KERALA HIGH COURT

V. Padmanabha Ravi Varma Raja

Vs.

Deputy Tahsildar Chittur

O.P. Nos.831, 874, 1199, 1664, 1927, 2196, 2874, 3171, 3371 of 1961 and 399 and 771 of 1962

(C.A. Vaidialingam, J.)

11.10.1962

JUDGMENT

C.A. Vaidialingam, J.

1. In all these writ petitions, though the petitioners are different, the various provisions in the Kerala Land Tax Act, 1961, Act 13 of 1961, are attacked on the ground that they violate the fundamental rights guaranteed under Articles 14, 19 and 31 of the Constitution.

2. The exact grounds of attack raised by the petitioners will be adverted to later; but the background for the passing of the Act, which is under severe attack in these proceedings may be briefly indicated.

3. Prior to the formation of the Kerala State on 1-11-1956, the Travencore-Cochin legislature had passed the Travencore-Cochin Land Tax Act, 1955, Act 15 of 1955, purporting to provide for the levy of a low and uniform rate of basic tax on all lands in the State of Travencore-Cochin. That Act came into force on 1st day or April 1956, in accordance with the Notification issued by the Travencore-Cochin Government, under Section 1(3) of the said Act. Broadly, the Act purported to provide tor levy of a low and uniform rate of basic tax on all lands in the State of Travencore-Cochin. The expression "basic tax" was defined in Section 2(i) as the tax imposed under the provisions of the said Act. Under Section 3, it was provided that notwithstanding anything in any statute, grant, deed or other transaction, the arrangement made for the levy of basic tax shall be deemed inter alia to be a general revenue settlement of the State. Section 4 provided that subject to the provisions of the Act, there shall be charged and levied in respect of all lands in the State, of whatever description and held under whatever tenure, a uniform rate of tax to be called the basic tax. Under Section 5(1) of the Act the basic tax charged and levied under Section 4 shall be at the rate of three pies per cent of land per annum. Section 7 declared that the Act was not applicable to lands held or leased by the Government or any land or class of lands which the Government may, by notification in the gazette, either wholly or partially, exempt from the provisions of the Statute. Section 14 related to bar of suits as against Government in any Civil Court, in respect of anything done or any order passed under the Act. Section 16 gave powers to the Government to make rules for carrying into effect the provisions of the Statute.

4. On the formation of the Kerala State, the area commonly known as the Malabar area, which formed part of the Madras State, became part of the Kerala State. That Kerala legislature passed the Travencore-Cochin Land Tax (Amendment) Act, 1957, Act 10 of 1957, and the same was published in the State Gazette on 6th August, 1957. The preamble to this Act stated that it was deemed necessary to apply the basic land tax system to the whole State of Kerala and to amend the Travencore-Cochin Land lax Act, 1955 for the purposes mentioned in the Amendment Act. By virtue of the powers conferred under Section 1(2), the State Government issued the necessary notification in the Gazette bringing into force the provisions of the Travencore-Cochin Land Tax Act, 1955, as amended by Kerala Act 10 of 1957 with effect from 1st September, 1957.

5. Under Section 2, the words "State of Kerala" were substituted for the words "State of Travencore-Cochin" occurring in the long title and preamble of the Travencore-Cochin Land Tax Act, 1955. Apart from certain other consequential amendments, in particular Section 3(2) provided that the Act applies to the whole of the State of Kerala, Section 6 of the Amendment Act introduced Section 5A in the parent Act as follows :

> "5A. Provisional assessment of basic tax in the case of unsurveyed land :- (1) It shall be competent for the Government to make a provisional assessment of the basic tax payable by a person in respect of the lands held by him and which have not been surveyed by the Government and upon such assessment such person shall be liable to pay the amount covered in the provisional assessment.
> (2) The Government after conducting a survey of the lands referred to in sub-section (1) shall make a regular assessment of the basic tax payable in respect of such lands. After a regular assessment has been made, any amount paid towards the provisional assessment made "under sub-section (1) shall be deemed to have been paid towards the regular assessment and when the amount paid towards the provisional assessment exceeds the amount payable under the regular assessment, the excess shall be refunded to the person assessed".

6. The constitutionality of the Travencore-Cochin Land Tax Act, XV of 1955, as amended by the Travencore-Cochin Land Tax (Amendment) Act 10 of 1957, was challenged by various persons before the Supreme Court, by filing petitions under Article 32 of the Constitution.

7. The exact grounds of attack raised by the petitioners therein, as well as the stand taken by the State Government, and the discussion on the relevant aspect by their Lordships of the Supreme Court, in those matters, will also be adverted to later. But it is enough to point out at this stage, that the Act was challenged as violative of Articles 14, 19 (1) (f) and 31 of the Constitution. Sections 4, 5A and 7 of the Act were held by the Supreme Court, to be violative of Article 14, as also Article 19 (1) (f) of the Constitution; and their Lordships also held that these provisions are in effect confiscatory. As there was no question of severability of those sections from the other provisions of the Act, the entire Act was struck down by the Supreme Court The decision of the Supreme Court is reported in *Thathunni Moopil Nair v. State of Kerala*[1], No doubt Mr. Justice Sarkar has written a dissenting judgment, upholding the validity of the statute.

8. After the decision of the Supreme Court which was rendered on 9-12-1960 the Governor of Kerala promulgated the Kerala Land Tax Ordinance, 1961, Ordinance No. 8 of 1961, published in the State Gazette on 7th February, 1961. It is not necessary for me to advert to the provisions of the Ordinance, because they have been substantially, incorporated in the Act, which is under attack in these proceedings, namely, the Kerala Land Tax Act, 1961, Act 13 of 1961, published in the State Gazette on 5th April, 1961.

9. This will be referred to as the Act, in the further discussion to follow in this judgment. The preamble is to the effect that it is deemed necessary to provide for the levy of a basic tax on lands in the State of Kerala; and under Section 1(2), the Act is made applicable to the whole of the State of Kerala. Section 1 (3) provides that the Act shall be deemed to have come into force (a) from the 1st of April 1955 in the area comprising the former State of Travencore-Cochin; and (b) in the Malabar area, with effect on and from the 1st day of September, 1957. Section 2 provides for exemptions. Sub-section (1) is to the effect that the Act shall not apply to (a) lands belonging to the Government, (b) Sreepandaravaka lands belonging to the Sree Padmanabhaswami Temple, and (c) Sreepadam lands belonging to the Sreepadam Palace. Sub-section (2) gives power to the State Government, by notification in the Gazette, to exempt any land belonging to any public body or institution from the provisions of the Act, if they are satisfied that such exemption is necessary in the public interest. Power is also given to the State Government, by like notification, to cancel any exemption granted. Sub-section (3) makes provision for all notifications issued by the Government under sub-section (2) for being laid before the Legislative Assembly for a period of not less than 14 days. It is also to the further effect that the notifications shall be subject to such modifications as the legislative Assembly may make, during the session in which they are laid or the session immediately following. Section 3(1) defines "Basic Tax" as tax imposed under the provisions of the Act. Sub-section (3) defines "landholder" as meaning the registered holder for the time being of any land and including his legal representatives and assigns, and also any person who under any law nor the time being in force is liable for the payment of public revenue due in respect of land held by him and, in the case of lands which have not been surveyed, the proprietor of the land. The expression "prescribed" is stated to mean by section 3(6) as prescribed by rules made under the Act; and the expression "prescribed authority" under Section 3(7) is stated to mean the authority appointed by Government by notification in the Gazette to perform the functions of the prescribed authority under the Act.

10. Section 4 provides that notwithstanding anything in any enactment, grant, deed or other transaction, the arrangement made therein for the levy of basic tax, shall be deemed Inter alia to be a general revenue settlement of the State. There are four

[1]1961 Ker LJ 143 : AIR 1961 SC 552

provisos and an explanation to Section 4, which are not necessary to be adverted to. Section 5 is the charging section and section 6 provides for the rate of basic tax; and Section 7 deals with provisional assessment of basic tax in the case of unsurveyed lands. As these three sections have come in for very severe attack in these proceedings, it is desirable to set out three sections themselves :

> "5. Charge of land tax- (1) subject to the provisions of this Act, there shall be charged and levied a tax called 'basic tax' on all lands, of whatever description and held under whatever tenure -

(1) situated in the area comprising the former "state of Travencore-Cochin for every financial year commencing on and from the 1st day of April, 1956;

(ii) situated in the Malabar area for the period commencing on and from the 1st day of September, 1957, and ending on the 31st day of March, 1958, and thereafter for every financial year commencing on and from the 1st day of April, 1958.

(2) The basic tax charged on any land shall be paid by the landholder of that land;

Provided that where any land is in the possession or a tenant or other person not being the land-holder and the income obtained by the land-holder from that land is less than the basic tax payable thereon, the excess of the basic tax over such income shall be paid by the tenant or other person in possession.

(3) The basic tax charged and levied under this Act shall be deemed to be public revenue due on land within the meaning of the Revenue Recovery Act for the time being in force and shall be recoverable under the provisions of that Act.

6. Rate of basic tax - (1) The basic tax charged and levied under Section 5 shall, subject to the provisions of sub-section (2) and Section 7, be at the rate of two rupees per acre per annum.

(2) Notwithstanding anything contained in sub-section (1), where a landholder or other person liable to pay basic tax proves to the satisfaction of the prescribed authority that the gross income from any land was less than ten rupees per acre per annum, the basic tax payable on such land shall be at a rate fixed by the prescribed authority calculated at one-fifth of the gross income from such land :

Provided that pending the fixation of the rate at which basic tax is payable on any land under this sub-section, the land-holder shall be liable to pay basic tax on such land at the rate of two rupees per acre per annum; and, on fixation of the rate of basic tax, the excess tax, if any, paid or collected, shall be refunded to the person entitled thereto;

Provided further that the Government may, having regard to the potential productivity of any land used principally for growing coconut, arecanut, pepper, tea, coffee, rubber, cardamom or cashew or any other special crop, plant or tree that may be specified by the Government, by notification in the Gazette levy and collect basic tax at the rate of two rupees per acre per annum on such land, notwithstanding the fact that such crops, plants or trees had not begun to yield or bear and that for the time being no income was made from that land or that the income made was less than ten rupees per acre per annum.

Explanation 1 :- For the purposes of this section 'gross Income' with reference to any land shall mean the gross Income actually made from the land or the gross Income that could be made from the land with due diligence, whichever is higher.

Explanation 2. - Lands comprised in the same survey or sub-division number and held by the same land-holder shall be treated as a single unit for calculating the gross Income for the purposes of this section.

"Explanation 3 - For the purposes of calculating the gross income in money from any land the cash value of the produce from the land shall be commutted into money at the average market rate of such produce for six years immediately preceding the commencement of

this Act.

(3) An application for fixation of the rate of basic tax under sub-section (2) shall be in the form specified by tire Government by notification in the Gazette and shall be made to the prescribed authority within four months from the date of publication of this Act in the Gazette.

(4) The prescribed authority shall, as far as may be practicable, pass orders on the application within six months from the date of first appearance of the applicant.

(5) The order of the prescribed authority fixing the basic tax shall be communicated to the landholder concerned and any other person liable to pay the basic tax.

7. Provisional assessment of basic tax in the case of uasurveyed lands- (1) Notwithstanding anything contained in Section 6, in the case of land which have not been surveyed, the prescribed authority may make a provisional assessment of the basic tax payable on such lands. For the purpose of making the provisional assessment the prescribed authority shall, by notice, call upon the landholder concerned and any other person in possession of the lands - to furnish such particulars relating to the lands as the prescribed authority considers necessary within such time as nay be specified in the notice.

(2) If the prescribed authority is satisfied that the particulars furnished by the landholder or other person are correct and complete he shall make a provisional assessment of the basic tax payable on such lands at the rate specified in sub-section (1) or sub-section (2) of Section 6, as the case may be, on the basis of the particulars so furnished.

(3) If the particulars called for under sub-section (1) are not furnished within the time specified therefore or if the particulars furnished appear to the prescribed authority to be incorrect or incomplete, the prescribed authority may make a provisional assessment of the basic tax payable on such lands at the rate specified in sub-section (1) or sub-section (2) of Section 6 as the case may be, to the best of his judgment.

Provided that before making a provisional assessment under this sub-section the landholder concerned and any other person liable to pay the tax under the provisions : assessment shall be given an opportunity to show cause against the proposed assessment.

(4) The order of the prescribed authority under sub-section (3) shall be communicated to the land-holder concerned and any other person liable to pay the provisional assessment.

(5) The amount of the tax under the provisional assessment fixed under this section shall be recoverable in the same manner as the basic tax.

(6) The Government shall, as soon as may be, and in any case before the expiry of a period of five years from the date of publication of this Act in the Gazette, cause a survey to be conducted of the unsurveyed lands, and thereupon the prescribed authority shall make a regular assessment of the basic tax payable in respect of such lands. The provisions of Section 6 shall apply to such regular assessment, provided that the time for making application for the fixation of the rate of basic tax under sub-section (2) of Section 6 shall be four months from the date of completion of the survey of the land. After a regular assessment has been made under Section 6, any amount paid towards the

provisional assessment shall be deemed to have been paid towards the regular assessment and, where the amount paid towards the provisional assessment exceeds the amount payable under the regular assessment, the excess shall be refunded to the person entitled thereto".

11. Section 8 makes special provision relating to basic tax for periods prior to the date of publication of the Act; and sub-section (1) is broadly to the effect that it basic tax during the said period has been collected at a rate higher than a rate at which basic tax is payable under the Act the excess so collected for the said period shall be refunded. Section 9 provides for an appeal being taken to the Collector of the District by any person aggrieved by orders of the prescribed authority under sub-section (2) of Section 6 or under sub-section (3) of Section 7. There is a proviso to sub-section (1) that no appeal shall be unless the tax has been paid. Sub-section (3) prescribes the period of limitation for filing an appeal; but it also gives power to the appellate authority to admit an appeal after the expiry of the period, if the appellant is able to satisfy the said authority by showing sufficient cause for not presenting the appeal in time. Sub-section (4) provides that the appellate authority may, after giving the prescribed authority and the appellant an opportunity of being heard, pass such orders thereon as it thinks fit. Sub-section 5 provides for the order of the appellate authority being communicated to the appellant and to the prescribed authority. Sub-sections 5, and 7 of Section 9 are as follows :

"(6) The order of the appellate authority shall, subject to the provisions of Section 10 and Section 11, be final and shall not be called in question in any Court of law.
(7) Where the amount of basic tax or tax under the provisional assessment paid is in excess of the amount due under the order in appeal such excess shall be refunded to the person entitled thereto".

12. Sub-section (1) of Section 10 provides for the assessee requiring the appellate authority to refer to the District Court any questions of law arising out of such requisition within 30 days of the service of the notice of the order and subject to such conditions and limitations as may be prescribed. Sub-section 2 gives power to the District Court in the cases mentioned therein to refer we case back to the appellate authority to make such additions or alterations as the Court may direct. Sub-section 3 provides for the District Court, upon hearing of the case, to decide questions of law and to deliver judgment giving reasons for its decision and for sending copies of such judgment to the appellate authority which is to pass orders as are necessary to dispose of the case in conformity with the judgment of the District Court. Sub-section 4 makes the decision of the District Judge, on such reference final. Sub-section 5 provides that notwithstanding a reference has been made under Section 10 to the District Court, basic tax shall be payable in accordance with the assessment made in the case; and there is a proviso to sub-section 5 to the effect that if the amount of the assessment is reduced as a result of the reference, the amount overpaid shall be refunded.

13. Section 11 gives power to the Board of Revenue to exercise powers of revision over the orders of the Appellate Authority either suo moto at any time or if its jurisdiction is invoked by the party filing an application for that purpose within 30 days from the date of the order of the appellate authority. The first proviso to sub-section (1) states that no order enhancing the rate of

basic tax or the amount of provisional assessment shall be passed without notice to the party who may be affected by the order; the second proviso again states that no order passed on the basis of a reference under Section 10 and to the extent covered by the answer to such reference shall be subjected to revision by the Board of Revenue. Sub-section (2) provides that if the amount of basic tax or tax under the provisional assessment paid is in excess of the amount due under the order in revision, such excess shall be refunded.

14. Section 12 deals with construction of stipulation in contract etc. Section 13 deals with Jenmikaram; Section 14 deals with Thiruppuvaram; and Section 15 deals with irrigation or water cess. Section 16 gives power to the State Government to appoint such officers as they deem necessary for the purpose of this Act. Section 17(1) bars the institution of suit against the Government in any Civil Court in respect of anything done or any order passed under the Act.

15. Section 18 gives power to the authorities concerned, for rectification of mistakes and is as follows :

> "Rectification of mistakes :- At any time within four years from the date of any order passed by it the prescribed authority or the appellate authority or the revisional authority may, on its own motion, rectify any mistake apparent from the record and shall within a like period, rectify any such mistake which has been brought to the notice of the prescribed authority or the appellate authority or the revisional authority, as the case may be, by a land-holder or other person liable to pay tax;
> Provided that no such rectification shall be made which has the effect of enhancing the tax payable unless the land-holder and any other person liable to pay tax have been given a reasonable opportunity of being heard in the matter".

16. There is a further provision in Section 19 as follows :

> "19. Savings :- Nothing in this Act shall -
> (a) affect the conditions of any agreement, grant or deed relating to any land except to the extent hereinbefore provided;
> (b) affect any rights which have accrued to the Government before the date on which this Act comes into force".

17. Section 20 gives power to the State Government to make rules for carrying into effect the provisions of the Act; and sub-section (2) provides in particular the various matters regarding which rules may be framed. Sub-section (3) provides for the rules made under the Act being laid for a period of not less than fourteen days before the Legislative Assembly and their being subject to such modifications as the Assembly may make during the session in which they are laid or the session immediately following.

18. Section 21 repeals the Land Tax Act, 1955, and the Kerala Land Tax Ordinance, 1961 (Ordinance 2 of 1961).

19. Before I advert to the relevant rules framed under the Act, I may also incidentally refer to the Kerala Additional Tax on Lands Act 1961, Act 25 of 1961, published in the State Gazette on

15th July, 1961. This Act makes provision for the levy of an additional tax on certain lands. Under Section 4 it is provided that subject to the provisions of the Act, there shall be charged and levied as and from 1st April, 1961 an additional tax at the rate of Rs. 2 per acre per annum on all lands of whatever description held by a person, the gross income from which is not less than Rs. 20 per acre per annum.

20. I do not think it necessary to go into the various other matters provided therein excepting to state that there is provision made in this Act for a person holding lands as on 1st April, 1961 liable to the additional tax to submit a return to the prescribed authority giving the various particulars relating to the lands held by him. There is also provision made for making revised returns or for amending a return that has already been sent and the procedure for making assessment is also indicated in the statute. There is no controversy that the procedure for assessment and levy of an additional tax under the provisions of Kerala Act 25 of 1961 is entirely different and most of these provisions do not occur in the Act, the validity of which is challenged in these proceedings.

21. By virtue of powers conferred under Section 20 of the Kerala Land Tax Act, 1961, the Government have framed certain rules and those rules have been published in the State Gazette on 11th July 1961. Rule 3 provides that in the case of surveyed lands, the basic tax at the rate of Rs. 2 per acre of land under sub-section (1) of Section 6 has to be calculated on the area of each holding as entered in the revenue records at the rate of 2 N.Ps. per cent of land and that the fractions of a cent shall be regarded as one cent for the purpose of levying baste tax. Rule 5 provides for the filing of application for fixation or basic tax under Section 6(2) of the Act. If the basic tax is to be fixed for lands situated in one Taluk, the application is to be made to the Tahsildar of the Taluk where the land is situated and if the tax has to be fixed for lands in more than one Taluk held by the same person, separate applications are to be made to the Tehsildars of the Taluka concerned. Rule 6 provides for the Tahsildar causing the applications presented under Rule 5 to be verified by the Village Officer and the Village Officer verifying the details given in the application with reference to the revenue records, by local inspection and enquiry. The village Officer is to submit the report within 30 days of the receipt of the application in the Village Office. There is also provision to the effect that the Tahsildar is to cause a verification by the Revenue Inspectors or Revenue Supervisors or by himself, of the report submitted by the Village Officer etc. Rule 7 provides that before fixing the basic tax at a rate lower than Rs. 2/- per acre per annum the Tahsildar shall himself check the verification report and make or cause to be made such enquiry as he deems necessary, Rule 8 gives power to the Tahsildar to determine the gross income from any land, whether actually cultivated or not, if it is cultivable. It also provides for the Tahsildar ascertaining the income derived from similar neighbouring lands, if any, and for taking evidence, from persons who are likely to be acquainted with the nature of cultivation of such lands. Sub-rule (2) of Rule 8 provides for fixing the money value in the manner indicated therein after the gross income in kind is determined. Sub-rule (3) of Rule 8 provides for the Tahsildar recording in his proceeding the basis for the determination of gross income from any land as also the money value for the several kinds of produce; it also provides that copy of the proceeding shall be given to the landholder or other person concerned liable to pay the tax.

22. Rule 9 provides that the appeals against the orders of the Tahsildar before the District Collector are to be filed within 30 days of the receipt of the order and it also provides for the form of the appeal; the fee payable on an appeal; and the manner of service of notice.

23. Rule 11 deals with application for refund of tax, the form in which it has to be filed and the particulars to be given and also the period within which such applications are to be filed; and for the Revenue Divisional Officer ordering refund after satisfying himself that the amount is to be refunded.

24. Rule 14 provides that the basic tax charged and levied under the Act is to be paid in two equal instalments, namely, before the 15th of October and 15th of January every year. There is provision made regarding the lands in North and South Wynad Taluks. The said the also provides that any instalment or portion remaining unpaid shall be treated as an arrear of land revenue after the dates mentioned therein and they are recoverable under the Revenue Recovery Act for the time being in force.

25. I shall now briefly indicate the facts as mentioned in the affidavits filed by the various petitioners which will also give an idea as to the nature of the attack levelled against the Act in question. I will also indicate the stand taken by the State Government in the counter-affidavit filed in these matters.

26. The constitutional question alone will be considered for the present and any special points arising for consideration in these writ petitions will be taken up for hearing after an adjudication on the constitutional point.

27. In O. P. No. 831 of 1961, the petitioner, through his learned counsel Mr. C.K. Viswanatha Iyer, challenges the provisional assessment of the petitioner to basic tax, made by the concerned Tahsildar on 18-4-1961.

28. The petitioner in this case claims to own forests in the Palghat District which originally formed part of the State of Madras and now forming part of the State or Kerala. The petitioner further states that the forests, when they were in the Madras State and even now, are governed by the provisions of the Madras Preservation of Private forests Act, 1949, Madras Act 27 of 1949. Under the provisions of the said Act, it is the case of the petitioner, that without the previous sanction of the District Collector, the petitioner cannot sell, mortgage, lease or otherwise alienate wholly or any portion of the forest nor can he without the previous permission of the District Collects cut trees or do any act likely to denude the forest of diminish its utility as a forest. It is also stated that the Collector invariably restricts the permission given to a very insignificant area of the forest. Therefore, the income derived by the petitioner is, apart from being very limited precarious also. The forests comprised in this writ petition are, according to the petitioner unsurveyed areas. The petitioner refers to the original demand made by the District Collector under Section 5A of the Travencore-Cochin Land Tax Act as basic tax and the steps taken by him before the Supreme Court challenging those proceedings by filing an application, namely, Petition No. 19 of 1958 under Article 32 of the Constitution.

29. After adverting to the decision of the Supreme Court striking down the Land Tax Act of 1955, and to the promulgation of the Ordinance, 2 of 1961 as well as the passing of the Act in question, the petitioner states that the various infirmities pointed out by the Supreme Court In the Land Tax Act 1955 exist in the present Act, and, therefore, it has to be struck down as offending Articles 14, 19 and 31 of the Constitution.

30. The petitioner avers that there is absolutely no reasonable basis for classification of lands yielding annually Rs. 10/- per acre and more and lands yielding less than Rs. 10/- per acre. According to the petitioner, lands just yielding Rs. 10/- per acre and lands yielding more than Rs. 500 per acre are taxed at a uniform rate of Rs. 2 per acre per annum, and, therefore, the Act is discriminatory and hit by Article 14 of the Constitution.

31. According to the petitioner, the provisions of Section 7 of the Act authorising the imposition of a provisional assessment on unsurveyed lands are also illegal and void. The petitioner has been assumed to own 30,000 acres of unsurveyed forest lands and the authorities on that basis proposes to levy a basic tax of Rs. 60,000/- per year. In view of the fact that the extent is unsurveyed, the petitioner states that the extent assumed by the revenue authorities is absolutely fanciful and arbitrary. These forest areas take in very large tracts of barren and rock portions, which do not yield any income at all and the enjoyment of the property is drastically restricted by the provisions of the Madras Preservation of Private Forests Act. Till a final survey is made and the actual extent is ascertained, the petitioner will have to pay from 1957 onwards at the rate demanded by the revenue authorities and if default is made to meet the demand, the properties may be sold under the provisions of the Revenue Recovery Act, and the property, according to the petitioner, will be knocked off by the State Government by being the nominal purchaser, because nobody will be prepared to buy the property after paying the huge amount of tax levied on the same.

32. The petitioner also avers that the so-called appeal and the revision provided to the Collector and the Board of Revenue are illusory and of no actual benefit whatsoever. Therefore, the petitioner challenges the proceedings initiated by the concerned Tahsildar for making a provisional assessment on these unsurveyed lands.

33. The State Government in its counter-affidavit avers that the writ petition is not maintainable as no fundamental rights of the petitioner have been infringed and that the provisions of Kerala Act 13 of 1961 do not impose any unreasonable restriction on the right to hold property and that no provisions of the Constitution, and in particular, Articles 14, 19 (1) (f) and 31, have been violated in any manner.

34. According to the State, the Act was passed with a view to unify the system of land tax in the whole of the State of Kerala; and in passing this enactment the infirmities pointed out by the Supreme Court regarding the Land Tax Act of 1955 have been very carefully considered and all those infirmities have been completely eliminated in the present statute.

35. The State further avers that adequate provisions have been made in the Act for issuing notice to the assesses before making a provisional assessment and the statute has also provided for a right of appeal and revision, apart from giving a further right to the assessee to ask for a reference on a point of law to the District Court. The levy of basic tax, under this Act, is made after having due regard to the income, either actual or potential, that may accrue from the land. The classification of lands yielding an annual income of Rs. 10/- and more and of lands yielding an annual income less than Rs. 10/- is a classification made having due regard to the object of the statute. The provisions of the Madras Preservation of Private Forests Act have, according to the State, no bearing in considering the validity of this Act. It is also stated that the extent of unsurveyed lands has been ascertained, after due enquiry by its Officers; and it is really on that

basis that the provisional assessment is sought to be made. Therefore, according to the State the Act is a perfectly valid piece of legislation.

36. In O. P. No. 874 of 1961, on behalf of the petitioner, his learned counsel Mr. T. Chandrasekhara Menon, again seeks the issue of a writ of prohibition forbearing the District Collector of Cannanore from collecting basic tax from the petitioner under the Kerala Land Tax Act, 13 of 1961, and to declare the Act, ultra vires and unconstitutional.

37. The petitioner is the eldest member and pothokaranavan of Neeleswar Thekke Kovilakam which owns properties in Hosdrog Taluk of Cannanore District, of a total extent of about 150,00 acres. Out of these, an extent or 11,180 acres are Kumri or waste lands yielding absolutely no income whatsoever. The Kovilakam was partitioned in 1958 and different and distinct shares have been set apart to the various members of the family; and applications had already been made for change of registry of lands and for mutation of names and issue of pattas; but nothing has been done by the Revenue Department so far. On the basis of the original patta owned by the Kovilakam, the petitioner is sought to be made liable for payment of the entire tax for the properties originally owned by the Kovilakam in common. After the partition some of the members have sold their shares of an extent of about 5000 acres and nevertheless the petitioner is also sought to be made liable for basic tax in respect of those lands. Under the partition deed, the petitioner is actually in possession of only less than 900 acres of waste land.

38. After referring to the Land Tax Act of 1955, the decision of the Supreme Court and the Ordinance issued by the Governor of Kerala, the petitioner adverts to the provisions of the Act. The petitioner then refers to the attempt of the District Collector to collect basic tax from the petitioner in respect of all the lands originally owned by the Kovilakam for which a common patta had been issued and the petitioner has been served with distraint orders on 10-5-1961 claiming a sum of Rs. 80,000/-.

39. The petitioner challenges the Act as attending Articles 14, 19 and 31. According to the petitioner, one acre of land yielding Rs. 400/- per annum and one acre of land yielding Rs. 15/- are made to pay tax at the same rate and where punam cultivation is done only once in seven or eight years at considerable expenses and labour, the entire income will have to be paid as tax. The petitioner further avers that an entire area of 11800 acres is wasteland, most of them rocky and yielding no income at all. Even a provisional assessment is no consolation because the petitioner will have to shell out enormous amount as and by way of basic tax and if the amounts are not paid the properties will be proceeded with under the Revenue Recovery Act. According to the petitioner, the present Act is nothing more than a colorable device adopted by the Government for virtually confiscating and expropriating the forest and wastelands under the guise of imposing a land tax. The petitioner further avers that notwithstanding the fact that applications for change of pattas, in respect of the properties allotted to the various sharers have been made long ago, the revenue authorities have taken no action whatsoever and they are demanding the entire amount from the petitioner. There is no provision in the Act giving a right to the petitioner to raise all these objections before the authorities and, therefore, the levy sought to be made is illegal and arbitrary.

40. In the counter-affidavit filed in this writ petition by the State, apart from denying the various grounds of attack raised as against the validity of the Act, the State avers that it is not true that the

whole Income of the petitioner's properties will have to be paid as tax. They also state that under Section 6 (2) a right is given to a landholder to have the tax liability reduced by proving to the satisfaction of the prescribed authority that the gross income from his lands was less than Rs. 10/- per acre per annum. But it is mentioned in paragraph 14 of the counter-affidavit that according to the revenue records about 772.90 acres of wet land, 269.09 acres of gardenland and 17273.92 acres of dry land have been registered in the name of the petitioner alone or jointly with other members of his family. Out of this extent, only about 15080.25 acres are kumri lands and these lands were assessed at the rate on 2 annas and one anna prior to the introduction of the basis tax. From these averments made by the State, it is clear that, at any rate, so far as an extent of 15080.25 acres of land are concerned, the petitioner's allegation that they are kumri lands appears to be well founded. Though there is a specific allegation in the affidavit that the petitioner does not get any income from these properties, there is no controverting of this fact in the counter-affidavit of the State though, no doubt, there is a general denial in the counter-affidavit that the averment of the petitioner that most of the lands of the petitioner are wastelands is not correct.

41. In O. P. No. 1199 of 1961, Mr. A. Madhava Prabhu, learned counsel for the petitioner, again seeks a declaration regarding the invalidity of Kerala Act 13 of 1961 and also prays for a writ of Mandamus prohibiting the State of Kerala and the Tahsildar of Vaikom from enforcing the provisions of the said Act as against the properties owned by the petitioner Devaswom.

42. The petitioner in this case is the Cochin Thirumala Devaswom, a public religious and charitable institution. The Devaswom claims to own 2300 acres of land consisting of paddylands and coconut gardens in Cochin, Parur and Kanayannur. The petitioner avers that if the tax under Act 13 of 1961 is collected from the petitioner, the income accruing from these lands in Vaikom will not be enough to satisfy the tax liability. Here again, the Act is alleged to violate Articles 14, 19 (1) (f) and 31 on the ground that the tax is confiscatory in character and has no reference to the income of the land on which the tax is levied. Though the Act claims to be a revenue settlement it makes no attempt at a proper classification of land which is very essential and necessary before a real revenue settlement can be effected. The original land revenue payable by the petitioner was Rs. 1,211-0-6 whereas under the Act the petitioner has to pay a basic tax of Rs. 4654.58 the properties have been leased for a considerably long period on a fixed rent and in view of the increase in the land tax the petitioner cannot get a proportionate increase in the rent also.

43. Here again, the State Government have controverted the various grounds of attack levelled as against the validity of the Act. So far as I could see, there is no specific denial in the counter-affidavit of the State of the various statements of fact made in the petitioner's affidavit.

44. In O. P. No. 1644 of 1961, Mr. K. Kuttikrishna Menon, learned counsel, on behalf of the petitioner, who is an advocate receiver appointed in O. S. No. 56 of 1957 by the Subordinate Judge of Palghat, again seeks the issue of a prohibition against the respondent, the Stats, the Collector of Palghat and the Tahsildar of Alathur TaluK, from enforcing the provisions of Kerala Act 13 of 1961.

45. According to the petitioner, the Tahsildar of Alathur has made a demand for payment of basic tax of Rs. 30,120/- in respect of the properties of the tarwad which are being managed by the petitioner as receiver. The various lands, in respect of which the said demand has been made, are

in Palghat District forming part originally of the State of Madras and now of the State of Kerala, governed by Madras Act 27 of 1949.

46. The petitioner challenges the various provisions of the Act as ultra vires and void. According to the petitioner, the reasons given by the Supreme Court for striking down the Land Tax Act of 1955 apply with full force to this enactment also. Though superficially some slight changes appear to have been effected, nevertheless the Act, in substance, is essentially the same as the Land Tax Act of 1955. The Act, according to the petitioner again imposes a uniform rate of tax on all lands irrespective of the income and the petitioner's income from the forest lands in question will not be able to meet the tax liability, the consequence of which will be the sale of the lands under the Revenue Recovery Act. Therefore, the Act, according to the petitioner, is confiscatory in its incidents and application and opposed to Article 19 (1) (f). Again, according to the petitioner a land yielding Rs. 10/- per acre and lands yielding Rs. 1,000/- per acre are treated on the same basis and there is no reasonable basis of classification adopted. The classification, if at all, is highly discriminatory and artificial having no relation to the object of the enactment.
47. The petitioner further states that though superficially a distinction is sought to be made in the case of lands getting an annual income of less than Rs. 10/- per acre under Section 6 (2), nevertheless the right becomes absolutely illusory in view of the provisions to sub-section (2) as well as the Explanations incorporated in Section 6. The period fixed in Section 6 (3) of the Act for making an application is absolutely arbitrary and unworkable, more especially in these cases when the rules providing for the prescribed authority contemplated under Section 6 (3) were framed only as late as 11th July, 1961 and when no form has been specified by the Government as contemplated under Section 6 (3) even up to now. Therefore, the very object underlying the provisions contained in Section 6 (2) of the Act has been frustrated by the total inaction of the Government.

48. Then again, an attack is made as against Explanation 2 of section 6 to the effect that lands comprised in the same survey or sub-division number and held by the same landholder shall be treated as a single unit for calculating the gross income for purposes of the section. The petitioner claims that in particular, Sy. No. 561/3 owned by him is of an extent of over 4300 acres consisting of hills, rivulets and rocks on which nothing grows and nothing will grow. But if a very small portion of this Survey number is, with considerable difficulty, cultivated by the petitioner and he is able to get some income, by virtue of this explanation, the entire extent of 4300 acres in this sub-division number will be treated on the same basis and tax levied. That, according to the petitioner, is clearly opposed to the principles laid down by the Supreme Court that the tax must have some reference to the income accruing from the lands.

49. The provisions regarding appeal and revision provided in the statute are again challenged as illusory and serving no purpose whatsoever. In particular, the petitioner urges that the rules framed under this Act clearly show that in the enquiry that is being conducted by the Tahsildar, the landholder has no right to participate and materials are alllowed to be collected behind the back of the petitioner and they will be used by the concerned authority when an order is passed. The appellate or revisional authority will only be concerned with those materials that have been collected and they will not be in a position to go behind those materials. When that is the position, the fact that nominally a provision for appeal and revision is provided for is of no consequence, as these remedies are absolutely illusory, serving no purpose whatsoever, especially when the person sought to be made liable is given no opportunity whatsoever to substantiate his

return.

50. There is also an attack made as against the provisions of Section 2 (2) of the Act empowering the State Government to exempt lands from the operation of the Act in the manner indicated therein.

51. The competency of the State Legislature to enact legislation for levying a tax on forest lands is also challenged.

52. In this writ petition also, the State Government generally controverts the attack made against the statute. It is also mentioned herein that the Explanation to Section 6 is not in any way opposed to Article 19 (1) (f) of the Constitution. It is also averred that the petitioner is given a right under Section 6 (3) to apply for fixation of basic tax if the gross income of his lands is less than Rs. 10 per acre and that the petitioner has not availed himself of that opportunity within the time prescribed. So far as this allegation is concerned, I should straightaway say that Mr. Kuttikrishna Menon, learned counsel for the petitioner, has stated before me that his client has actually filed an application under Section 6 (3) of the Act for whatever it is worth though he has got a larger contention that filing or an application under Section 6 (3), is of no use whatsoever and the State Government has not prescribed the form as required under Section 6 (3) of the Act.

53. In O. P. No 1927 of 1961 Mr. T. Narayanan Nambiar, learned counsel, challenges the Act in question and also seeks to have the assessments imposed as against the petitioner under the Act quashed.

54. The petitioner states that in respect of the forest lands in North Wynad Taluk owned by him, no cultivation is done at all, but nevertheless the concerned Tahasildar has issued notices demanding a sum of Rs. 7108.24 for the period 1st September, 1957 to 31st March, 1961, though the properties have not yielded any income whatsoever. Various grounds of attack again are raised as against the several sections in the Act. There is no counter-affidavit filed by the State in this matter.

55. In O. P. No. 2196 of 1961, Mr. K.V. Suriyanarayana Iyer, learned counsel for the petitioner, challenges the assessment order passed by the concerned Tahsildar under Section 7 (3) of the Kerala Land Tax Act, 1961, in respect of an extent of unsurveyed forest stated to be owned by the petitioner.

56. According to the petitioner, when the forests were in the Madras area, revenue was not levied as against unsurveyed forest lands and under the revenue settlement tax was levied even in respect of other lands based upon a proper classification of the soil. The petitioner refers to the issue of a notice by the concerned Tahsildar under Section 7 (1) and to the petitioner sending a reply stating that he gets no income from the properties as the lands are forest tracts in respect of which felling licenses are granted only when the trees become mature for cutting. But without any further enquiry on this matter, the order of assessment in question has been served on the petitioner. The petitioner states that the notice completely ignores the fact that among the items included there are various items which consist only of rock or cart tracts from which no income is derived whatsoever.

57. The provisions of the Act are again attacked as being violative of Articles 14, 19 (1) (f) and

31. It is stated that there is no classification for the purpose of making a levy as held by the Supreme Court in the previous instances. There is no counter-affidavit filed by the State in this matter.

58. In O. P. No. 2874 of 1961 Mr. V. Bhaskaran Nambiar, learned counsel for the petitioner, challenges the provisions of the Act as violative of Articles 14, 19 and 31. The petitioner states that an arbitrary assessment to tax without any reference to the income accruing from the lands is highly illegal and unjust. The other grounds of attack as against the Act itself are more or less similar to those made in the other writ petitions.

59. The petitioner states that the patta for the property stands in the name of the deceased karnavan and the properties have been partitioned and allotted to different thavazhies and groups as early as 1955. Notwithstanding the fact that the petitioner has raised a very serious controversy that he is in possession only of the lands mentioned in the schedule to this application, nevertheless the revenue authorities are not prepared to accept the same. And inasmuch as the Act does not contain any provision for conducting an enquiry into that controversy, the petitioner stands the risk of proceedings being taken under the Revenue Recovery Act, and, therefore, the petitioner's fundamental right to hold and enjoy property is very seriously threatened by the State.

60. The State in their counter-affidavit again controvert the various grounds of attack leveled as against the Act. It is also stated that the petitioner has not filed any application under Section 6 (3) of the Act and, therefore, the petitioner cannot make a grievance that no enquiry has been conducted by the authorities. The State also avers that the details of properties given by the petitioner in the schedule to the affidavit are not correct.

61. The petitioner in O. P. No. 3171 of 1961 was one of those who challenged the Land Tax Act of 1955 before the Supreme Court. The petitioner owns about 8434.90 acres of land out of which an extent of 2695 acres are waste or tharisu lands and the rest are forest lands and both sets of properties do not yield any appreciable income to the petitioner.

62. The petitioner again attacks the various provisions of the Act on the ground that they violate Articles 14, 19 and 31 of the Constitution. There is no counter-affidavit filed by the State in this matter.

63. In O. P. No. 3371 of 1961, the properties concerned are unsurveyed lands and the petitioners are represented by their learned counsel Mr. Velayudhan Nair. The petitioners seek to have the provisional assessment made by the concerned Tahsildar under the Act for the four years 1957-58 to 1960-61 in the sum of Rs. 94,600/- quashed. The basic tax has been fixed annually in the sum of Rs. 24,000/- According to the petitioners, who are receivers appointed by Court, the annual income from these properties is only Rs. 3000/-. whereas the annual basic tax that is sought to be collected is eight times the said income and, therefore, the petitioners aver that it is absolutely impossible to meet the provisional demand from and out of the income of the properties. Therefore, the natural result or non-payment will be the sale of the properties under the Revenue Recovery Act. Here again, the petitioners attack the various provisions of the Act on more or less the same pattern. There is no counter-affidavit filed in this petition either.

64. In O. P. No. 399 of 1962, Mr. K.P. Abraham, learned counsel for the petitioner, attacks again

the Act, as being ultra vires and unconstitutional and also seeks the issue of a writ of prohibition restraining the respondents from enforcing the provisions of the Act as against the petitioner.

65. The petitioner claims to hold extensive lands in Kannan Devan Hills, Village of Devicolam Taluk.

66. The petitioner says that in respect of lands held by him, the gross annual income from which is not less than Rs. 10/- he is paying basic tax at the rate of Rs. 2/-per acre per annum. But in the case of an extent of about 13373 acres which is taken in by two or three survey numbers, the gross income is not more than Rs. 2.50 per acre. The petitioner further alleges that in respect of about 30811 acres of land, he gets no income at all. In particular, he says from out of these lands, an extent of 21842 acres is in Sy. No. 79 and if some small cultivation is done in a small portion of Sy. No. 79 he will have to pay a uniform rate of tax in respect of the entire 21842 acres in view of explanation 2 to Section 6 of the Act, though he gets no income whatsoever from the said lands.

67. But, nevertheless, the petitioner states that in respect of those items of 44184 acres of land also the Tahsildar has demanded from the petitioner payment of basic tax at Rs. 2/- per acre per annum and he has also threatened to take action under the Revenue Recovery Act.

68. The petitioner states that even though it may appear superficially that under Section 6 (2) of the Act a right is given to a land-holder to satisfy the authority concerned that his annual income from 1 acre of land is less than Rs. 10/- nevertheless that right is absolutely illusory in view of the provisos to sub-section (2) of Section 6, as well as the Explanations incorporated in Section 6. According to the petitioner, the effect of the provisos and the Explanation is to compel the landholder to pay tax on his entire properties at a uniform rate of Rs. 2/- per annum which was the very thing held to be unconstitutional by the Supreme Court. Further, the petitioner takes up the position that when even the legislature contemplates a person getting an annual income of less than Rs. 10/- per acre and also gives such a person a right under Section 6 (2), nevertheless even pending the disposal of an application filed by the petitioner for fixation of Basic tax at less than Rs. 2 per acre, the petitioner is bound to pay the tax at the maximum rate of Rs. 2/- per acre, harsh and illegal and constitutes a violation of the guarantee under Article 19 (1) (f). The fact that there is a provision for making a refund ultimately is again, according to the petitioner, absolutely illusory because there wilt be no scope for getting any refund whatsoever once the provisos and Explanations to Section 6 (2) are invoked and applied, as they will surely be applied by the taxing authorities.

69. The petitioner also avers that when the statute itself proceeds on the basis that the arrangement is to be considered as a general revenue settlement of the State, before a tax liability is fixed, there must be a proper investigation conducted by the authorities giving a full and fair opportunity to the land-holders to raise ail their objections regarding the extent and quality of the lands, their liability and other allied matters. On the other hand, without in any manner intending to do any of these things, the Act proceeds on an assumption that all lands in the Kerala State get an annual income per acre of more than Rs. 10/- That, according to the petitioner, is absolutely illegal and improper. There is no counter-affidavit filed in this writ petition
.
70. In O. P. No. 771 of 1962, Mr. V. R. Krishna Iyer, learned counsel for the petitioner,

challenges the order of the second respondent making a provisional assessment under Section 7 (3) of the Act. The petitioner is assumed to own an extent of about 3000 acres of unsurveyed lands and he is directed to pay a sum of Rs. 23,650 for the period commencing from 1st September 1957 and ending with the financial year 1960-61. There is also a threat that if the amounts are not paid, they will be recovered by having recourse to the provisions of the Revenue Recovery Act.

71. According to the petitioner, he does not get any income from these lands and there is also no likelihood of getting any income in view of the Madras Preservation of Private Forests Act, 1949.

72. The petitioner refers to the various correspondence that passed between him and the Tahsildar. In particular, he also refers to a request made by him to the Tahsildar to furnish him with the form which must have been specified by the Government under Section 6 (3) of the Act, to enable him to make an application under Section 6(2) of the Act for fixing the basic tax at less than Rs. 2. The Tahsildar appears to have sent a communication to the petitioner stating that the form fixing the basic tax has been published in the Kerala Gazette on 7-2-1961 and that reference may be had to rule 15 of the Kerala Land Tax Act Rules 1961, published in the Gazette dated 11-7-1961. The petitioner appears to have sent a further communication giving necessary particulars and also informing the authorities that no income is being received from the properties. But the 2nd respondent dismissed the application filed by the petitioner on 9-3-1962 on the ground that the application is time barred.

73. The petitioner raises the same grounds of attack as against the statute itself. In particular, the petitioner states that the order of the Tahsildar dated 24-10-1961 that the form of application for fixation of basic tax has been published in the Kerala Gazette on 7-2-1961 is meaningless and the reference to Rule 15 of the Kerala Land Tax Rules published in the State Gazette on 11-7-1961 is again a very serious error committed by the Tahsildar.

74. The petitioner urges that notwithstanding the fact that a right is given to file an application under Section 6(2) within the time mentioned in Section 6(3), the petitioner has been effectively deprived of getting relief by the total inaction of the State Government in not having specified the form by notification, as it was bound to do under Section 6 (3) of the Act. Though the petitioner has been repeatedly asking the Tahsildar concerned to send the form, the Tahsildar has totally misunderstood this request.

75. The Act itself was published in the State Gazette only on 5th April 1961 and, therefore, the reference made by the Tahsildar to the form of application stated to have been published on 7-2-1961 does not convey any meaning.

76. Again, the petitioner urges that the Kerala Land Tax Act, 1961, was published only as late as 11th July 1961. The Tahsildar has drawn the attention of the petitioner to Rule 15 and Rule 15 of the said rules is only to the effect that the Kerala Land Tax Rules, 1961, published in the State Gazette on 7-3-1961 are repealed, though there is a proviso to the effect that any order made or action taken under these rules shall be deemed to have been made or taken under the corresponding provisions of the rules. The petitioner urges that the dismissal of the application made by the petitioner, when a form has not been specified by the State Government as time-

barred is absolutely arbitrary and unjust. That is, the petitioner has been effectively deprived of a right and an opportunity given to him for making an application for relief under Section 6(2) of the Act. There is no counter-affidavit filed in this matter.

77. Before I proceed to consider the actual aspects that have been presented before me by the learned counsel for the petitioners, as well as the stand taken by the learned Advocate General, this will be a convenient stage to refer to the various principles laid down by the Supreme Court in considering the validity of the Land Tax Act of 1955. I may also state that one of the grievances of the petitioners is that no form has been specified by the Government, by notification, as they were bound to do, under Section 6 (3) of the Act so as to enable them to file an application under Section 6 (2) within four months from the date of publication of the Act in the Gazette. The Act was published in the State Gazette on 5th April, 1961 and, therefore, the parties will have time till 5-8-1961. The Authority to whom such application is to be made was prescribed by the Kerala Land Tax Rules, 1961, for the first time only as late as 11th July 1961. Even, such of those persons, who were anxious to take advantage of the right given to them to file an application during the remaining three weeks, could not do so because one of the essential conditions stipulated under Section 6 (3) was that an application under Section 6 (2) should be in the form specified by the Government by notification. And it is the further grievance of the petitioners that no such form has been specified by the Government by notification even up to now.

78. So far as this is concerned, on behalf of the State, the learned Advocate General has accepted the position before me that no form has been specified by Government, by notification, as contemplated under Section 6 (3) even up to date. Even apart from this, in spite of specific averments by the petitioners in some of their applications to the effect that no form has been prescribed, there has been no denial by the State Government on that aspect in any of the counter-affidavits. Therefore, it is very clear that no form was specified by the State Government at any time before the expiry of four months, namely, the period within which the application under Section 6 (2) is to be filed.

79. As the learned counsel for the petitioners have contended that the infirmities pointed out by the Supreme Court in the Land Tax Act of 1955 are present in the Act in question, and, therefore, it must be struck down and as the learned Advocate General urged that the various infirmities pointed out by the Supreme Court have been fully rectified and that the Act does not suffer from any such infirmities and, therefore, it is a valid piece of legislation, the various aspects dealt with by their Lordships of the Supreme Court regarding the Land Tax Act of 1955 will now be briefly indicated by me.

80. The decision of the Supreme Court is reported in 1961 Ker LJ 143 : AIR 1961 SC 552. The learned Chief Justice, delivering judgment on behalf of the majority, is of the view that the Land Tax Act in question before them does not, unlike other taxing statutes, make any provision for issue of notice to the assessee, nor is there any provision for submission of a return by the assessee. This conclusion is arrived at after a review of the various provisions of that Act. It is also stated that the Act does not make any provision for any appeals in cases where the assessee may feel dissatisfied with the assessment and the Act does not also indicate as to when a regular assessment is to be made excepting indicating that it can be made only after a survey has been made in respect of the land assessed. It is also the view of the Court that a tax is levied at a flat

rate irrespective of the quality of the land and consequently of its productive capacity. Under the Act before them the charge has to be levied whether or not any income has been derived from the land and that the Legislature was so much in earnest about the levying and realization of the tax that it could not have waited for a regular survey of the land with a view to determining the extent and character of the lands.

81. These are the points emerging from the scheme of the statute, when the learned Chief Justice considers the attack made that inequality was writ large in the provisions of the Act and that the Act infringes Article 14 of the Constitution as being discriminatory in character and effect. The attack was that without any regard to the quality of the land or its productive capacity, a tax at a uniform rate of Rs. 2 was being levied per acre.

82. The learned Chief Justice then adverts to the attack made on the basis of Article 19 (1) (f) of the Constitution on the ground that the Act does not lay down any provision calling for a return from the assessee nor does it provide for any enquiry for investigation of facts before the provisional assessment is made or for any right of appeal to any higher authority against the order of provisional assessment and that there was no provision for hearing the assessee at any stage.

83. The learned Chief Justice then adverts to the attack made on Section 7 of that Act as giving power to the Government to grant exemptions from the operation of the Act on the ground that the said section gives uncanalised, unlimited and arbitrary power to the Government to pick and choose in the matter of granting total or partial exemption from the provisions of the Act. The learned Chief Justice also adverts to the attack on the Act before them that the tax proposed to be levied on private property in the State has absolutely no relation to the paying capacity of the persons sought to be taxed with reference to the income they could derive or actually did derive from the property.

84. These various grounds of attack were met by the State Government before the Supreme Court, by urging that the notices proposing provisional assessment have been issued on the basis of areas ascertained by the authorities concerned through the local officers. Inasmuch as the State had made a levy of tax at Rs. 2 per acre in respect of land, the question of the land producing any income or otherwise is of no consequence whatsoever and, therefore, there was absolutely no necessity for making any provisions regarding the conduct of any enquiry or investigation. Inasmuch as the rate was known and the extent had been ascertained by the local officers on enquiry, the only thing to be done was to fix the amount of tax payable by the parties concerned and the whole thing was in the nature of an administrative action. The authorities functioning under the Statute could be expected to act in accordance with the principles of natural justice. The State also took up the position that inasmuch as the Act satisfies the provisions of Article 265 of the Constitution, it is not subject to the provisions of Part III of the Constitution and the petitioners therein cannot invoke Articles 14, 19 and 31. Even on the assumption that the Act is confiscatory, being a taxing statute, it cannot be questioned and as the Act was not imposing a tax on income but a tax on the property itself, the question of the amount of income derived by the owners of the property sought to be taxed is wholly irrelevant.

85. The learned Chief Justice after adverting to the stand taken by the petitioners and the State Government, expresses the view that the guarantee of equal protection of laws must extend even

to taxing statutes and that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14, though the courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in a manner that the Court may think more just and equitable.

86. On this basis, the learned Chief Justice proceeds to examine the Act before the Court with reference to the attack based on Article 14 of the Constitution. The learned Chief Justice states that if property of the same character has to be taxed, the taxation must be upon some standard so that the burden of taxation may fall equally on all persons holding that kind and extent of property and that it the Legislature has classified persons and properties into different categories, which are subjected to different rates of taxation, with reference to income or property, such a classification would not be open to attack of inequality on the ground that the total burden resulting from such a classification is unequal. The learned Chief Justice also states that different kinds of property may be subjected to different rates of taxation but so long as there is a rational basis for the classification Article 14 will not be in the way of such a classification. But the learned Chief Justice further emphasises that if the same class of property, similarly situated is subjected to an incidence of taxation which results in inequality, the law may be struck down as creating an inequality among holders of the same kind of property.
87. After laying down these broad propositions, the learned Chief Justice proceeds to state that the Act before them, has no reference to the income, either actual or potential, from the property sought to be taxed and that the Act obliges every person who holds land to pay tax at the flat rate prescribed, whether or not he makes any income out of the property or whether or not the property is capable of yielding any income. It is the further view of the learned Chief Justice that ordinarily a tax on land or land revenue is assessed on the actual or potential productivity of the land sought to be taxed and that the tax has reference to the income actually made or which could have been made with due diligence and, therefore, is levied with due regard to the incidence of taxation. On this aspect, ultimately, the learned Chief Justice is of the view that in the Act before them, inequality is writ large on the Act and is inherent in the provisions of the taxing section and that no attempt at classification has been made under the provision of the Act and as such, inasmuch as the Act lacks classification, it creates inequality and is hit by Article 14 of the Constitution.

88. The learned Chief Justice is also of the view that in giving power under Section 7 of that Act to the State Government to exempt lands wholly or partially from the provisions of the Act, the Act has not laid down any principle or policy for the guidance and the exercise of discretion by the Government. On this basis, Sections 4 and 7 are declared unconstitutional.

89. The learned Chief Justice is also of the further view that the provisions of the Act before them are unconstitutional, viewed from the angle of Article 19(1) (f) of the Constitution also. The provisions of Section 5A in the said Act regarding provisional assessments, according to the learned Chief Justice, are equally objectional because they impose unreasonable restrictions on the right to hold property safeguarded by Article 19 (1) (f) of the Constitution. In this connection, the learned Chief Justice observes that a taxing statute lays down a regular machinery for making assessments of the tax proposed to be imposed by the statute and it also lays down detailed procedure as to notice to the proposed assessee to make returns in respect of property sought to be taxed and also prescribes the authority and the procedure for hearing any objections to the liability for taxation or as to the extent of the tax proposed to be levied. The learned Chief Justice

also states that a taxing statute also ordinarily gives a right to an assessee to challenge the regularity of assessment made, by having recourse to proceedings in a higher Civil Court.

90. Having these principles in view, the learned Chief Justice after considering the Act before the Court states that the Act is silent as to the machinery and procedure to be followed in making assessments and leaves it to the executive to evolve the requisite machinery and procedure and the whole matter, from beginning to end, is treated as of a purely administrative character,

> "completely ignoring the legal position, the assessment of tax on person or property is at least of a quasi Judicial character".

The learned Chief Justice also states that while there is no obligation on the part of the Government to undertake survey proceedings within any particular period, a landholder is subjected to repeated annual provisional assessments on more or less conjectural basis and made liable for the tax as assessed.

91. The learned Chief Justice ultimately winds up the discussion in this aspect at p. 152 (of Ker LJ) by stating:

> "The Act thus proposes to impose a liabiltiy on landholders to pay a tax which is not to be levied on a judicial basis because (1) the procedure to be adopted does not require a notice to be given to the proposed assessee; (2) there is no procedure for rectification of mistakes committed by the Assessing Authority; (3) there is no procedure prescribed for obtaining the opinion of a superior Civil Court on questions of law as is generally found in all taxing statutes and (4) no duty is cast upon the Assessing Authority to act judicially in the matter of assessment proceedings. Nor is there any right of appeal provided to such assessees as may feel aggrieved by the order of assessment."

92. Then the learned Chief Justice considers the attack made on the provisions of the Act before the Court on the ground that they are in fact confiscatory. The learned Chief Justice accepts that contention and ultimately is of the view that the Act, apart from being discriminatory and imposing unreasonable restriction on the right to hold property, it is also clearly confiscatory in character. Ultimately, the learned Chief Justice holds that Sections 4, 5A and 7, which are the operative sections of the Act have to be struck down and as they are not severable from the other provisions of the Act, the entire statute will have to be struck down.

93. There is only one aspect dealt with by Mr. Justice Sarkar in his dissenting judgment to which I would make a reference because, according to the learned Advocate General, the view expressed by the learned Judge on that aspect has not been dealt with in the majority judgment. Mr. Justice Sarkar considers the question as to why classification and levy of tax on the basis of area alone are bad and expresses the view at p. 155 (of Ker LJ) of the reports that if the contention of the landlords before them is accepted, tax on land can be imposed only according to its productivity. The learned Judge is also of the view that the tax is not levied because the land is productive but because the land is held in the State and if the tax which could be imposed on land has to be co-related to its productivity, then the State would have no power to tax reproductive land and the provision in the Constitution that it has got such a power to tax would

to that extent be futile. It is not really necessary for me to consider this aspect any further because in my view, the learned Chief Justice, expressing the majority view in the said decision, has categorically held that a tax on land or land revenue is assessed on the actual or potential productivity of the land sought to be taxed. In fact the learned Chief Justice has accepted the contention advanced on behalf of the petitioners before the Court that the Act before them obliges every person who holds land to pay tax, irrespective of the fact whether he makes any income or not out of the property. Therefore it will be clearly seen that the aspect dealt with by Mr. Justice Sarkar referred to above, though no doubt relied upon by the learned Advocate General in the proceedings before me, has not found acceptance at the hands of the majority Judges.

94. The Supreme Court, in a later decision reported in *Raja Jagannath Baksh Singh v. State of Uttar Pradesh*[1], had occasion to consider their earlier decision, in 1961 Ker LJ 143 : AIR 1961 SC 552. Adverting to that decision, the Supreme Court expresses the view that the said decision illustrates how a taxing statute, though ostensibly passed in exercise of the legislative powers conferred on the Legislature, can be struck down as being a colourable exercise of that power.

95. That a taxing statute can be struck down, if it offends either Article 14 or 19 of the Constitution has again been laid down by the Supreme Court in its decision referred to above, namely, 1962-46 ITR 169 : AIR 1962 SC 1563. In this connection, Mr. Justice Gajendragadkar delivering the judgment of the Court, observes at p. 178 (of ITR) as follows:-

> "This contention raises the familiar problem as to whether a taxing statute is subject to the provisions of Part III of the Constitution or not; and it arises in regard to a statute which has been passed for the purpose of only raising revenue. The power of taxation is, no doubt, the sovereign right of the State; as was observed by Chief Justice Marshall in *McCulloch v. Maryland*[2], 'The power of taxing the people and their property is essential to the very existence of Government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the Government may choose to carry it'. In that sense, it is not the function of the Court to enquire whether the power of taxation has been reasonably exercised either in respect of the amount taxed or in respect of the property which is made the object of the tax. Article 265 of the Constitution provides that no tax shall be levied or collected, except by authority of law; and so, for deciding whether a tax has been validiy levied or not, it would be necessary first to enquire whether the legislature which passes the Act was competent to pass it or not. But that is not the only enquiry which is relevant in deciding the validity of taxing statute. Since a taxing statute is a law, it is a law for the purpose of Article 13 and so its validity can be challenged on the ground that it contravenes one or the other of the fundamental rights guaranteed by Part III.

It is thus clear that a citizen can challenge the validity of a taxing statute on the ground that it offends against Article 19 or Article 14 of the Constitution. At one stage it appears to have been assumed in some of the earlier decisions of this Court that Article 31 (1) was concerned with deprivation of property otherwise than by imposition or collection of tax and inasmuch as the right conferred by Article 265 is not a right conferred by Part III of the Constitution, it could not

be enforced under Article 31. In these decisions, certain general observations were made which would indicate that the fundamental rights guaranteed in Part III could not be invoked in respect or taxing statute, vide *Ramjilal v. Income-tax Officer, Mohindargarh*[3], and *Laxmanappa Hanumantappa Jamkhandi v. Union of India*[4], But in recent years, there has been a consensus of opinion in the decisions of this Court that the validity of the legislation imposing a tax can be challenged not only on the ground of lack or absence of legislative competence, but also on the ground that the impugned

[1]1962-46 ITR 169 : AIR 1962 SC 1563 [3]1951-19 ITR 174 : AIR 1951 SC 97
[2](1819) 4 Law Ed 579 at p. 607 [4]1954-26 ITR 754 : AIR 1955 SC 3

legislation violates the fundamental rights guaranteed by Part III of the Constitution, vide *Mohammad Yasin v. The Town Area Committee, Jalalabad*[5], *State of Bombay v. United Motors (India) Ltd*[6]., *Bengal Immunity Co. Ltd. v. State of Bihar*[7], *Ch. Tika Ramji v. State of Uttar Pradesh*[8], and *Balaji v. Income Tax Officer, Akola*[9], Therefore, it must now be taken to be settled that the validity of a tax law can be challenged on the ground that it infringes one or the other of the fundamental rights guaranteed by Part III, and so the argument that the tax with which we are concerned is invalid because it offends against Articles 14 and 19(1)(f) cannot be rejected as inadmissible".

96. Mr. Justice Gajendragadkar again considers broadly the circumstances under which a taxing statute can be held to contravene Article 14 or Article 19 (1) (f) and in this connection at p. 179 (of ITR) observes as follows:

> "A taxing statute can be held to contravene Article 14 if it purports to impose on the same class of property similarly situated an incidence of taxation which leads to obvious inequality. There is no doubt that it is for the legislature to decide on what objects to levy what rate of tax and it is not for the Courts to consider whether some other objects should have been taxed or whether a different rate should have been prescribed for the tax. It is also true that the legislature is competent to classify persons or properties into different categories and tax them differently, and if the classification thus made is rational, the taxing statute cannot be challenged merely because different rates of taxation are prescribed for different categories of persons or objects. But, if in its operation, any taxing statute is found to contravene Article 14, it would be open to Courts to strike it down as denying to the citizens the equality before the law guaranteed by Article 14.

Similarly, if a taxing statute makes no specific provision about the machinery to recover tax and the procedure to make the assessment of the tax and leaves it entirely to the executive to devise such machinery as it thinks fit and to prescribe such procedure as appears to it to be fair, an occasion may arise for the Courts to consider whether the failure to provide for a machinery and to prescribe a procedure does not tend to make the imposition of the tax an unreasonable restriction within the meaning of Article 19(5). An imposition of tax which in the absence of a prescribed machinery and the prescribed procedure would partake of the character of a purely administrative affair can, in a proper sense, be challenged as contravening Article 19 (1) (f). Therefore, whenever the validity of taxing statute is challenged on the ground that it contravenes Article 14 or Article 19, the challenge cannot be thrown out on the preliminary ground that a tax law is beyond such challenge, but its merits must be carefully examined." It may be stated that in

the decision, in question, their Lordships were considering the attack made upon the levy of a tax on landholding where the measure of the tax was fixed in the light of the annual value of the holding. The attack made on the basis of Articles 14 and 19 (1) (f) were repelled by their Lordships after having due regard to the provisions of the statute.

[5]1952 SCR 572 : AIR 1952 SC 115
[6]1953 SCR 1069 : AIR 1953 SC 252
[7](1955) 2 SCR 603 : AIR 1955 SC 661
[8]1956 SCR 393 : AIR 1956 SC 676
[9](1961) 43 ITR 393 : AIR 1962 SC 123

97. The learned Judge also considers the scope of Articles 31 (1) and 31 (2) with special reference to a taxing statute. The learned Judge expresses the view that the authority of law postulated by Article 31 (1) is obviously the authority of valid law. If the law is not valid because it offends against Article 14 or Article 19 or some other fundamental right guaranteed by Part III, the measure of tax levied by it cannot be said to meet the requirements of Article 31(1), and if the Act is otherwise valid, then Article 31(1) is complied with. It is the further view of the Court that Article 31 (2) would be inapplicable to a taxing statute because the taxing statute does not purport to acquire or requisition any property and that even though the imposition of tax levied by a statute is excessive and may ultimately lead to the loss of the assessee's property, it cannot be said that by virtue of that statute, the property has been acquired or requisitioned. Finally, the Court winds up the discussion on this aspect by stating that the provisions of Article 31(2) cannot be invoked in impeaching the validity of a taxing statute and a taxing statute which does not offend against any fundamental rights guaranteed by Part III, would justify the imposition of a tax and would meet the requirements of Article 31(1) and that Article 31(2) is well out of the way.

98. Ultimately, the Court again considers as to under what circumstances an attack on a taking statute can succeed on the ground that it is a colourable exercise of legislative power and in this connection observes at p. 182 (of ITR) as follows:

> "Though the validity of a taxing statute cannot be challenged merely on the ground that it imposes an unreasonably high burden, it does not follow that a taxing statute cannot be challenged on the ground that it is a colourable piece of legislation and as such is a fraud on the legislative power conferred on the legislature in question. If, in fact, it is shown that the Act which perports to be a taxing Act is a colourable exercise of the legislative power of the legislature, then that would be an independent ground on which the Act can be struck down. Colourable exercise of legislative power is not a legitimate exercise of the said power and as such it may be open to challenge. But such a challenge can succeed not merely by showing that the tax levied is unreasonably high or excessive, but by proving other relevant circumstances which justify the conclusion that the statute is colourable and as such amounts to a fraud".

99. I have fairly exhaustively referred to the previous decision of their Lordships of the Supreme Court rendered on the Land Tax Act of 1955, as well as the recent judgment in 1962-46 ITR 169 : AIR 1962 SC 1563, because in my view, a decision regarding the various grounds of attack levelled as against the Act, in question, will have to be given, having due regard to those principles. I am particularly referring to this aspect, because the learned counsel appearing for some of the petitioners, as well as the learned Advocate General in particular, referred me to certain other decisions which, according to them, will have a bearing on a consideration of this

question.
In particular, the learned Advocate General has referred me to various passages occurring in Willy's Constitutional Law, Rottachuofer's Constitutional Law, and Corwin's Constitution of the United States of America, to the effect that in taxation, more than in other fields, the legislature possesses greater freedom in classification and the burden is on the one attacking the legislative arrangement to negative every conceivable basis which must support it and that the legislature has got also wide powers in classifying the subjects for purposes of taxation. I do not think it necessary to consider those passages in any great detail because a similar principle has been laid down by our own Supreme Court in their earlier decision in the Land Tax Act case, (1961 Ker LJ 143 : AIR 1961 SC 552). In fact, in that decision, the learned Chief Justice takes note of the fact that the guarantee of equal protection of laws, though it extends even to taxing statutes, does not mean that every person should be taxed equally and that different kinds of property may be subjected to different rates of tax so long as there is a rational basis for the classification. The learned Chief Justice has again, if I may say so with great respect, laid emphasis on another aspect, namely, that the Courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in way that the Court might think more just and equitable. Similarly, it is also not necessary for me to consider again the various passages cited by the learned Advocate General, in particular, from some of these text books regarding the procedure to be adopted for the levy and collection of tax, because even those aspects in my opinion, have been considered in the earlier decision of the supreme Court. In particular, in the later decision of the Supreme Court in 1962-46 ITR 169 : AIR 1962 SC 1563 Mr. Justice Gajendragadkar has, if I may say so with respect, again emphasized the fact that if a taxing statute makes no provision about the machinery to recover tax and the procedure to make the assessment of the tax and leaves it entirely to the executive to device such machinery as it thinks fit and to prescribe such procedure as it appears to think to be fair, an occasion may arise for the Courts to consider whether the failure to provide for a machinery and to prescribe a procedure does not tend to make the imposition of a tax an unreasonable restriction under Article 19(5), and that an imposition at a tax in the absence of a prescribed machinery and prescribed procedure would partake of the character of a purely administrative affair and in a proper case such an imposition can be challenged as contravening Article 19 (1) (f) also. In fact, if I may say so with respect, in these two decisions of the Supreme Court, the various aspects as to the circumstances under which an attack based upon Articles 14, 19 and 31 can or cannot be sustained regarding a taxing statute has been elaborately considered and principles laid down regarding those matters.

100. The learned Advocate General has also referred me to the comments made by the learned Author Mr. Durgadas Basu in his Commentary on the Constitution of India, 4th Edition, at pages 648 and 649, on the majority judgment of the Supreme Court in 1961 Ker LJ 143 : AIR 1961 SC 552. The learned author states that according to the Judgment of the Supreme Court in *Express Newspapers Ltd. v. Union of India*[10], the effect of a statute is to be ascertained from the object at which it is directed and not from an examination of how it operated in particular cases but how it may possibly operate in any case having regard to the provisions of the Statute. These principles, according to the learned author, have not been either considered or discussed in the majority judgment in 1961 Ker LJ 143 : AIR 1961 SC 552.

101. It is not necessary for me to go into these aspects excepting to state that at page 649, the learned author is of the view that the Land Tax Act which was struck down by the majority

judgment cannot be branded as a colourable transaction; but the Supreme Court in the later decision in 1962-46 ITR 169 : AIR 1962 SC 1563

[10] AIR 1958 SC 578

specifically refers to the decision in 1961 Ker LJ 143 : AIR 1961 SC 552 as an illustration dealing with a colourable statute.

102. The learned Advocate General again referred me to the observations of the Supreme Court in *Hamdard Dawakhana v. Union of India*[11], that the presumption is in favour of the constitutionality of a statute it must be assumed that the legislature understands and appreciates the need of the people and the laws it enacts are directed to problems which are made manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. "

103. These observations relied upon by the learned Advocate General are certainly entitled to very great respect and consideration at the hands of this Court; but these observations have also to be related to the context in which they have been made. Even otherwise, I do not think the said decision bars the jurisdiction of the Court to consider an attack made on a taxing statute as violative of Articles 14 and 19 of the Constitution. Therefore, these observations, in my view, will not assist the learned Advocate General unless he is able to satisfy this Court that the statute in question does not suffer from any of the infirmities alleged as against it.

104. I will now consider the attack made against the statute in the light of the decisions of the Supreme Court in 1961 Ker LJ 143 : AIR 1961 SC 552 and *Raja Jagannath Baksh Singh v. State of Uttar Pradesh*[12],

105. In one sense, it is not as if the legislature was covering a new ground altogether, when it enacted the Act in question. A previous enactment making provision for the levy of basic tax on the basis of a general revenue settlement of the State had come in already for scrutiny at the hands of the highest Court in the land. The legislature, in enacting the Act in question, must have had before it the various infirmities pointed out in the Land Tax Act, 1955, by their Lordships of the Supreme Court. Therefore, the endeavour of this Court must be to find out whether the legislature has avoided, in the Act in question, those infirmities pointed out by their Lordships of the Supreme Court not only in form but also in effect and substance.

106. The broad criticism that has been levelled as against this enactment by the various learned counsel appearing for the petitioners is that excepting making it appear superficially that the legislature has effected a classification and also provided adequate opportunities for the parties concerned to place all their objections and given them a remedy by way of appeal to the Collector, a revision to the Board of Revenue and asking for reference to the Civil Court, in effect and substance they are absolutely illusory and a mere empty formality. In fact, the learned counsel for the petitioners have even taken up the stand that this Act is a colourable piece of legislation, having been enacted without any regard to the principles laid down by the Supreme Court, and therefore, the statute amounts to a fraud on the Constitution. I am only indicating the very extreme Stand that has been taken in these matters.

[11] AIR 1960 SC 554 at p. 560

[12] 1962-46 ITR 169 : AIR 1962 SC 1563

107. According to the learned counsel, though ostensibly the statute appears to make a

classification of the lands dividing them into surveyed and unsurveyed lands that classification is not a reasonable classification having any relation to the object of the statute. Again, the classification made by the statute of lands yielding an annual income of Rs. 10/- and more per year and lands yielding less than Rs. 10/- as annual income per acre, is no classification at all. In fact, it is urged that the various provisos and Explanations occurring in Section 6 ultimately will result in a uniform levy of Rs. 2/- per acre, without any relation to the income accruing from the lands. It is also urged that there is not even a quasi judicial approach in the matter of assessment, levy and collection of tax.

108. Again, the provisions regarding the making of a provisional assessment to basic tax in the case of unsurveyed lands have also been very severely attacked on the ground that there is no proper and reasonable classification, having due regard to the object of the statute. It is also urged that these provisions, apart from being discriminatory, also very seriously affect the rights of the owners of property to hold property.

109. Again, the provisions providing for appeals and asking for reference to the District Court, as also the power of revision, are all attacked as absolutely meaningless and serving no purpose and being illusory.

110. I will now consider in detail the various grounds of attack with special reference to the several sections of the statute itself.

111. According to the learned counsel for the petitioners, the provisions of Section 2 exempting certain lands from the operation of the Act and giving power to the State Government by issuing notification to exempt Lands from the operation of the Act, are analogous to the provisions of Section 7 of the old Act which was struck down by the Supreme Court as giving an arbitrary power to the State Government without the legislature having provided any principle or policy for the guidance of the Government in exercising its discretion.

112. In particular, Mr. Kuttikrishna Menon, learned counsel appearing for the petitioner in O. P. No. 1664 of 1961 urged that Section 2(1) provides for exemption of Sreepandaravaka lands belonging to Sri Padmanabha Swami Temple and Sripadam lands belonging to the Sreepadam Palace are absolutely illegal and there is no rational basis as to why such lands also should be exempted. On the other hand, the learned counsel urged that there is an equally famous Temple in the Kerala State, namely, the Guruvayoor Temple, which also owns considerable properties and no exemption has been provided from payment of basic tax in respect of those properties.

113. If the question had been properly raised by making suitable averments in the petition by any or the petitioners, I may have to consider this ground of attack on its merits. But it will be seen that none of the petitioners, including the petitioner in O. P. No. 1664 of 1961 have raised any specific ground of attack regarding the exemption granted in respect of the lands owned by Sreepadmanabhaswami Temple and by the Sripadam Palace. Therefore, in consequence, the State Government, quite naturally, had no opportunity to place the circumstances under which such an exemption has been provided for. A proper adjudication on such matters can be given only if an attack has been specifically made and the State had an opportunity of placing before this Court the policy underlying the granting of exemption in respect of these lands. Therefore, the attack, as it is, against Section 2(1) of the Act cannot be sustained.

114. Then the question is whether the attack as against Section 2(2), read with Section 2(3) of the Act can be sustained.

115. The analogous provision, namely, Section 7, of the old Statute which the Supreme Court had to consider was, in my opinion, totally different. That section merely provided that the Act is not applicable to lands held or leased by Government or any land or class or lands which the Government may by notification in the Gazette either wholly or partially exempt from the provisions of the Act. The Supreme Court held that the said provisions are discriminatory, inasmuch as the section vests in the Government arbitrary powers to exempt lands from the operation of the statute without having provided any principle or policy for the guidance for the exercise of the discretion by the Government.

116. But, in my view, the position, so far as the present Sections 2(2) and 2(3) are concerned, is entirely different. Sub-section (2) of Section 2 clearly restricts the power of the Government to exempt lands belonging to any public body or institution and it is hedged in by another condition that the Government should be satisfies that such exemption is necessary in the public interest. Therefore, it cannot certainly be stated that any arbitrary power has been given to the State Government. Again, there is ample safeguard provided by the legislature itself as a check to the exercise of the powers of the Government by making suitable provisions in Section 2(3). In that sub-section there is an obligation on the State Government to place all notifications issued under Section 2 (2) before the legislature for a period of not less than 14 days and those notifications are also made subject to such modifications as the Legislative Assembly may make either during that session or in the session immediately following. Therefore, having due regard to these limitations placed by the legislature, it cannot certainly be stated that Section 2(2) read with Section 2(3) suffers from the infirmities pointed out by their Lordships of the Supreme Court in respect of Section 7 of the old Act. Therefore, if the petitioners are not able to succeed to their attack as against the operative sections of the statute, Section 2 of the Act will have to be sustained.

117. During the course of the arguments, the principles and procedure to be adopted in the matter of making a revenue settlement by the Government have been referred to me. In this connection, certain passages in the Land System of British India by B. H. Baden Powell, and statements made in the Malabar District Gazetteer, 1951, were also referred to in particular, by Mr. K.V. Surianarayana Iyer, learned counsel for the petitioner in O. P. No. 2196 of 1961. All these passages will clearly indicate that in the matter of making a revenue settlement, the nature of the land, having due regard to its quality and various other factors has to be taken into account, after adopting a very elaborate procedure. In fact, lands were also classified on the basis of the quality of the soil.

118. In particular, in the Malabar District Gazetteer, 1951 Edition, at page 344, the principles of a revenue settlement have been dealt with. It is mentioned that cultivable lands are classified according to their soil and they are divided into wet, garden and dry lands. Lands levelled, bunded and adopted for wet cultivation are treated as wet and to constitute a gardenland, a minimum number of stated trees are necessary. It is also stated that other cultivable lands are classed as dry and are divided into two kinds as occupied and unoccupied and occupied dry lands which are under permanent occupation continued from year to year are assessed to revenue. But

unoccupied lands are waste lands or lands cultivated only intermittently with fugitive cultivation, and assessment is levied only on the extent cultivated in each year and no charge is made for lands lying fallow. In the said Gazetteer various other matters are dealt with such as taking into account of various factors for purposes of fixing the wet and dry assessment of lands including the tharam of the lands. Similarly, the manner of revenue assessment in the Cochin and Travencore areas has also been referred to me by Mr. A Madhava Prabhu, learned counsel appearing for the petitioner in O. P. No. 1199 of 1961. The passages in these Manuals also clearly show, according to the learned counsel, that an assessment is made having due regard to the income accruing from the lands, apart from other factors. It will also be seen that though there has been a survey of forest or waste-lands in particular for the purpose of fixing the extent alone, there has been no survey of those lands for the purpose of assessment in the sense that no consideration has been given to the productivity of the soil or the capacity of the said area for cultivation or otherwise so as to bring in income to the owner thereof. In fact, I have already indicated that no assessment by way of revenue has been made on such lands which do not yield any income and if any portion is actually cutivated or made to yield any income, an assessment is levied only on that portion of the property. The learned Advocate General certainly did not controvert any of these aspects as laid down in the various manuals referred to above.

119. If I may say so with respect, the system obtaining in respect of making a revenue settlement as could be gathered from the various passages in these manuals must have been in the mind of the learned Chief Justice of the Supreme Court, when in the earlier decision, His Lordship states that a tax on land or land revenue is assessed on the actual or potential productivity of land sought to be taxed and that the tax has reference to the income actually made or which could have been made with due diligence and therefore is levied with due regard to the incidence of taxation.

120. A severe attack has been made by learned counsel appearing for the petitioners that though the Act nominally purports to make a classification of lands under two broad headings, namely, surveyed lands and unsurveyed lands, and again makes it appear that there is a further classification of surveyed lands into lands getting an annual income of Rs. 10/- and more per acre and lands yielding an annual income of less than Rs. 10/-, the whole scheme is illusory and does not accord with the principles laid down by the Supreme Court in the earlier decision.

121. The learned counsel urged that the Act purports to make an assessment at a particular rate under Section 6 of the Act having regard to the income occurring from the land and the rate also depending upon as to whether the land yields an annual income of Rs. 10/- and more or less than Rs. 10/-. This, according to the learned counsel, is nothing but a very formal attempt at making it appear that there is compliance with the principles laid down by the Supreme Court that there must be a classification of the property and that a land revenue or a tax on land is to be assessed having regard to the income that actually accrues or which could accrue with due diligence. In fact, it is really on the classification made and the rate of assessment based upon such classification, in Section 6 that the learned Advocate General has very strenuously relied to show that there has been a proper classification of lands, according to the income, and the rate of tax also depends upon the income that accrues from the property. But it should be noted that the classification that the Supreme Court has referred to and as required under Article 14 of the Constitution is not a kind of arbitrary classification but a reasonable classification having nexus to the object of the enactment. So far as I could see, the income from the land envisaged by the

Supreme Court and which must be taken into account for purposes of making a levy or fixing a rate is not the gross income but the net income.

122. Applying these principles, the question is whether the provisions of Section 6 can be sustained as not being violative of Article 14. No doubt, there are other contentions raised, namely, that even on the basis that there is a classification, Section 6 is violative of Article 19 (1) (f) of the Constitution inasmuch as the whole scheme mentioned therein is illusory and the provisions of Section 6 (2) will assist no owner of property in view of the provisos and Explanations occurring in Section 6. That aspect I will consider later.

123. There is also an attack that there is absolutely no provision in Section 6 (1), at any rate, providing for a regular machinery for making assessment of the tax proposed to be imposed therein nor is there any provision giving a right or an opportunity to the land holders on whom notices of demand have been served to have any mistakes corrected in the said demand or to object to the notice on any ground that may be available to them in law.

124. Section 5 of the Act is the charging section and Section 6 deals with the rate of the basic tax. under Section 5 (1) there shall be charged and levied a tax called basic tax on all lands and it is clearly mentioned therein that it is subject to the provisions of the Act. Sub-section (2) provides that the basic tax is to be paid by the landholder of the land and the expression 'landholder' has been defined under Section 3 (3) of the Act. Under the proviso to sub-section (2) if a land is in the possession of a tenant or other person who is not a landholder and the income from the land is less than the basic tax, the excess of the basic tax over such income is to be paid by the tenant or other person in possession.

125. The criticism against this provision is that though the expression 'landholder' takes in assigns also, there is no machinery provided under which it is open to a landholder who may have been the original owner of the property, when a demand is made, to satisfy the authorities that he is no longer liable for payment of the basic tax on any property on the ground that they have been assigned earlier. In particular, it has been stated by the petitioner in O. P. No. 2874 of 1961 that though he was the Pothukarnavan of the tarwad, the tarwad has partitioned the properties long ago and that the shares to whom properties have been allotted have also alienated part of their properties. It is also further averred therein that applications for transfer of patta and mutation of names in the revenue register have been made even at the time of partition, but the revenue authorities have taken no action whatsoever for change of registry and inasmuch as the petitioner was registered as a landholder, when he was the Pothukarnavan a demand has been made for payment of the entire land revenue on the properties of the tarwad and the petitioner urges that inasmuch as there is absolutely no machinery or procedure provided under the Act he is not able to raise all these objections.

126. Again, there is an attack made that there is no machinery provided for fixing the liability as between the landlord and the tenant under the proviso to sub-section (2) of Section 5. It is also urged that the legislature itself contemplates under the proviso that the assessment of basic tax may be at such a high figure that the landlord will get nothing out of the property because the entire rent received by him will have to be given for payment of the tax and that in some cases at least, even more than the income will have to be paid, though the tenant is made liable for that excess.

127. No doubt, the provisions of Section 6 will make it appear that there is a classification of lands under two heads, namely, (1) lands getting an annual income of Rs. 10/-and more and (2) lands getting an annual income of less than Rs. 10/- per acre. Though sub-section (1) of Section 6 does not give any indication, nevertheless reading sub-section (1) along with sub-section (2) and the other provisions in Section 6, one must proceed on the basis that under sub-section (1) the legislature proceeds on the assumption that every acre of land in the State, irrespective of its quality or otherwise, yields an annual income of Rs. 10/- and more. Again though there is no such indication in sub-section (1) of Section 6, the tax that is levied at the rate of Rs. 2/- per acre must be taken to be again on the further assumption that legislature does not proceed on the basis of an annual net income of Rs. 10/-but only on an annual gross income of Rs. 10/- and more per acre. The learned Advocate General accepted this position indicated by me as correct. Therefore, it will mean that under sub-section (1) of Section 6 all lands are presumed to yield an annual gross income of Rs. 10/- and more per acre and there is a uniform levy of tax at Rs. 2/-per acre. No doubt, sub-section (1) itself states that the tax charged and levied under Section 5 is, subject to the provisions of sub-section (2) and Section 7 of the Act at the rate of Rs. 2/- per acre per annum. Sub-section (2) no doubt gives a right to a landholder or other person to satisfy the prescribed authority that the gross-income from the land owned by him is less than Rs. 10/- per acre per annum. There is a further provision that under those circumstances the basic tax payable on such land shall be at the rate fixed by the prescribed authority calculated at 1/5th of the gross income from such land.

128. In my view, the adopting of a basis of classification on the basis of lands getting an annual gross income of Rs. 10/- and more per acre and of lands getting an annual gross income of less than Rs. 10/- is certainly not in accordance with the principles laid down by the Supreme Court in its earlier decision and it cannot also be stated that there is a proper classification or a reasonable classification, having a nexus to the object of the enactment. It cannot also be stated that the rate of levy of tax is also in accordance with the principles laid down by the Supreme Court; i.e., the levy must be such, having due regard to the income that actually accrues or is likely to accrue with due diligence. No doubt, I am aware of the observations of their Lordships of the Supreme Court in 1962-46 ITR 169 : AIR 1962 SC 1563 that the validity of a taxing statute cannot be attacked merely on the ground hat it imposes an unreasonably high burden. But both the decisions do emphasize that the incidence of taxation should not lead to obvious inequality.

129. It should be remembered that one of the grounds on which the Supreme Court, struck down the Land Tax Act of 1955 was that the said Act obliges every person who holds land to pay the tax at a flat rate prescribed, whether or not he makes any income out of the property or whether or not the property is capable of yielding any income. As I will presently show, the result is the same under Section 6 also, when the provisions of Section 6 are carefully considered. By taking the gross income alone of the property into consideration, it will be seen that there is an unequal burden cast upon the owners of property. Even assuming that a tax levied on the basis of merely gross income can be justified, it will be seen that under sub-section (1) of Section 6, an owner getting just Rs. 10/- gross income from the property, after incurring heavy expenses, has to pay the same rate of Rs. 2/- per acre as another person more favorably situated and making considerably more, say Rs. 500 or Rs. 1000 per acre, without a proportionate higher expense. I am only illustrating this to show that the burden falls unequally on the owners of the property.

Apart from the fact that there is no data given in the various counter-affidavits filed by the State as to on what basis the assumption has been made that all lands in Kerala get an annual gross income of at least Rs. 10/- per acre, in my view, the classification itself is arbitrary and cannot be stated to be a reasonable classification, having relation to the object of the statute. The object of the statute is, as has been stressed by the learned Advocate General, a general revenue settlement of the State and for purposes of raising public revenue.

130. If sub-section (1) of Section 6 alone stands, there can be, in my view, no doubt, that it amounts to a uniform levy of tax on all owners of property for merely holding lands in the State.

131. But it is urged by the learned Advocate General that sub-section (2) of Section 6 makes all the difference for justifying the classification and the levy of tax. The said provision did not exist in the Land Tax Act of 1955, and therefore there is no infirmity in this statute, according to the State.

132. No doubt, sub-section (2) gives a right to the landholder for having the basic tax fixed at less than Rs. 2/-per acre per annum, if he is able to satisfy that the gross income obtained by him is less than Rs. 10/- per acre per annum. But it will be seen that there are two provisos to sub-section (2). I will leave out for the present the first proviso because that will have to be considered with reference to the attack based upon Article 19 (1)(f). But under the second proviso, it is seen that if any land is used for growing any of the various crops mentioned therein, basic tax can be collected at the rate of Rs. 2/-per acre per annum on such land, and such collection can be made even though the crops, plants or trees mentioned therein had not begun to yield or bear. It is also seen under the said proviso that such a levy can be made at the rate of Rs. 2/- per acre though no income for the time being is made from that land or that the income made is less than Rs. 10/- per acre per annum.

133. Quite naturally, there is a severe attack made on this proviso by the learned counsel for the petitioner that the attempted classification under Section 6 (1) and Section 6 (2) of the Act stated to be based upon annual income, at any rate, of Rs. 10/- and more or less than, Rs. 10/-, becomes absolutely illusory and without any basis when assessment is made on the basis of this proviso.

134. That is, according to the learned counsel for the petitioner, though the object of the enactment is to levy tax on lands on the basis of lands getting an income of Rs. 10/- or more or levying it at a lower rate when the annual income is less than Rs. 10/-, under this proviso the whole classification, even if it can be called a classification, is given up because an absolute right is given to the Government to levy and collect at a uniform rate of Rs. 2/- though no income is being derived from such lands and notwithstanding the fact that the income obtained by an owner is actually less than Rs. 10/- per acre per annum.

135. The learned Advocate General, no doubt, urged that the right given under sub-section (2) of Section 6 is for getting a lower rate fixed on the ground that the actual income is less than Rs. 10/- per acre. The 2nd proviso levies tax, having regard to the potential capacity of the land. Even here, learned counsel for the petitioners urge that there is absolutely no rational principle in the enumeration of the crops, plants or trees mentioned in this proviso. For instance, it was pointed out that though a coconut plant may have been just planted, an owner cannot expect to get any yield from it at least for 7 or 8 years; whereas under the said proviso the owner will have

to pay all these years at a uniform rate of Rs. 2/- per annum per acre. The failure to pay the tax so levied, notwithstanding that the owner gets absolutely no income, is that the property will be proceeded against and sold under the Revenue Recovery Act as provided in sub-section (3) of Section 5. Further, the right given under sub-section (2) of showing that the annual income is less than Rs. 10/- is taken away by the provision made in this proviso and therefore a uniform rate of tax at Rs. 2/- can be collected though the income is less than Rs. 10 per acre.

136. In my view, the contention of the learned counsel for the petitioners has to be accepted. The proviso, inasmuch as it states that a uniform rate of tax at Rs. 2/- can be collected even when there is no income from the property or that there is an income less than Rs. 10/- per acre, apart from being opposed to sub-sections (1) and (2) of Section 6, also suffers from the infirmity pointed out by the Supreme Court in the Land Tax Act of 1955. The working of the proviso will ultimately result in this, namely, that tax at a uniform rate of Rs. 2/-will have to be paid by such persons, and that is the exact point which has been decided against the State by the Supreme Court.

137. Incidentally I must also note that there is an attack on this proviso that a very arbitrary power has been given to the State Government to specify by notification any other special crop that may be grown on land which will bring in the proviso into operation for enabling the State to collect tax at a uniform rate of Rs. 2/-. This may be a minor matter and if the provisions of Section 6 cannot otherwise survive, the power given herein will also vanish.

138. Explanation 2 in Section 6 has also been very severely attacked. That explanation is to the effect that lands comprised in the same survey or sub-division number and held by the same landholder shall be treated as a single unit for calculating the gross income for the purpose of the section. The effect of this Explanation is that if income accrues from part of a survey number a rate of tax in accordance with the provisions of Section 6 (1) or Section 6 (2) can be levied not only in respect of that part of the survey number from which the income accrues but also in respect of the entire area covered by the survey number. The learned Advocate General accepted this position to be correct as following from the Explanation.

139. To take a concrete instance, the petitioner in O. P. No. 399 of 1962 has specifically stated that Sy. No. 79 is of an extent of 21842 acres. The demand upon him is at the flat rate of Rs. 2/- per acre per annum on this survey number as also in respect of other properties owned by him. If the petitioner is able to satisfy, under Section 6 (2) that he is getting a gross income of less than Rs. 10/- per acre per annum from a very negligible portion of this survey number, nevertheless in view of Explanation 2, the rate of tax that may be fixed for the portion from which he is getting some income can be enforced against the entire 21842 acres. I am only giving an illustration as to how the working of the Explanation will result in a particular case. That again, in my view, is quite opposed to the provisions, of Section 6 (1) and Section 6 (2) and it cannot also be stated that there has been a reasonable classification for purposes of levy of tax, under Section 6 of the Act.

140. Therefore, in my view, the provisions of Section 6 of the statute must be considered to be violative of Article 14 of the Constitution.

141. Then coming to the provisions of Section 7, they deal with the making of provisional

assessment to basic tax in the case of unsurveyed lands. The earlier provision in the Land Tax which the Supreme Court had to consider was Section 5A. That section provided for the Government making a provisional assessment of the basic tax payable by a person in respect of the lands held by him and which have not been surveyed by the Government and upon such assessment such a person is to be liable to pay the amount covered by the provisional assessment. No doubt, under sub-section (2) of Section 5A there was a provision made for conducting a survey of the lands and making a regular assessment and for refund of any excess amount that may have been collected under the provisional assessment.

142. No doubt, the provisions in Section 7 of the Act are slightly different. Under sub-section (1) of Section 7, power is given to the prescribed authority to make a provisional assessment of basic tax and that power is, notwithstanding anything contained in Section 6; and for this purpose the authority can call upon the landholder and any other person in possession of the land to furnish particulars relating to the lands.

143. Under sub-section (2) if the prescribed authority is satisfied about the particulars furnished by the landholder, the basic tax can be levied at the rate specified in sub-section (1) or sub-section (2) of Section 6 as the case may be on the basis of the particulars so furnished. Under sub-section (3), if the particulars are not furnished or if the particulars furnished are found by the authority to be incorrect or incomplete, a best judgment assessment can be made on the lands at the rates specified in sub-section (1) or sub-section (2) of Section 6. No doubt, there is a proviso to sub-section (3), giving an opportunity to the landholder to show cause against the proposed provisional assessment. Under sub-section (6) there is a provision to the effect that within a period of five years from the date of the publication of the Act in the Gazette a survey has to be conducted of the unsurveyed lands and for making a regular assessment to basic tax and there are certain other consequential provisions therein, making the provisions of Section 6 applicable to the regular assessment and providing for making an application for fixation of basic tax within 4 months from the date of the completion of the survey. There is also provision made for refunding any excess amounts that may be found due on the basis of a regular assessment

144. In my view, the provisions of Section 7 do not stand on any different footing from the provisions of Section 6. No doubt, there is a provision made for calling upon the landholder for furnishing a return and for an opportunity being given to him before a provisional assessment is made. Apart from the fact that there is nothing placed before me to show the basis for making such a classification, in my view, such a classification has been made only for the purpose of satisfying the criticism levelled by the Supreme Court against the Land Tax Act of 1955. Even apart from this, it will be seen that an assessment to tax is to be made on the same basis that is to be adopted under Section 6 of the Act which takes in the provisos and Explanations which have been discussed by me earlier. Therefore, in my view, the provisions of Section 47 also suffer from the infirmity of there being no reasonable classification and the ultimate result being of a levy at a uniform rate of Rs. 2/- per acre per annum on the lands, the extent of which is only to be fixed by the authorities concerned. Notwithstanding the slight attempt at improvement made in the framing of Section 7, in my view, it suffers from the same infirmity pointed out by the Supreme Court in respect of Section 5A of the Land Tax Act of 1955. No doubt, there is a period of five years fixed from the date of publication of the Act for completing a survey to be conducted of the unsurveyed lands. But in all other essential particulars, the same infirmity is present in this section also because that makes the landholder liable to pay at a uniform rate of

Rs. 2/- per acre per annum on the extent of lands which the authorities may hold the owner is having.

145. Therefore, Section 7 also, in my view, is violative of Article 14 of the Constitution, and the Explanations in Section 6, which have application here also, really result in ultimately levying a uniform rate of tax without any regard to the income accruing from the property.

146. Then I will have to consider the attack made upon Sections 6 and 7 as violative of Article 19 (1) (f) of the Constitution, and the other provisions providing for appeals, reference to the District Court, and revision to the Board of Revenue, as being absolutely illusory and serving no purpose. Before I consider those matters, I may also indicate that Section 5 by itself cannot stand because it levies a basic tax on all lands of whatever description and held under whatever tenure and there is absolutely no classification indicated therein. That section by itself only levies a uniform basic tax on properties and that will be hit by the previous decision of the Supreme Court. No doubt, there is also the further aspect, namely, that there is absolutely no procedure indicated in Section 5 as to how exactly the assessment is to be made and as to how the disputes, if any, regarding liability for payment of tax between the land holder and the tenant are to be resolved. Though sub-section (2) of Section 5 creates a liability on the landholder to pay the tax, there is no provision providing for rectification of any mistakes or giving a right to the party sought to be assessed to challenge either his liability or the correctness of the matters mentioned in the assessment order and this will directly come within the observations of their Lordships of the Supreme Court in 1962-46 ITR 169 at p. 179 : (AIR 1962 SC 1563 at p. 1570) to the effect that if a taxing statute does not make any provision about the machinery to recover tax and the procedure to make the assessment of tax, the imposition of the tax can be considered to be an unreasonable restriction under Article 19 (5) of the Constitution and that an imposition of tax in the absence of a prescribed machinery and prescribed procedure will also partake a character of a purely administrative affair and will be hit by Article 19 (1) (f) also. Therefore, under both Articles 19 (5) and 19 (1), Section 5 will have to be held to be invalid.

147. That there is no machinery provided under sub-section (1) of Section 6 for either raising any objections regarding the liability or extent and that the procedure to make the assessment is left entirely to the executive machinery is also fairly clear. No doubt, the learned Advocate General urged that under the rules framed, i.e., under Rule 3 of the Kerala Land Tax Rules, 1961, it is provided that in the case of surveyed lands basic tax at the rate of Rs. 2/- per acre of land per annum under sub-section (1) of Section 6 is to be calculated on the area of each holding as entered in the revenue records at the rate of 2 nP. per cent. Therefore, the learned Advocate General urged that in the case of surveyed lands when the demand is made on the basis of the entries in a patta, the extent is known, the registered owner of the land is known and the tax is only to be multiplied with reference to the extent. I should point out that the very same contention was raised by the then learned Advocate General appearing for the State before the Supreme Court and that contention was not accepted. Therefore, for the same reasons given by their Lordships of the Supreme Court this contention of the learned Advocate General will have also to be rejected.

148. Sub-section (2) of Section 6, no doubt, appears to give a right to a person claiming to get less than Rs. 10/- as gross income from one acre of land to apply for a fixation of a reduced rate of basic tax. But it will be seen that in the first proviso to sub-section (2) it is specifically

provided that pending the fixation of the rate at which basic tax is payable under sub-section 2, the landholder is liable to pay basic tax at the full rate of Rs. 2/- per acre per annum. This certainly is, in my view, an unreasonable restriction to hold property under Article 19 (1) (f). When the legislature itself contemplates that there may be cases where the party may be liable to pay only less than Rs. 2/- per acre, in my view, this proviso imposes an undue restriction on the right to hold properties and the result of non-payment of these amounts specified in the proviso will be proceeding being taken under the Revenue Recovery Act. It should not also be forgotten that under Section 5 (1) the Statute retrospectively takes effect in respect of the Travencore-Cochin area from 1st April 1956 and in the Malabar area from 1st September 1957. That means, when a person who has to file an application in 1961 under sub-section (2) of Section 6 of the Act, will nevertheless be faced with a liability to pay for nearly five years the tax at the full rate with the penal consequences attached to the same.

149. Again, under sub-section (3) of Section 6, it is provided that an application for fixing a rate of basic tax under sub-section (2) is to be in the form specified by the Government by notification in the Gazette and shall be made to the prescribed authority within four months from the date of publication of the Act, in the Gazette. It will be noted that the Act has prescribed a very short period of limitation for persons intending to seek relief under Section 5 (2). No doubt, the fixation of such a short period itself has been attacked as an unreasonable restriction. Though I may not be inclined to accept such a large contention, from what I am saying immediately it will be seen that the right given under sub-section (2) read with sub-section (3) of Section 6 has become absolutely unworkable and futile due to the inaction of the State Government in prescribing the authority to whom the application is to be made and more than that in not having specified the form as they are bound to do under sub-section (3) of Section 6. I have already indicated that the learned Advocate General has accepted the position that the State Government, even up to now, have not specified the form referred to in sub-section (3) as they are bound to do. Learned counsel in some of the cases have brought to my notice that applications filed otherwise, have been rejected on the ground that they are not in the prescribed form.

150. No doubt, the learned Advocate General urged that if the conditions necessary for the application of sub-section (3) do not exist, the limitation mentioned in sub-section (3) also can be ignored. I am not inclined to accept this contention. The Act was published on 5th April 1961 and the parties should have filed their applications as indicated in sub-section (3), within four months, namely, on or before 4-8-1961. The rules themselves were published by the State Government only as late as 11th July 1961 and the authority to whom applications are to be filed under sub-section (3) was indicated for the first time in Rule 5 of the said rules. Even in respect of such of those parties who could have availed themselves of their right to file the application at least within the remaining three weeks, that right was also effectively denied by the State Government's inaction in not issuing a notification specifying the form, as it was obligatory under sub-section (3) of Section 6.

151. No doubt, a very large ground of attack has been taken that the State Government deliberately did not specify the form in order to deprive the parties concerned of their right to file applications within the four months specified in sub-section (3). I am not inclined to accept this large contention; but whether the omission to specify a form is deliberate or accidental, the result is that a very valuable right for seeking relief has been effectively taken away. That means, the position ultimately is all lands have to be assessed on the uniform rate of Rs. 2/-per acre per annum. Considering the matter from this point of view, it must be held that Article 19(1) (f) has

been violated.
152. The matter can be approached in a different manner also. There is no right given in Section 6 to the parties concerned, who may have applied under Section 6(2) for relief, of participating in any enquiry that may be conducted by the Tahsildar or of being given an opportunity to substantiate the stand taken by them in their applications. Sub-section (4) of Section 6, no doubt, provides that the prescribed authority is to pass orders on the applications as far as practicable within six months from the date of first appearance of the applicant. As to when the date of first appearance of the applicant is to be fixed, there is absolutely no indication. Then there is sub-section (5) to Section 6 to the effect that the order of the prescribed authority fixing the basic tax is to be communicated to the landholder concerned and any other person liable to pay the tax.

153. Therefore, as it is, the party who wants to seek relief under Section 6 (2) files an application under Section 6 (3) within four months and he merely gets a communication from the prescribed authority fixing the basic tax. There is absolutely nothing in the section giving any right, as I mentioned earlier, to the said parties to participate in the enquiry.

154. The rules that have been framed on this aspect provide very interesting reading : Rule 5 provides for the prescribed authority to whom an application under Section 6 (2) is to be made. Rule 6 provides for the Tahsildar causing the applications presented under Rule 5 to be verified by the Village Officer or Adhikari and the Village Officer is to verify again the details of the application with reference to revenue records and by local inspection and enquiry and to submit the report within 30 days of the receipt of the application in the Village Office. There is again an obligation on the Tahsildar to verify the reports submitted to him by the Village Officer and have them checked by the appropriate Revenue Inspectors or Revenue Supervisors. There is a provision made in Rule 7 that before the basic tax is fixed at a rate lower than Rs. 2/- per acre, the Tahsildar himself is to check the verification report and make or cause to be made the necessary enquiry. When the Government have taken considerable pains to see that fixation of basic tax at less than Rs. 2/- is to be more or less on the sole responsibility of the Tahsildar after looking into the matters personally, there is absolutely no corresponding right to the person who has made the application and whose application is under enquiry of being made known any of the materials that are being collected. Rule 8 provides that the Tahsildar is to determine the gross income from any land, whether it is actually cultivated or not, if it is cultivable, and a power is given to him to ascertain the income from making enquiries regarding similar lands and also by taking evidence of persons who are likely to be acquainted with the nature of cultivation on such lands. Sub-rule (3) of Rule 8, no doubt, provides that the Tahsildar is to send a copy of the proceedings to the landholder or other person concerned liable to pay the tax.

155. A perusal of these provisions clearly shows that the person who makes the application seeking relief on the basis of Section 6 (2) is nowhere in the picture. Therefore, neither the statute itself nor the rules framed under the Act, give any right to the applicant to participate in the enquiry and to challenge any materials that may have been collected.
156. No doubt, the learned Advocate General rather strenuously urged that an appeal is provided against the orders passed on applications under sub-section (2) of Section 6 and under Section 9 of the Act the appellate authority can remedy the grievance. I am not impressed with this contention of the learned Advocate General. No doubt, there is an appellate authority provided under Section 9 and a right is given to a party aggrieved by orders passed under sub-section (2) of Section 6 or sub-section (3) or Section 7 to appeal to the District Collector. But there again it is

stated clearly, that no appeal shall lie unless the tax has been paid. The provision for an appeal is, in my view, absolutely illusory and serves no purpose whatsoever in fact. The entire tax has to be paid and even otherwise when a party had no opportunity of challenging the materials that have been collected by the prescribed authority, he can hope to get no relief whatsoever at the hands of the appellate authority. On the other hand, the appellate authority, however considerate and willing he may be, can only dispose of the appeal on the basis of the materials placed before him by the prescribed authority. He cannot certainly entertain a grievance that the petitioner has not been given an opportunity to participate in the enquiry because neither the statute nor the rules give such a right to the party. Therefore, in my view, though as a formality, a right of appeal is given, that appeal, apart from the hardship of having to pay the entire tax before the filing of the appeal, will also result in no material benefit to a landholder who wants to challenge the order of the prescribed authority.

157. Therefore, it will be seen that the provisions of Section 6 also contravene Article 19 (1) (f) of the Constitution.

158. More or less the same reasons will apply also to the provisions of Section 7. The assessment can be, as I mentioned earlier under Section 7 only on the basis of the provisions contained in Section 6 of the Act. Even there, when once the authority makes a provisional assessment on the basis of those provisions, the appellate authority can give no relief whatsoever. No doubt, an appeal has been provided under Section 9 against orders passed by the prescribed authority under Section 7(3), that is, or making a best judgment provisional assessment, having regard to the provisions of sub-section (1) or sub-section (2) of Section 6. Here again, the provision for appeal is absolutely illusory and Section 7 will have also to be declared as violative of Article 19 (1) (f) of the Constitution.

159. Then the only other aspect that has to be considered is whether the provisions regarding appeals, reference to District Court and revision by the Board of Revenue are of any substantial benefit to a person seeking relief at their hands. I have already dealt with the provisions of Section 9 relating to appeals. No doubt under Section 11, a power of revision by the Board of Revenue is given against the order of the appellate authority, i.e., the Collector, functioning under Section 9. Even the Board of Revenue will be bound by the materials collected by the prescribed authority which, as I have already stated, are materials collected, behind the back of a landholder. Therefore, the power of revision declared under Section 11 is also of no avail and is merely an empty formality and is illusory.

160. No doubt, under Section 10 a right of reference to the District Court is given. Section 10 is as follows:-

> "10 Reference to District Court- (1) Subject to such conditions and limitations as may be prescribed, the assessee. may, within thirty days of the date upon which he is served with notice of an order under sub-section (4) of Section 9, require the appellate authority to refer to the District Court any questions of law arising out of such requisitions, and the appellate authority may, within sixty days of the receipt of such requisition, draw up a statement of the case and refer it to the District Court.
>
> (2) If the District Court is not satisfied that the statement in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the appellate authority to make such additions thereto or alterations

therein as the Court may direct in that behalf.

(3) The District Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court to the appellate authority which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(4) The decision of the District Judge on such reference shall be final.

(5) Notwithstanding that a reference has been made under this section to the District Court, basic tax shall be payable in accordance with the assessment made in the case".

Provided that if the amount of assessment is reduced as a result of such reference the amount overpaid shall be refunded.

(6) For the purposes of this section 'District Court means the District Court having jurisdiction over the area in which the land on which basic tax has been levied is situate".

In my view, this provision is only an attempt to satisfy the criticism made by the learned Chief Justice of the Supreme Court in the previous decision that there is no procedure prescribed for obtaining the opinion of a superior Civil Court on questions of law as is generally found in all taxing statutes. In the manner in which the applications filed by parties are disposed of and materials collected, ordinarily and in majority of cases there can be no question of law arising so as to enable a party to ask for a reference under Section 10. Most of the points that may arise in the course of applications filed claiming reliefs under Section 6(2) will be purely factual and Section 10 cannot certainly be considered to safeguard the interests of an assessee.

161. To conclude, the provisions of Sections 5, 6 and 7, which are the material provisions of the Act have to be declared ultra vires and unconstitutional; Section 5 as being violative of Articles 19(1) (f) and 19 (5); and Sections 6 and 7 as being violative of Articles 14 and 19 (1) (f) of the Constitution. As Sections 5, 6 and 7 are held to be invalid, inasmuch as they offend the fundamental rights guaranteed by Articles 14 and 19 of the Constitution, the imposition of tax levied thereunder cannot also be said to meet the requirements of Article 31(1).

162. These are the main and substantial provisions, without which the Act cannot stand.

163. No doubt, the learned Advocate General urged rather strenuously that, in any event, the provisions or Section 7 are severable from the rest of the Act and its constitutionality must be upheld. I am not inclined to accept this contention. Section 7, I have already shown, is so closely knit with Sections 5 and 6 that it is not possible, in my view, to isolate the same. Even otherwise, I have held that Section 7 is violative of Articles 14 and 19 (1) (f), and no question of severability arises at all.

164. No doubt, the learned Advocate General also urged that even if the rules are ultra vires and even assuming that they are opposed to principles of natural justice, the rules alone can be struck down and not the statute. No doubt, this aspect may have to be taken into account, if the provisions in the statute have themselves safeguarded the right of land-holders to participate in the enquiry to be conducted by the prescribed authority and if a right had been given to them of being furnished with the materials that may be collected by the prescribed authority and a further

right to challenge the same had also been given. But inasmuch as no such right has been given in the statute itself, there is no purpose in striking down the rules alone.

165. Without the Act, the rules cannot stand and the Kerala Land Tax Act Rules, 1961 will have also to be struck down.

166. I have already shown that Sections 9, 10 and 11 are absolutely illusory and they have to be struck down. In any event, they cannot remain in the statute, when the main Sections 5, 6 and 7 are struck down. I may also indicate that there is a bar in Section 17 in the way of instituting any suit against Government in any Civil Court in respect of anything done or any order passed under that Act. That means, notwithstanding that the statute here and there states that any excess amounts that may have been collected from landholders have to be refunded, they cannot enforce it, if there is inordinate delay, by resort to a Civil Court.

167. No doubt, the learned Advocate General placed considerable reliance on Section 18 of the Act which is as follows :

18. Rectification of mistakes. At any time within four years from the date of any order passed by it the prescribed authority or the appellate authority or the revisional authority may, on its own motion, rectify any mistake apparent from the record and shall within a like period, rectify any such mistake which has been brought to the notice of the prescribed authority or the appellate authority or the revisional authority, as the case may be, by a landholder or other person liable to pay tax.

> Provided that no such rectification shall be made which has the effect of enhancing the tax payable unless the landholder and any other person liable to pay tax have been given a reasonable opportunity of being heard in the matter".

The learned Advocate General relied upon this section to satisfy me that whatever mistake there may have been in any order passed by the authorities mentioned therein, a power has been given to them to rectify those mistakes when they are brought to their notice. I am not inclined to accept the contention that Section 19 is of any assistance to the assessee; because the operation of that section is very limited, namely, mistakes apparent from the record. In view of the fact that the main sections are struck down and also the other sections mentioned above have to be struck down, it follows that the entire Act and the rules framed thereunder will have both to be declared unconstitutional.

168. I may also state that there was a contention raised on behalf of the petitioners that the Act, though it purports to levy a tax on land, is really a law relating to forests in the possession of the petitioners and would not come within the purview of Entry 18 read by itself or in conjunction with Entry 45 of list II; and that it is really a law relating to Forests under Entry 19.
169. No doubt, this contention has been noted by his Lordship the Chief Justice of the Supreme Court in the earlier decision, but the majority have not expresses any view on this aspect and they have assumed that the State Legislature had the necessary competence to enact the Land Tax Act, 1955.

170. But Mr. Justice Sarkar, in his dissenting judgment, has referred to this aspect and has ultimately held that under Entry 49 taxation of land on which a forest stands is permissible and legal. Inasmuch as there has been no adjudication by the majority on this aspect, I am bound by the decision of Mr. Justice Sarkar on this aspect and I have to hold that the contention of the petitioners regarding the competency of the legislature to enact the measure in question, if the Act is otherwise valid, has to be rejected.

171. It is rather regrettable to note that notwithstanding the clear guidance and lead given by their Lordships of the Supreme Court in the previous decision, that has not been properly availed of when this Act, in question, was enacted.

172. In the result, all these writ petitions are allowed and the proceedings challenged therein are quashed and a writ of mandamus will issue forbearing the respondents therein from taking further ation on the basis of the Kerala Land Tax Act, 1961, Act 13 of 1961, or the rules framed thereunder.

173. In view of the fact that the writ petitions are allowed because of the Act being declared unconstitutional, I am not expressing any opinion regarding any other contentions that have been taken regarding the applicability or otherwise of the Act to particular cases even on the assumption that the Act is a valid piece of legislation. These questions do not arise for consideration for the present.

174. As the State has not even discharged the duty cast upon it under Section 6(3) by specifying the necessary form for enabling the parties concerned, to claim relief under Section 6(2) of the Act, within the time mentioned in the Act, the State will pay the costs of the petitioners in all these, writ petitions.
Petitions allowed.