry relating to fees in respect of the matters in the particular list concerned. For example, see Entry 96 in List I, Entry 66 in List II and Entry 47 in List III.

25. We are only adverting to these matters to show that under the scheme of our Constitution if really the power to legislate carries with it a power of levying tax and also imposing a fee as incidental to the power of legislation, Parliament would not have taken so much trouble to specify or confer the right also to levy tax in respect of certain matters or levy fees in respect of certain other matters. That provisions have been made under specified entries empowering levy of tax regarding some of the main subjects of legislation clearly shows that the scheme of the distribution adopted by our Constitution is different. No doubt Clause 3 of Article 246 to the Constitution is to the effect that the legislature will have exclusive power to make laws for the State or any part thereof in respect of any of the matters enumerated in List II of the Constitution. But when coming to Article 248 the Constitution clearly divides the residuary power of Parliament into two: (a.) its exclusive power to make a law in respect of any matter not

enumerated in the Concurrent List or the State List and (b) to include in such power a power to make law imposing tax. There are also indications among the various entries in the List themselves to show that where power to legislate over certain matters has been given there is also provision made at the same time in the entries in the various lists giving power either to Parliament or to the State Legislature to levy tax in respect of certain matters covered by the other head of legislation.

26. Ordinarily, we may have to go into some of these aspects in greater detail, but we have been relieved of that task because, in our opinion, of the direct decision of the Supreme Court in AIR 1958 SC 468. Their Lordships the Supreme Court in that decision had to consider the ambit of Entry 42 of List I and Entry 54 of List II as it stood prior to its amendment. It will be seen that a contention was raised before the learned Judges that Entry 42 in List I. "Inter-State Trade and Commerce" is based upon the commerce clause of the American Constitution and that has been interpreted by the Supreme Court of United States as meaning that the States have no power to enact a law imposing tax on the carrying on of inter-state trade. There was also a point taken that so far as inter-state trade and commerce, being Entry No.42 of List I of Seventh Schedule is concerned, Parliament had the exclusive power to enact laws in respect of the same and that such power included also a power to impose a tax on inter-state sales and that the States had, therefore, no competence under the Constitution to enact a law imposing a tax on such sales. His Lordship Mr. Justice Venkitarama Iyer, delivering the majority judgment of the court, declined to accept this contention, observing at page 493 as follows:

"In List I, Entries 1 to 81 mention the several matters over which Parliament has authority to legislate. Entries 82 to 92 enumerate the taxes which could be imposed by a law of Parliament. An examination of these two groups of Entries shows that while the main subject of legislation figures in the first group, a tax in relation thereto is separately mentioned in the second. Thus, Entry 22 in List I is "Railways," and Entry 89 is "Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights." If Entry 22 is to be considered as involving taxes to be imposed, then Entry 89 would be superfluous. Entry 41 mentions "Trade and commerce with foreign countries; import and export across customs frontiers." If these expressions are to be interpreted as including duties to be levied in respect of that trade and commerce, then Entry 83 which is 'Duties of customs including export duties' would be wholly redundant. Entries 43 and 44 relate to incorporation. Entry 85 provides separately for Corporation tax. Turning to List II, Entries 1 to 44 form one group mentioning the subjects on which the States could legislate. Entries 45 to 63 in that List form another group, and they deal with taxes. Entry 18 for example, is "land" and Entry 45 is "Land Revenue." Entry 23 is "Regulation of mines" and Entry 50 is "Taxes on mineral rights." The above analysis - and it is not exhaustive of the Entries in the lists - leads to the inference that taxation is not intended to be comprised in the main subject in which it might on an extended construction be regarded as included, but is treated as a distinct matter for purposes of legislative competence. And this distinction is also manifest in the language of Article 248, Clauses (1) and (2) and of Entry 90 in List I of the Constitution. Construing Entry 42 in the light of the above scheme, it is difficult to resist the conclusion that the power of

Parliament to legislate on inter-State trade and commerce under Entry 42 does not include a power to impose a tax on sales in the course of such trade and commerce.

27. The above observations of His Lordship will clearly show that the power given to the Legislature to legislate on particular topics will not also carry along with it a power to impose a tax in respect of those matters unless that has been especially conferred on parliament or the State Legislature. In fact, if we may say so with respect, the learned Judge considers the various entries in Lists I and II and also particular entries in the same lists which deal with the head of legislation and also with power to tax and ultimately comes to the conclusion that the power to tax given in Lists I and II in respect of the identical entries over which power has been given for legislation would have been wholly unnecessary and redundant if the power to legislate also carries with it the power to levy tax also.

28. No doubt, Mr. Subramania Iyer very strenuously urged before us that the Supreme Court had no occasion to consider the provisions of Article 248 or the provisions of Clause (3) of Article 246 of the Constitution. In our view, the fact that the learned Judges had not considered Article 246(3) does not in any way assist the learned counsel. In fact, it will be seen from the observation extracted above that the Supreme Court has adverted to Article 248(1) and (2) and also Entry 97 in List I in support of the conclusion arrived at by them to show that the power to legislate is treated as distinct from a power to levy a tax,

29. Therefore, in our view, the contention of Mr. Surianarayana Iyer, learned counsel for the Revenue, that the power to legislate given under the particular entry, viz., Entry 18 of List II, will not also carry with or as incidental to it, a power to levy a tax unless a power to tax has been clearly conferred by any particular entry in one or other of the lists has to be accepted, as it is based on the scheme of our Constitution.

30. We may also refer to the decision of the Andhra Pradesh High Court in AIR 1960 Andhra Pradesh 115. No doubt, it will be seen that in that case the counsel appearing for the various petitioners, who were attacking the Gift Tax Act, were also relying upon certain other Entries in List II in support of their contention that the State Legislature alone had got power to levy tax on gifts and not the Parliament. It is not really necessary for us to consider that aspect, because no arguments have been advanced before us to show that, apart from Entry 18 in List II, the State legislature can be considered to have any power to levy tax in respect of a gift of agricultural lands.

31. We are not certainly inclined to accept the contention of the learned counsel for the petitioners that Entry 18 of List II, standing by itself can also be considered to empower the State Legislature to levy gift tax on the transfer of agricultural lands. No other entry in List II, excepting Entry 18, has been placed before us, as giving power to a State Legislature to levy tax on agricultural lands. The Andhra Pradesh High Court ultimately has come to the conclusion that the Gift Tax Act, levying tax on agricultural lands is within the competence of the Parliament, by virtue of the residuary powers conferred upon Parliament under Clause 2 of Article 248 read with Entry 97 of List I and we are in respectful agreement with the conclusions arrived at by the learned Judges in that case. In this view, the writ petitions will have to fail.

32. Another contention that requires to be considered is the attack made, again on this Act, based upon Entry 47 List II. Entry 47 of List II deals with 'Duties in respect of succession to

agricultural land.' According to Mr. Subramania Iyer, levying of gift tax on transfer of agricultural land really amounts to a levying of 'Duty in respect of succession to agricultural land', and therefore it comes within the powers of the State Legislature under Entry 47 referred to earlier. No doubt, the learned counsel relied upon certain observations contained in the judgment of the Madras High Court in *Santhamma v. Neelamma*<sup>5</sup>, On the other hand Mr. K.V. Surianarayana Iyer, learned counsel appearing for the Revenue has referred us to the decision of the Federal Court in Powers of Federal legislature to levy Estate Duty, In the matter of, AIR 1944 FC 73 and also to the decision of the Andhra Pradesh High Court referred to above, namely AIR 1960 Andhra Pradesh 115 in support of his contention that the scope and ambit of Entry 47 is totally different from the enactment that is now before us. The Federal Court had to consider the scope of Entry 56 in List No.I and Entry 43 in List II of the Government of India Act, 1935. Entry 56 of List I of the Government of India Act corresponds to entry 88 of the Constitution, and Entry 43 of List II of the Government of India Act corresponds to Entry 47 of the Constitution.

33. The Federal Court had to consider the ambit and scope of the expression "succession" and the learned Chief Justice, after a consideration of the various Entries, no doubt, observes that their attention was drawn to the meaning of the word 'succession' in dictionaries and law lexicons and a contention was raised that the word

<sup>5</sup> AIR 1956 Mad 642

succession was capable of comprehending every kind of passing of property intended to be comprised in question No.1 that was referred for consideration to the Federal Court. The learned Chief Justice observes:

"We are by no means satisfied that this is so." Then considering the entries in the various lists of the Government of India Act as also Entry No.7 of List III of the Government of India Act dealing with "Wills, intestacy and succession" corresponding to Entry No.5 in List II of the Constitution where the same words occur, the learned Chief Justice observes:

"The Succession Act broadly divides the subject of 'succession' into 'testamentary' and 'intestate' succession; and the ordinary meaning of succession is the transmission, by law or by the will of man, to one or more persons of the Property and the transmissible rights and obligations of a deceased person. That this is the sense in which 'succession' is used in the Lists in Schedule 7 is indicated by the collocation of the words 'wills', 'intestacy' and 'succession' in entry 7 of List 3."

The learned Chief Justice finally winds up the discussion as follows:-

".....But if there be any legislative practice at all in India, it is to be found generally in the use of the word succession in the narrower sense".

34. The Andhra Pradesh High Court also had occasion to consider as to whether the Gift Tax Act can be considered to come within Entry 47 of List II of Schedule VII of the Constitution in the decision referred to earlier, AIR 1960 Andhra Pradesh 115. After adverting to the decision of the Federal Court referred to earlier, the learned Chief Justice at page 119 sums up the conclusion as

follows:

"It appears from these remarks that it is only when accession of right takes place on the death of a person, the expression 'devolution' or 'succession' would be appropriate. These words imply the passing of property to another on the death of a person and can have no application to transfers inter vivos. Thus this dictum is in consonance with that of the Federal Court in AIR 1944 FC 73.....For these reasons, we hold that gifts do not fall within the import of Entry 47. In considering whether the impugned legislation falls within one entry or other, we have to examine the pith and substance and see whether that pith and substance falls substantially within one entry or other conferring legislative power." We are in respectful agreement with the reasoning of the learned Judges of the Andhra Pradesh High Court regarding the ambit of Entry 47 of List II and we are also in respectful agreement with the conclusions arrived at by the learned Judges that the Gift Tax Act will not certainly come within the ambit of Entry 47 of List II.

35. In view of what is stated, it follows that there are no entries in List II, whereby it is possible to hold that a provision has been made for levying Gift Tax on agricultural land and that; such power has been given to the State Legislature. In the absence of any such matter being enumerated in List II, it follows, in our opinion, that Clause (2) of Article 248 read with Entry 97 of List I gives ample power to the parliament to enact the legislation in question.

36. Therefore, it follows that the constitutional question raised before us in all these writ petitions will have to be answered against the petitioners.

37. There are no doubt, certain other contentions raised in the writ petitions and in our opinion it is not desirable that we should adjudicate upon these aspects in proceedings under Article 226. We make it very clear that except answering the constitutional point, that have been raised with regard to the competency of Parliament to enact the legislation in question, regarding agricultural lands, we express no opinion whatsoever on the various other contentions that have been raised. It is open to the respective petitioners in O.P. Nos.323 and 1339 of 1959 and 117 of 1960 to raise all the other points before the appropriate Gift Tax Officers before whom proceedings for assessment are pending. With these observations, these three writ petitions will be dismissed and parties will bear their own costs.

38. In O.P. No.131 of 1961, as we mentioned earlier, there has also been an order of assessment made by the Gift Tax Officer in question. Here again, we make it very clear that, excepting considering the constitutional question that has been raised and argued before us and which point has been found against the assessee, we are not expressing any opinion in respect of the other matters. It is open to the petitioner to seek other remedies open to him. The parties will bear their own costs.

Writ petitions dismissed