RAJASTHAN HIGH COURT

East India Hotels Ltd.

Vs.

State of Rajasthan

Civil Writ Petn. No.55 of 1998
(Dr. Ar. Lakshmanan, C.J. and Bhagwati Prasad, J.)

12.03.2001

JUDGEMENT

Dr. Lakshmanan, C.J.

1. The present writ petition and other writ petitions (mentioned in the appended Schedule) raise an interesting question of law in the matter of onetime tax scheme introduced by way of insertion of Section 3 (1B) of the Finance Act, 1989 (Act No. 6 of 1989)

2. The questions for our consideration are that :-

(1) Whether, fresh assessment is permissible under the law in respect of the land held by the previous owner who had exercised the option in terms of onetime tax scheme prescribed by Section 3(1B) of the Rajasthatn Land and Building Tax Act, 1964 (hereinafter referred to as "the Act") even though the certificate exempting the aforesaid land from the future tax liability had been issued by the competent officer of the department?
(2) Whether, the tax under the Act is upon a land or building or both separately as units and when the property in question has already been subjected to tax, the question of any further tax liability under the Act can arise merely on account of the transfer of such property?
(3) Whether, the change in ownership is wholly inconsequential?
(4) Whether, Section 3 which is the main charging section does authorise fresh levy on a property which has already suffered tax?
(5) Whether, clause (c) of Section 3(1B) of the Act subjects the assessee to pay tax on rebuilt or enlarged building on which one time tax has been paid? and;

(6) Whether, Sections 13 and 15 of the Act are violative of Article 265 of the Constitution of India which clearly lays down that no tax shall be levied or calculated except by an authority of law?

3. The short facts leading to the above case are as follows:-

The petitioner No. 1 M/s. East India Hotels Ltd. is a company duly incorporated under the Companies Act. The company has its operations in all over the country including at Jaipur and at Udaipur in the State of Rajasthan. Petitioner No. 2 Sri O.P. Arora is the shareholder of the company and is Director Deposits. The land which has been acquired by the petitioner-company at Udaipur is being subjected to proceeding for reassessment for levy and charge to tax by the Assistant Director, Land and Building Tax Department, Government of Rajasthan, Udaipur for and on behalf of the Government of Rajasthan. The order impugned in this writ petition is dated 8th of December, 1997 which has been passed by the Rajasthan Taxation Tribunal at Jaipur.

4. The petitioner with the object of establishing a new five star luxury hotel in Udaipur had obtained a lease in respect of land measuring approximately 75 acres located in Haridasji Ki Magri, Udaipur from M/s. Lake Place Hotels and Motels Pvt. Ltd. The lease deed was duly executed and registered on 17th of December, 1992. The leasehold rights were transferred for a period of 72 years in terms of the lease deed dated 17th of December, 1992. As per the petitioners the land in question had been subjected to the proceedings under the provisions of the Rajasthan Land and Building Tax Act, 1964 (hereinafter referred to as 'the Act of 1964') in an assessment order dated 1-7-1981 in the name of Late Maharana Shri Bhagwat Singhji under GIR No. M-92 and in respect of which an annual tax liability of Rs. 3,990/- had been affixed. It was represented by the lessor that not only the entire tax liability, as determined by the assessment order dated 1-7-1981 was duly deposited for and up to the date of transfer but also that an option in terms of Section 3(1B) of the Act of 1964 had been exercised by the lessor by depositing the life time tax and that such an option was duly accepted by the respondent No. 2, who ultimately issued a certificate of exemption from all future liabilities under provisions of the said Act in terms of the aforesaid Section 3(1B) of the Act. The certificate bears No. 19279 has been registered in his DNCR as 3/29 on 15th of May, 1992. As per the case of the petitioners, based on the aforesaid representations by the lessor and upon legal advise tendered the petitioner- company

preferred to obtain leasehold rights of the land under consideration on the basis that it was a tax free land which did not carry the burden of the tax under the Act of 1964. The petitioner- company after obtaining the aforesaid leasehold rights, entered into another transaction with one M/s. Indus Hotels Corporation Ltd. another company carrying on the business inter alia, of construction and running of hotels of International Standards to whom it sub-leased the land measuring 27.9 acres. The aforesaid transaction has been recorded in a sub-lease deed dated March 21, 1996 and was duly registered with the Sub-Registrar of Deeds, Udaipur on the same day. By the aforesaid sub-lease deed the petitioner-company had transferred a smaller plot of 27.9 acres for the remaining term of lease i.e., for a period of 69 years for construction and running thereon a first Class medium rate hotel.

5. However, respondent No. 2 has initiated proceedings for fresh assessment by issuing notice under Section 22 dated nil requiring the petitioner-company to supply the necessary information latest by 22nd of July, 1997. In due compliance of the aforesaid notice, the petitioner-company through its authorized representative, represented to the respondent No.2 interalia that in view of the option under Section 3(1B) of the Act having already been exercised by the previous owner and on O.T.T. certificate having been issued by the respondent No. 2, no further proceedings could validly be taken out against the petitioner-company at all. The Assistant Director, Land and Building Tax Department, Udaipur issued a notice dated August 29, 1997 under Section 11(1) of the Act for appearance on September, 3, 1997 and for provisionally determining the market value of the property at Rs. 63,89,06,400/- as on April 1, 1993. By the said notice, the petitioner- company was called upon to submit objections in writing on 3rd of September, 1997. A separate notice dated August 29, 1997 under Section 16-A (1) of the Act was also issued to the petitioner-company to show cause as to why penalty be not imposed for failure to furnish return. The representative of the petitioner-company vide his letter dated 3rd of September, 1997 requested for adjournment for filing objections. Accordingly, time was granted and the Assessing Authority fixed the matter on 3rd of October, 1997 with a further direction that notice of hearing for the said date be issued. On 3rd of October, 1997, the authorised representative of the petitioner-company again requested for time to collect details by filing application that the hearing be fixed in the month of November. At that time,the authorised representative of the petitioner-company was informed that on account of transfer and his last day in the office at Udaipur, the Assessing Authority will not do any work. The representative of the petitioner was also informed that the

new incumbent was likely to join shortly and the next date of hearing would be fixed and accordingly notice would be sent. As per the case of the petitioner, the petitioner-company did not receive any notice of hearing after October 3, 1997. The Assistant Director also did not issue any notice of hearing or intimate any date in the matter. However, the petitioner was surprised to receive a copy of the *ex parte* assessment order dated October 13, 1997 on October 16, 1997. By the said assessment order, the respondent No. 2 applied the best judgment method of valuation and determined the value of entire land measuring 75 acres in the hands of the petitioner- company at Rs. 66,04,48,800/- as on April 1, 1993 by enhancing the provisional market value of Rs. 63,89,06,400/- by a sum of approximately Rs. 2.15 crores, as per the case of the petitioner-company, without serving a revised notice of provisional market value as stipulated by Section 11(1) of the Act of 1964. The consequential annual tax liability determined by the Assessing Authority works out to Rs. 98,99,732/- for 1993-94 and Rs. 98,00,232/- per annum for 1994-95, 1995-96 and 1996-97. By the same *ex parte* proceedings the respondent No. 2 has also carried out an adjustment in terms of the amendment introduced in the Act of 1964 by the Finance Act, 1997 whereby the appointed date has been shifted to 1-4-1997 and a revaluation as on 1-4-1997 is required to be made under Section 14 of the Act of 1964. The respondent No. 2 instead of carrying out a fresh valuation of the subject land has merely enhanced the tax liability to the maximum ceiling limit of 150% of the existing liability. Consequently, he has enhanced the annual tax liability to Rs. 1,49,47,348/- and for arriving at the aforesaid tax liability, the value has been enhanced to Rs. 175,11,88,000/-.

6. As per the case of the petitioner, only after receipt of the assessment order, the petitioner-company came to know that on 3rd of October, 1997, the matter was purportedly fixed on 13th of October, 1997 and that due to the absence of the petitioner or its authorised representative, the *ex parte* best judgment assessment was made. It is submitted that the assessment order had been passed by the new incumbent in the Office of the respondent No. 2 who as per the information available to the petitioner, took charge of the office on 4th of October, 1997. It is apparent that the new incumbent had passed the order without affording any opportunity of hearing or even discussions to the petitioner. As per the case of the petitioner, the new incumbent was not holding the office of respondent No. 2 before 4th of October, 1997. The petitoner obtained certified copy of the proceedings and it appears from the order sheet dated 3-10-1997, that the same was not signed by the respondent No. 2, the Assessing

Authority.

7. Aggrieved with the aforesaid assessment order, the petitioner-company moved an application for rectification in terms of Section 22-A of the Act of 1964 inter alia, in order to obtain the appropriate opportunity of hearing as also to point out the fallacies in the aforesaid valuation and assessment. The petitioner-company, out of abundant precaution, also preferred an appeal before the Appellate Authority along with an application for stay of the entire amount of tax demanded by the impugned assessment order. The respondent No. 2, passed the order on the application under Section 22-A of the Act on 28th of October, 1997 and summarily rejected the objections of the petitioner-company. He refused (a) to grant of exemption of the land from future tax liability in view of the previous owner M/s Lake Palace Hotel and Motels Pvt. Ltd. having exercised an option under the One Time Tax; (b) that the land be valued by belting and development method or by capitalization of rent; (c) that the value of subject land be taken on the basis of its assessment under the Wealth-tax Act, 1957 where under the subject land had been valued in the hands of M/s. Lake Palace Hotels and Motels Pvt. Ltd. wherein by an order dated 29-3-1996, the Deputy Commissioner, Wealth-tax, Special Range, Udaipur has valued the very land at Rs. 2.53 crores as on 31-3-1993. By the same very order, the Assistant Director had summarily rejected the objections of the petitioner relating to the land value being excessive on account of an assumption that the same is being put to use as an hotel site. The respondent No. 2 also directed the petitioner- company to deposit the disputed tax liability to the tune of Rs. 5.4 crores and had also levied a penalty under Section 16-A (1)(a) to the tune of Rs. 8280/- and interest to the tune of Rs. 1,72,97,823/-. In all totaling to Rs. 7.18 crores. According to the petitioner, this action of the respondent No. 2 is also rendered the alternative remedy prescribed in Section 16(1) of the Act of 1964 as not only nugatory and onerous but also inefficacious and burdensome inasmuch as the petitioner-company has been burdened with the requirement of depositing a minimum sum of Rs. 98,99,732/- in case the petitioner-company wishes to dispute any part or portion of the action of the respondent No. 2.

8. That being aggrieved and dissatisfied with the orders dated 13-10-1997 and 28-10-1997, and the assessment proceedings, the petitioner-company submitted an application before the Rajasthan Taxation Tribunal, which had been dismissed *in limine* by the Tribunal vide order dated 8th of December, 1997.

9. Being aggrieved by the aforesaid orders, the consequential demand, the recovery proceedings thereto, and the impugned order dated 8th of December, 1997, the petitioners have filed the present writ petition before this Court.

10. Sri Rajendra Mehta, learned counsel appearing for the petitioner, raised the following contentions at the time of hearing:

(1) The levy of tax under the Act of 1964 is being done on the basis of Entry 49 of List-II (State-List) as contradistinguished from Entry 86 of List-I (Union-List) of the VII Schedule to the Constitution of India. It may be relevant to reproduce the two entries which are as under
"Entry 49, List II : Taxes on Land and Building.
Entry 86 List I : Taxes on capital value of assets, exclusive of agriculture land of individuals and companies; taxes on the capital of the companies."
(2) The judgment rendered in Rajputana Hotel's case is not applicable to the facts of this case and is distinguishable on facts and law.
(3) Initiation of fresh proceedings by the Assessing Authority is grossly violative of Article 265 of the Constitution inasmuch as it seeks to levy and collect tax in violation of Entry 49, List-II of VII Schedule of the Constitution of India as though it were being levied in accordance with the provisions contained in Entry 86, List-I of VII Schedule of the Constitution of India.
(4) Section 3(1B) is an independent special provision intended to take care merely of cases wherever an option in terms thereof has been exercised by the assessee and such a situation could not have been envisaged when the original Act was introduced in 1964 or when it came into force in 1973 and, therefore, Sections 13, 15 and 15-B cannot and need not be compared with Section 3(1B) of the Act which has been introduced subsequently by the Rajasthan Ordinance of 1988 or by the Finance Act, 1989; and, the two provisions deal with separate situations altogether.
(5) The impugned assessment proceedings are clearly violative of the principles of natural justice.
(6) When the tax under the Act of 1964 is upon land or building or both separately as units and when the property in question has already been subjected to tax, the question of any further tax liability under the Act cannot arise merely on account of the transfer of such property.
(7) Section 15 of the Act porovides for assessment order, inter alia, by reason of

any change having taken place in the ownership of land and building. However, this provision is not a charging section but only enables amendment of assessment on the happening of certain events.

(8) The words used, "if not already liable to pay tax" in clause (b) of sub-section (1) of Section 13 of the Act make it clear that commencement of the liability for the payment of tax under Section 13 shall be effective only when it is established that owner has not already been paying tax.

(9) Sections 13 and 15 of the Rajasthan Land and Building Tax Act, 1964 are violative of Article 265 of the Constitution of India.

11. The writ petition was resisted by the respondents. According to them Article 14 does not forbid reasonable classification of persons, objects and transactions by the Legislature for the purpose of attaining specific ends ; and, that, what is necessary in order to pass the test of permissible classification under Article 14 is that the classification must not be arbitrary, artificial or evasive; but, must be based on real and substantial distinction bearing a just and reasonable relation with the object sought to be achieved by the Legislature. The learned Advocate General submitted that there is always a presumption in favor of the constitutionality of a statute and the burden is upon the person who attacks it to show that there has been a clear transgression of the constitutional principles. He submitted that another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc.

12. According to the learned Advocate General the benefit flowing from the provisions continued to be available so long as the land or building remained with the assessee who has deposited the one-time tax in respect of such land or building. Sub-section (1B) operates on a plane different from the one on which Sections 13 and 15 operate. According to him, Section 13 speaks of commencement of liability in certain cases provided for therein. It comes into play in cases of withdrawal of exemption under Section 6 or Section 21 of the Act or acquisition of land and building by transfer or otherwise; or, building, re-building or enlargement of a building already in existence. Thus, according to him, it speaks of three contingencies where its provisions with regard to commencement of fresh liability are attached into the application; and, if any of these contingencies does exist and the owner is not the tax payer then such land or building shall be assessed to tax from the year following the year during which such land or building ceased or enjoy exemption or was acquired or

during which any building, re-building or enlarged portion was occupied, whichever is earlier. Sub-section (1B) speaks of payment of one time tax whereas Section 13 does not speak of any such thing. The benefit of sub-section (1B) is available to the assessee so long as he continues to be the owner of the land or building whereas Section 13 does not speak of any such contingency. Sub-section (1B) further provides that the payment of one-time tax shall be effective so long as the land or building is not re-built or enlarged and such re-building or enlargement does not result in enhancement of the market value of the land or building; whereas in the case of Section 13, he submitted, the tax determined under it will remain in force until the revision thereof is made under Section 14 of the Act. Section 13 of the Act comes into play only when any of the above contingencies mentioned therein occurs; however, the occurrence of these contingencies is not pre-requisite to coming into operation of sub- section (1B). The learned Advocate General, therefore, argued that the Tribunal has committed no illegality in coming to the conclusion that the constitutional validity holds good in case of Section 15 also. As per Sections 13 and 15 of the Act whenever any land or building is acquired by transfer or otherwise or any building is built, re-built, or enlarged; or, any change has taken place in the ownership of the land and building then the Assessing Authority can amend the assessment order as per the provisions of Sections 13 and 15 of the Act. Though, in the instant case, it is true that the tax exemption certificate was issued to the original owner and, that, no liability can under the Act be cast on that person; but, since there is change of ownership, the proceedings can be initiated by the Assistant Director by giving a notice under Section 22 of the Act in view of the provisions of Sections 13 and 15 of the Act. Thus, it was submitted, a combined reading of Section 3(1B), Section 13 and Section 15 of the Act makes it otherwise clear that when there is change of ownership the Assessing Authority can amend/re-asses the assessment order.

13. Arguing further, the learned Advocate General submitted that different kinds of properties may be subjected to different rates of taxation and, so long as there is a rational basis for the classification, Article 14 of the Constitution will not come in way of such classification resulting in unequal burdens on different classes of properties. But, if the same class of properties similarly situated is subjected to an incidence of taxation, which results in unequality, the law may be struck down as creating unequality among holders of the same kind of property. It is also disputed that the tax under Entry 49, List-II is not concerned with the division of interest in the land or building or, in other words, when a person owns or occupies it, the assessment is on

the basis of the value of the land and building and when person acquire any property by way of transfer or otherwise they constitute a separate category by themselves and the said categorisation cannot be said to be violative of Article 14 and the tax remains as tax on the land and building. In support of his contention, the learned Advocate General has placed strong reliance on the decision of this Court in the case of *Rajputana Hotels Pvt. Ltd. v. State of Rajasthan*, which was decided by the Division Bench of this Court on 27-5-1992.

14. Before proceeding with the case any further, it would be better to extract the relevant rules. Section 3 of the Rajasthan Land and Building Tax Act, 1964 runs as under:

> "3. Levy of Lands and Buildings tax - (1) There shall be levied and collected with effect on and from 1st April, 1973; for each year a tax on lands and buildings situate in an urban area, (hereinafter referred to Lands and Buildings Tax) from the owner of such Lands and Buildings at such rate not exceeding 2% of the market value thereof as State Government may, by notification in the Official Gazette, declare in this behalf;
> Provided that the State Government may fix graduated rate of tax on different slabs of market values of lands and buildings. Provided further that until a notification declaring rate of tax is issued under this sub-section, the rate of tax on lands and buildings shall be as follows :
> ....
> ....
> Provided further that with effect on and from "the date of commencement of the Rajasthan Lands and Buildings Tax (Amendment) Act, 1995 (Act No. 14 of 1995)" no tax shall be levied and collected on lands and buildings situate in an urban area having a population of less than "one and half lakh," according to the latest census figures :Provided further that if any area is declared a cantonment or is constituted a municipality, after the commencement of the Rajasthan Urban Land Tax (Amendment) Act, 1973, the tax on lands and buildings situate in such area shall be levied and collected with effect from the commencement of the year following the year during which the area is declared a cantonment or is constituted a municipality :(A-1) for removal of doubt it is declared that the tax shall be levied on land or building or both separately as units.(1-B) (a) An assessee may pay one-time-tax in lieu of the tax payable for each year under

sub-section (1)
(b) The one-time tax shall be the amount of tax arrived at after multiplying the amount of yearly tax, assessed and levied under the provisions of this Act, by the calculation factor, not exceeding ten, to be notified by the State Government in the Official Gazette, from time to time.
(c) Where any building, on which one time-tax has been paid, is so re-built or enlarged as to make the assessee liable to pay an enhanced or additional amount of tax under this Act, be liable to pay the amount of enhanced or additional yearly tax or one-time-tax.
(2) The tax shall be in addition to any other tax for the time being payable in respect of the land and building or portion thereof under any other law for the time being in force."
Section 13 of the Act runs as under:
"13. Commencement of liability in certain cases- (1) If any land or building-
(a) Ceases to enjoy the character on account of which it was entitled to exemption under Section 6 or 21, or
(b) (is acquired, by transfer or otherwise), or any building is built, re- built or enlarged, During any year after the commencement of the Rajasthan Urban Land Tax (Amendment) Act 1973, the owner, if not already liable to pay tax shall, subject to the other provisions of this Act, be liable to pay tax from the year following the year during which the land or building ceases to enjoy the character on account of which it was entitled to exemption or is acquired or during which any building, re-building or enlargement is completed or such building or enlarged portion is occupied, whichever is earlier.
EXPLANATION - The Expression ("Acquired by transfer or otherwise" used in clause (b) of this sub-section shall not include acquisition by inheritance)
(2) Such owner shall, within ninety days of the commencement of the year in respect of which he first becomes liable to pay tax under sub-section (1), furnish to the Assessing Authority a return in the prescribed form containing the prescribed particulars, in respect of lands and buildings in any urban area, and shall pay tax according to the provisions of sub-section (2) of Section 7 as if that section applied to him as it applies to an owner liable to pay tax on the date of the commencement of the Rajasthan Urban Land Tax (Amendment) Act, 1973.
(3) Notwithstanding anything contained in Section 4, the tax in respect of such lands and buildings shall be determined on the market value thereof as on the

date of commencement, of the year in respect of which he first becomes liable to pay tax.

(4) The provisions of Sections 8 to 12 (both inclusive) shall mutatis mutandis apply to returns filed under this section and to assessment of market value and determination of tax payable for such lands and buildings.

(5) The tax determined under this section shall remain in force until a revision of tax is made under Section 14.

Sections 14 and 15 of the Act reads as follows :

"14. Duration of tax determined under Section 10 or 11 -

(1) The amount of tax determined under Section 10 or 11 with the modification, if any, made under Section 15 or in any appeal under Section 16 or revision under Section 19, shall remain in force -

(a) For a period of three years from the date of commencement of the Rajasthan Urban Land Tax (Amendment) Act, 1973, or

(b) For such further period not exceeding twenty years as the Government may direct.

(2) (i) After the expiration of the period of three years referred to in clause (a) of sub-section (1), the Government may, and after the expiration of the further period referred to in clause (b) of sub-section (1), the Government shall, direct revision of the tax.

(ii) Notwithstanding anything in this section, fresh revision of tax shall be carried out with effect from 1st April, 2000 so however that such revision shall not affect the Lands and Buildings for which one-time-tax in lieu of annual tax has already been deposited or is deposited under the provisions of sub-section (1-B) of Section 3, on or before 31st March, 2000.

Vide notification No. F8 (14) FD/Tax-Div. 97 dated 1-4-1997 State Govt. hereby directs that revision of tax be caried out and that such revision will take effect from 1-4-1997 provided that such revision of tax on 1-4-1997 shall not be applicable on those lands and buildings in respect of which tax due upto 31-3-1997 is deposited on one-time basis in lieu of annual tax, calculated on the basis of annual tax determined for the year 1996-97 on or before 31-3- 1997.

(3) All the provisions of this Act, shall as far as may be, apply to the determination of the tax in pursuance of a direction under sub-section (2) as they apply to the determination of tax for the first time after the commencement of the Rajasthan Urban Land Tax (Amendment) Act, 1973.

(4) For the purpose of revision of the tax under sub-sections (2) and (3)-

(a) the reference in section 4 and in clause (a) of sub-section (1), to "the date of commencement of the Rajasthan Urban Land Tax (Amendment) Act, 1973" shall be construed as a reference to the 1st day of April, of the year in which the direction under the said sub-sections is issued; and

(b) The period of ninety days referred to in Section 7 shall be computed from the date on which such direction is issued.

(5) Any direction for revision issued under sub-section (2) shall have effect prospectively and shall have no effect on past cases, where returns have been filed or in which the proceedings of assessment, amendment of assessment, appeal or revision under the provisions of this Act are pending on the date of coming into force of the direction issued under sub-section (2) and the proceedings of assessment, amendment in assessment, appeal or revision in such cases shall be continued, finalized, disposed of, ordered or determined in accordance with the provisions of this Act as in force before the date of enforcement of the revision of tax under sub-section (2) and for removal of doubts it is clarified that with effect from the date of enforcement of the direction issued under sub-section (2), the revision of tax under sub-section (2) shall also have effect on aforesaid cases prospectively."

15. Amendment of assessment order- Notwithstanding anything in Sections 10, 10A, 11 or 13 the Assessing Authority may, at any time, subject to such conditions as may be prescribed, amend the order of assessment of market value and determination of tax in respect of any land or building, where it appears that it is necessary so to do in order to bring it in accord with the existing circumstances and in, particular may amend or correct the order as appears to it to be necessary by reason of –

"(a) the rate of tax having been altered under the provisions of this Act; or

(b) any change having taken place in the ownership of the land or building; except by way of inheritance; or

(c) the land or building having become, or ceased to be, liable to tax; or

(b) any building having been substantially damaged or destroyed or any building having been built, re-built or enlarged;

the order so amended or corrected shall, subject to any order in appeal or revision, be effective from the commencement of the year following the year during which any of the events mentioned in clauses (a) to (c) take place and in case of clause (d), from the commencement of the year following the year

during which such building, re-building or enlargement is completed or such building or enlarged portion is occupied, whichever is earlier and in other cases, from such date as the assessing authotiry may direct :
Provided that no order under this Section shall be made unless the owner of the land or building has been afforded a reasonable opportunity of being heard and of producing evidence."

In support of his contentions, Mr. Mehta cited the following decisions:

. A. Entry 49 of List II- Tax on property and not on person:
1. *Asstt. Commissioner v. Buckingham Co. Ltd.*[1]
2., *U.O.I. v. H.S. Dhillon*. [2]
3. *D.G. Gouse and Co. v. State of Kerala*. [3]
4. *Lt. Col. Sawai Bhawani Singh v. State of Rajasthan*. [4]
5. *Goodric Ltd. v. State of West Bengal*. [5]
B. One-time tax payment :
1. AIR 1999 Supreme Court 1630, paras 26 to 30.
2. (1999) 3 Ker LT 147.
C. Per Incuriam :
1. *State of U.P. v. Synthetics and Chemicals Ltd*. [6]

following : *M.C. Delhi v. Gurnam Kaur*. [7]
B. Shamrao v. Union Territory. [8]

D. Subject not to be taxed unless charging provision clearly imposes obligation :

C.I.T. v. Ajax Products Ltd. [9]

16. We shall now consider the decisions cited by learned counsel for the petitioner and the learned Advocate General.

(1) *(Asstt. Commissioner v. Buckingham Co. Ltd.* : [10]
The question to be considered in the appeal was whether the Madras Legislature was competent to enact the legislation under Entry 49 of List II of Scehdule VII of the Constitution which reads : "Taxes on lands and buildings." It was urged

on behalf of the State that the impugned Act fell under Schedule VII, List-I, Entry 86 that is "Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies. It was argued on behalf of the other side that the Act, both in form and substance, taxation of capital and was hence beyond the competence of the State Legislature. A five-Judges Bench of the Supreme Court held that the tax under Entry 86 proceeds on the principle of aggregation and is imposed on totality of the value of all the assets and it is imposed on the total assets which the assessee owns and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account. It is further held (Para 5):

"In certain exceptional cases, where a person owes no debts and is under no enforceable obligation to discharge any liability out of his assets it may be possible to break up the tax which is leviable on the total assets into components and attribute a component to lands and buildings owned by an assessee. In such a case the component out of the total tax attributable to lands and buildings may in the matter of computation bear similarity to a tax on lands and buildings levied on the capital or annual value under Entry 49, List II. But in a normal case a tax on capital value of assets bears no definable relation to lands and buildings which may or may not form a component of the total assets of the assessee. But Entry 49 of List II, contemplates a levy of tax on lands and buildings or both as units. It is not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings, and bears definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee."

(2) *U.O.I. v. H.S. Dhillon* : [12]

In that case, it was urged on behalf of the respondent that in Asstt. Commr. of Urban Land Tax v.The Buckingham and Carnatic Co. Ltd. (1970) 1 SCR 268 : AIR 1970 Supreme Court 169, the Supreme Court held that a tax on the capital value of land and buildings could be imposed under Entry 49, List II. However, the Hon'ble Court observed (Paras 63 and 65) :

".....but it seems to us that this is not a correct reading of that decision. Reliance is placed on the following sentence at page 277:

> "We see no reason, therefore, for holding that the Entries 86 and 87 of List I preclude the State Legislature from taxing capital value of lands and buildings under Entry 49 of List II."

The above observations have to be understood in the context of what was stated later. Ramaswami, J., later observed in that Judgment as follows:

> "The basis of taxation under the two Entries is quite distinct. As regards Entry 86 of List I the basis of the taxation is the capital value of the asset. It is not a tax directly on the capital value of assets of individuals and companies on the valuation date. The tax is not imposed on the components of the assets of the assessee. The tax under Entry 86 proceeds on the principle of aggregation and is imposed on the totality of the value of all the assets. It is imposed on the total assets which the assessee owns and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account.....But Entry 49 of List II contemplates a levy of tax on lands and buildings or both as units. It is not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of powers under Entry 86, List I tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under Entry 49, List II the State Legislature may adopt for determining the incidence of tax, the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not make the fields of legislation under the two entries overlapping. The two taxes are entirely different in their basic concept and fell on different subject-matters.
>
> (Emphasis-supplied)"

The Supreme Court further observed that :

> "The requisites of a tax under entry 49, List II may be summarized thus :
> (1) It must be a tax on units that is lands and buildings separately as units.
> (2) The tax cannot be a tax on totality, i.e. it is not a composite tax on the value of all lands and buildings.
> (3) The tax is not concerned with the division of interest in the building or land. In other words, it is not concerned whether one person owns or occupies it or two or more persons own or occupy it.
> In short, the tax under entry 49, List II is not a personal tax but a tax on property."
> (3) *S.G. Gouse and Co. v. State of Kerala*[12]

The Supreme Court, in that case, while dealing with Entry 49 of List-II, observed as follows : (Para 8)

> "On the other hand, entry 49 of the List II is as follows :
> "49. Taxes on lands and buildings."
> If, therefore, a tax is directly imposed on buildings, it will bear a direct relation to the buildings owned by an assessee. It may be that the building owned by an assessee may be a component of his total assets, but a tax under Entry 86 will not bear any direct or definable relation to his building. A tax on 'buildings' is, therefore, a direct tax on the assessee's buildings as such, and is not a personal tax without reference to any particular property."

It was further observed at para 43 as under:

> "The controversy really centres round the choice of the multiple, to work out the capital value. The Legislature has thought it proper to define "capital value" of a building to mean the value arrived at by multiplying the annual value of a building by sixteen. There was nothing to prevent it from doing so for, as has been pointed out, it has legislative competence to impose the building tax. And it is by now well settled that the quantum of the tax levied by the taxing statute and the conditions subject to which it is levied, are matters within the competence of the Legislature."
> (4) *Lt. Col. Sawai Bhawani Singh v. State of Rajasthan*".[13]

While dealing with the subvject, the Hon'ble Supreme Court observed vide para 7, in that case, as follows:

> "It is now well-settled that as per Entry 49 of List II, the State Legislature is competent to impose tax either on lands or on buildings or on both. A land or building or both of a person may be subjected to direct tax by the State Legislature under Entry 49 of List II and may also be the subject-matter of direct tax as a component of his total assets, like wealth-tax by the Union Legislature as mentioned in Entry 86 of List I. These two taxes are separate and distinct in nature and it cannot be said that there was any overlapping or that the State Legislature was not competent to levy such tax on lands and buildings merely on the ground that they have been subjected to another tax as a component of the total assets of the person concerned. See in this connection a seven-member Bench decision of this Court in *Union of India v. H.S. Dhillon*. This Court clearly said that for a tax to be under Entry 49 of List II, three conditions must be satisfied, i.e. (i) it must be a tax on units, i.e., land and buildings separately as units; (ii) the tax cannot be a tax on totality, i.e., it is not a composite tax on the value of all lands and buildings; and (iii) the tax is not concerned with the division of interest in the building or land; in other words, the tax was not concerned whether one person owned or occupied the land or building or two or more persons occupy or own it."

One-time Tax Payment :

(1) *Steel Authority of India v. State of M.P.* :[14]

In *Steel Authority of India Ltd. v. State of M.P.*, the Supreme Court, at para 25, observed as follows:

> "Though Mr. Banthia has urged that as no reply was sent to the letter of the State Government dated 25th September, 1958, therefore, there was no contract under Article 299 of the Constitution of India between the Central Government and the State Government regarding the non-payment of land revenue, we are unable to accept the contention of the learned counsel inasmuch as by the conduct of the parties it is very clear that both the Governments agreed with the

terms mentioned in the letter of the State Government dated 25th September, 1958 and, therefore, there was also a contract between the parties regarding the exemption from payment of land revenue, if 25 times of the land revenue was paid once for all.

It has further been observed (Paras 26, 27 and 28) :

"Section 58 of the Code provides that land revenue is payable in respect of all land unless it is exempted from such liability by special grant of the agreement between both the Governments and in view of the above provisions of Section 58 of the Code we hold that no land revenue is payable for the land in question more particularly as it has been capitalized at 25 times of the land revenue prevailing at that time.

Thus, whether it is because of the 1925 Rules or the Contract, Central Government was not liable to pay land revenue once it has paid the 25 times land revenue as a one-time payment.

The next question is whether after the land was transferred to the Company, the Company would be liable to pay land revenue under the Code?

17. Accordingly, on consideration of the matter in its entirety, the Hon'ble Supreme Court held in that case as follows:

"Thus it is clear from the above clauses of the deeds of assignment that while transferring the land to the Company rights, liberties, privileges etc. to the said land were also transferred. Therefore, the privileges of or right to exemption accrued to the Central Government not to pay land revenue to the State Government under Section 58 of the Code would also be available to the appellant-company, as a successor-in-interest to the Central Government."

18. Learned counsel for the petitioner, Mr. Mehta next placed reliance upon the judgment of the Kerala High Court in *Anas v. State of Kerala, reported in* [15] wherein speaking for the Bench, Dr. AR. Lakshmanan, Actg. C.J. (as His Lordship then was) observed at para 16 as follows :

"The above two decisions, both, the Supreme Court and the High Court have upheld the introduction of one-time tax, which is absolutely with the power of

the State Legislature. It is argued by Mr. K. Radhakrishnan that the Supreme Court judgment AIR 1988 Supreme Court 2062 which has been referred to above, on the basis of the statistical data has found in paragraph 18 of the said judgment and that the factual scenario upon which the two judgments are found is different from the one available here and nothing has been stated in the counter- affidavit about the evils sought to be remedied. About the objects sought to be achieved nothing is stated in the counter-affidavit except the plea raised in paragraphs 12 and 13 that it is a beneficial legislation to the extent that the vehicle owners need not visit the transport office for a period of 15 years. No data is given in the counter-affidavit as discussed at the Apex Court case in AIR 1988 Supreme Court 2062. The said submission has no merits as the Supreme Court and the Division Bench of this Court considered all the aspects elaborately and upheld the introduction of the one-time tax. A further contention that the above two judgments are in respect of two wheelers and three wheelers and, therefore, not applicable to the present case, cannot also be considered. There is no discrimination between the same class of vehicles. Therefore, in our view, the petitioners are liable to remit the amounts required under the Motor Vehicles Taxation Act. The contention of the petitioners that the Motor Vehicles Taxation Act is compensatory for the use of public road and there is no justification for levy of tax at the time of registration without specifying the period, is without any basis. From the proviso, introduced by the new Amendment, it is clear that if the one-time tax is paid at the time of first registration, thereafter, tax shall be levied at the time of renewal of registration only and the renewal of registration comes only after 15 years."

19. Mr. Mehta, learned counsel for the petitioner has also cited the judgment in *Commissioner of Income-tax v. Ajax Products Ltd., reported in* [16] The Supreme Court, in that case, quoting Rowlatt, J. in *Cape Brandy Syndicate v. Inland Revenue Commissioners,* [17] held as follows :

"Would the amendment make any difference in the application of the proviso ? The rule of construction of a taxing statute has been pithily stated by Rowlatt, J. in Cape *Brandy Syndicate v. Inland Revenue Commissioners* thus:
"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look

fairly at the language used."

To put it in other words, the subject is not to be taxed unless the charging provision clearly imposes the obligation. Equally important is the rule of construction that if the words of a statute are precise and unambiguous, they must be accepted as declaring the express intentions of the Legislature. Giving a close scrutiny to the second proviso, it will be clear that by giving the natural meaning to every word used therein, it clearly fits in within the scheme of the entire section."

20. Our attention was also invited to the opinion of the Law Department in this regard, which reads as follows:

"As per provisions of Rajasthan Land and Building Tax Act, 1964 the tax is levied on the building and not on the owner. Therefore, if one-time tax has been paid on the building and the owner transfers the building to another person, then subsequent owner or transfer of building, without being re-built or enlarged, is not liable to pay tax."

21. Now, we shall consider the decision cited by the learned Advocate General in *Rajputana Hotels Pvt. Ltd. v. State of Rajasthan and others* [18] This judgment was fully relied upon by the learned Advocate General. In the said case, the validity of the provisions of Section 13 of the Rajasthan Land and Building Taxa Act, 1964 has been assailed. The learned Advocate General has relied on the passage occurring in the judgment which reads thus:

"The submission of Bafna is that in accordance with the provisions of Article 245 of the Constitution of India, the power of Legislation of the Parliament and the State Legislature has been given and the VIIth Schedule is having 3 Lists, namely, List-I as Union List, List-II the State List and List-III the Concurrent List. Under List-I, Entry 86 authorises the Parliament to legislate in respect of the tax on the capital value of the assets, exclusive of agricultural land of individual and companies; tax on the capital of companies. List-II, Entry 49 provides for power to legislate "tax on the land and buildings". According to Mr. Bafna, the provisions contained in Section 13(1) (b) are outside the legislative competence of the State Legislature as the tax on transfer is in fact a tax on the capital value of the assets and not a tax on land and building."

22. According to the learned counsel for the petitioners, the legislative effect under the Entry 49, List-II of VIIth Schedule contemplates levy of tax on land and building, or both as units. Reliance has been placed on the decision of the Supreme Court, reported in AIR 1969 Supreme Court 56. Learned counsel for the petitioner has also submitted that Section 3(1B) was inserted in the Act for making provision for one-time payment of tax and the Law Department has clarified that one-time tax shall not be levied again in respect of a land or building which has been transferred after the tax has once been paid and the increase is possible only when there is re-construction or enlargement of the building. According to the learned counsel, since the tax is on the land and building the change of ownership would not affect or create a fresh liability in accordance with the provisions of Section 13 of the Act and, hence, illegal. The learned Judges of the Division Bench at page 70, after referring to the various decisions cited before them, have observed as follows:

> "The petitioners have no grievance if the building is re-built or enlarged and the provisions of Section 13 are invoked. The grievance is only in respect of acquisition by transfer or otherwise and is based on the reason that the tax is on the land and building irrespective of the ownership and if there is any transfer or acquisition to another person the tax once assessed taking the valuation as on 1-4-1973 should be made applicable to the law (land). Section 3 is the charging section, which creates the liability of tax on the land and building and the said tax has to be recovered from the owner of such land and building at the rate mentioned in the section. As a matter of fact, the provisions of Section 13 creates a further charge in respect of land or building, which are acquired by transfer or otherwise from the year following the year during which such property is acquired. This charge is based on the basis that a person who has acquired the property by way of transfer or otherwise and paid the market value of the property after enforcement of this Act, cannot claim that the tax should be levied on the market value of the property as was assessable in the hands of the previous owner. There is a reasonable basis of classification in respect of the two categories; (1) where there is no transfer of the property, and (2) where there is a transfer and it cannot be said to be unreasonable or discriminatory because all the transfers have been considered as a separate category.
>
> In order to see that the provisions of Section 13 and /or 14 of the Act are beyond the legislative competence or overlaps so as to fall within Entry 86 of List- I, it

has to be shown that the tax is livable on the totality of all the assets owned by the assessee on the ground of aggregation. This is not the position. The tax here is on the land and building separately as units and not by aggregating different units. It is no doubt correct that the tax under Entry 49, List-II is not concerned with the division of interest in the land or building or in other words, it is not concerned as to whether one person owns or occupies it or more persons own or occupy it, it is an assessment on the basis of the value of the land and building when it is so acquired or transferred. The persons who acquire by way of transfer or otherwise any property, constitute a separate category by themselves and the said provisions cannot be said to be violative of Article 14 of the Constitution of India. The tax remains as the tax on the land and building. The components of concept of tax namely the measurement or value is the lands and buildings on which the owner is made liable to pay tax. The contention raised by the learned counsel for the petitioner, in respect of the validity of Section 3(1)(b) of the Act, therefore, has no force and is rejected.

The other contention which has been raised in the case of M/s. Kamal Enterprises is that there cannot be double taxation in respect of the same unit of land and buildings. It has been submitted that during the course of construction of building, agreements have been entered into and the sale deed has not been executed and considerations have been received in part or in full. In accordance with the provisions of Section 2 (10), the persons who are entitled to receive the rent has also to be considered as owner. It has also been submitted that there cannot be double assessment in the hands of those owners to whom the said units have been sold as well as the builder who have constructed the building. This proposition is not seriously disputed by the learned Advocate General appearing on behalf of the respondent and rightly so because the definition of 'owner' under Clause 2 (10) of the Act is an inclusive definition, which includes the person who for the time being receives or who would be entitled to receive rent thereof, if the same were let.....This clause further provides that in case of land or building held for lease for the term not less than 30 years, the lessee shall be deemed to be owner of such land or building."

In the concluding portion, the Bench has observed as follows:

"From the inclusive definition of ownership, the criteria is not the registered ownership of a unit of land or building alone. The focus of the section is

entitlement to receive rent. Even those persons who are entitled to revceive rent have been considered to be owner and, therefore, if the petitioner is able to satisfy the assessing authority that he is not the owner in respect of a particular unit constructed and sold (whether by way of registered or unregistered deed of conveyance) and those persons were entitled to receive the rent if the property is let out, then the property is assessable in the hands of such persons and not in the hands of the petitioners.

This is a factual aspect of the matter, which may require investigation and the petitioners would be free to challenge the tax liability and discharge their burden before the assessing authority or before the appellate authority or before the revising authority, as the case may be. It is held that a registered document would not be necessary nor the tax could be realized from two persons namely, builder and purchaser in respect of one unit and only that person who is owner in accordance with the definition of clause 2(10) of the Act i.e. who is entitled to receive the rent shall be assessable in respect of each and individual separate unit.In the result, the writ petitions are partly allowed as indicated hereinabove. Parties are left to bear their own costs."

23. The above judgment in Rajputana Hotels Pvt. Ltd. case, in our view is not directly on the point and is distinguishable on facts and law. In the said case, the Division Bench appears to have examined the constitutional validity of Section 13 of the Act. The Court came to the conclusion that Section 13 creates a further charge in respect of the land and building which is acquired by transfer or otherwise and this charge is based on the basis that the transferee cannot claim that the tax should be levied on the market value of the property as was assessable in the hands of the previous owner. The question regarding the applicability of Section 13 or Section 15 was not in issue before this Court. This Court also did not examine the constitutional validity of Section 15 or effect of Section 13 vis-a-vis Section 15 or Section 3(1B). The Tribunal, in our opinion, has also committed a serious illegality in coming to the conclusion that the ratio of the Rajputana Hotels Pvt. Ltd. case, with regard to the constitutional validity of Section 13, holds good in the case of Section 15 also. Section 15, in our view, cannot go beyond Section 13 which may be the charging section for the purpose of subjecting transferred property to tax or Section 3(1B) and, therefore, the operation of Section 15 will be subject to these sections of the Act of 1964. The decision, in our view, does not conclude the present controversy. Since the matter in issue has not been decided one way or the other and has not been thrashed out the question in issue, in

our opinion, has gained vital importance inasmuch as various similarly situated citizens all over the State of Rajasthan are being subjected to re-assessment at the hands of the statutory authorities.

24. In other words, in the Rajputana Hotels Pvt. Ltd. case, this Court appears to have examined the constitutional validity of Section 13 of the Act and this Court came to the conclusion that Section 13 creates a further charge in respect of the land or building which has been acquired by transfer or otherwise and this charge is based on the basis that transferee cannot claim that tax should be levied on the market value of the property as was assessable in the hands of the previous owner. The question regarding applicability of Section 13 or Section 15 was not in issue before this Court and this Court also did not examine the constitutional validity of Section 15 or the effect to Section 13 vis-a-vis Section 15 or Section 3(1B). The learned Advocate General further submitted that when the Rajputana Hotels' case was taken on appeal to the Supreme Court the Hon'ble Supreme Court dismissed the SLP at the admission stage and, therefore, the contention raised by the petitioner in this writ petition cannot at all be countenanced.

25. It is held by the Supreme Court that dismissal of a SLP by a non-speaking order which does not contain the reasons for dismissal does not amount to acceptance of the correctness of the decision sought to be appealed against; and, that, such an order does not constitute the law laid down by the Supreme Court for the purposes of Article 141 of the Constitution of India. We may usefully refer to, in this context, the decision rendered by the Supreme Court in (2000) 6 SCC 359 and few other judgments. In *State of U.P. v. Synthetics and Chemicals Ltd.,* [19] the Supreme Court, at paras 40 and 41, has observed as follows:

> " 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignortium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu v. Rajdewan Dubey* [20] this Court while pointing out the procedure to be followed when conflicting decisions are placed before a Bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions

when the decision of an appellate Court is not binding. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English Courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind." (Salmond on Jurisprudence 12th Edn., p.153). In *Lancaster Motor Company (London) Ltd. v. Bremith Ltd.* the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in *Municipal Corporation of Delhi v. Gurnam Kaur* [21] The Bench held that, 'precedents sub-silentio and without argument are of no moment.' The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *B. Shama Rao v. Union Territory of Pondicherry* [22] it was observed, "it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein". Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

26. In view of the above judgment, the decision in Rajputana Hotels case, which is not express and is not founded on reasons nor it proceeds on the consideration of the issue, cannot be deemed to be a law declaring to have a binding effect as is contemplated by Article 141 of the Constitution of India. On a consideration of the entire material placed before us, the relevant rules and the decisions cited by the learned counsel appearing on either side, we are of the opinion that the writ petition has to be allowed as prayed for, for the following further reasons.

I. In the instant case, the respondent No. 2 Assessing Authority has erred in proposing to subject the land under consideration to fresh assessment irrespective of the fact that the same had earlier been assessed in the hands of the previous owner who had also exercised the option in terms of the one- time tax scheme, prescribed under Section 3 (1B) of the Act and, despite the certificate exempting the aforesaid land from future tax liability having been issued by his predecessor, in violation of Article 265 of the Constitution inasmuch as it seeks to levy and collect tax in violation of Entry 49, List-II of the VIIth Schedule as though it were being levied in accordance with the provisions contained in Entry 86, List-I of the VIIth Schedule of the Constitution. Thus the action of the respondent No. 2 in initiating fresh proceedings is grossly violative of Article 265 of the Constitution of India. The State of Rajasthan and its Officers are estopped from carrying out the present proceedings for fresh assessment of the subject land again for depositing one-time tax as the option for depositing one-time tax was made by the previous owner, and other similarly situated citizens on the basis of various exhortations made by them inviting people at large to make the aforesaid payment and get their land and building exempted from tax for all times to come.

II. A bare reading of the provisions contained in Section 3 (1B) of the Act goes to show that clause (c) thereof is absolutely silent about transfer. The said section is an independent special provision intended to take care merely of cases wherever an option in terms thereof has been exercised by the assessee. Such a situation could not have been envisaged when the original Act was introduced in 1964 or when it came into force in 1973 and, therefore, Sections 13, 15 and 15-B of the Act cannot and need not be compared with Section 3 (1B) of the Act which has been subsequently introduced by the Rajasthan Ordinance of 1988 or by the Finance Act, 1989; and, the two provisions deal with altogether separate situations. Land and building, or both which have subjected to assessment and tax under the Act and in respect of which one-time tax has been paid and are exempt from any future liability under the Act, such already assessed property cannot be assessed again under the Act irrespective of the transfer of property. The field of taxation under the Act *qua* such property is fully covered by Section 3 (1B) and no other provision including Sections 13 and 15 can empower further assessment of such property.

III. Under Section 13 of the Act land or building acquired by transfer or otherwise after commencement of the Act can be subjected to payment of tax

under the Act from the year following the year during which the same is acquired, if the property is not already liable to payment of tax. Section 13 is the only provision under which a property which has been transferred can be subjected to land and building tax. If the transferred property has already been subjected to tax the question of any further tax liability in respect of the property does not arise under the said Section 13. Undisputedly, the tax under the Act is livable on land or building or both separately as units. Under Entry 49, List-II of the VIIth Schedule, the State Legislature is competent to impose tax on lands and buildings or both as units. The State Legislature is not empowered under the said entry to impose tax on the capital value of the assets of a person. Such a tax on the total assets of the assessee can only fall within the domain of Parliament under Entry 86 of List-I of the VIIth Schedule to the Constitution of India. Land and building tax is thus not a tax on the assets of the person and, therefore, it is not a personal tax. In view of Entry 49 of List II, the State Legislature is not competent to levy tax on the aggregate value of the assets of the person and thus no personal tax on the owner of the property is imposable. Therefore, the question of ownership of the property is irrelevant for levy of tax under the Act of 1964.

IV. In our view, when the tax under the Act of 1964 is upon the land or building; or, both, separately as units and when the property in question has already been subjected to tax the question of any further tax liability under the Act cannot arise merely on account of the transfer of such property. Under the scheme of things contemplated in the Act, in this regard, the change in ownership is wholly inconsequential inasmuch as the tax is not on the person owning the land or building; but, on the land or building or both separately as units. The provision authorizing the levy of tax under the Act on the transferee of the property on account of change of ownership is beyond the legislative competence of the State Legislature. That being the position, Section 13 (1)(b) which reads, "is acquired, by transfer or otherwise", and Explanation that, " "acquired by transfer or otherwise" used in clause (b) of this sub-section shall not include acquisition by inheritance", are *ultra vires* the Constitution of India.

V. Section 15 of the Act provides for amendment of assessment order *inter alia* by reason of any change having taken place in the ownership of land and building. However, this provision is not a charging Section; and, only enables amendment of assessment on the happening of certain events. In the absence of any charging section empowering levy of tax on account of change of

ownership it is not competent for the Assessing Authority to subject any property to tax merely on the basis of change in its ownership. It might be that Section 13 is a charging section creating liability to tax *inter alia* in cases where land or building is acquired by way of transfer. However, this charging section is applicable only where the property acquired by way of transfer is not already liable to pay tax. Section 3 which is the main charging section does not authorize fresh levy on transferee of the property, more particularly on the property which has already suffered tax, Clause (c) of Section 3(1B) only subjects the assessee to pay tax on rebuilt or enlarged building on which one-time tax had been paid earlier to such re-building or enlargement. The provision does not speak of liability on account of transfer of property. Section 15 of the Act of 1964 will have to be read subject to Section 13 and Section 3 (1B) of the Act and that would only mean that amendment order under Section 15 can, if at all, in case of transfer, be passed only in cases covered under Section 13 or clause (c) of Section 3(1B) in so far as the same is necessitated due to change in ownership. That being the position, Section 13(1)(b), which reads "is acquired, by transfer or otherwise" along with Explanation "acquired by transfer or otherwise, used in clause (b) of this sub-section shall not include acquisition by inheritance", and Section 15(b), which reads "any change having taken place in the ownership of the land or building; except by way of inheritance" are beyond the legislative competence of the State Legislature.

VI. As already noticed, sub-section (1B) of Section 3 of the Act provides for the payment of one-time tax. This section was introduced in 1988 to provide relief to the tax payers who could discharge liability under the Act by depositing the one-time tax and free their mind from the anxiety to pay tax from year to year. Once such tax is paid, the property gets out of the purview of the Act and the same cannot be subjected to any further tax liability except in the circumstances as envisaged by clause (c) of sub-section (1B) of Section 3; and, therefore, in our view, the liability to pay the tax is on the property and not on the owner and thus, if one-time tax is paid in respect of a property, then there cannot be any liability to pay the tax in respect of such property even though the same is transferred. The benefit of one-time tax already paid is available to the property and, therefore, the same is available to the transferee as well.

VII. We have carefully gone through Section 13 of the Act. The words used, "if not already liable to pay tax", in clause (b) of sub-section (1) of Section 13 of the Act make it clear that the commencement of the liability for the payment of

tax under Section 13 shall be effective only when it is established that owner has not already paid tax. This condition concerning absence of existing liability from the payment of tax is a condition precedent to the applicability of Section 13. In the case on hand, the property in question changed hands in the context of the provisions of the Act but as the same was already exigible to tax, the question of application of Section 13 would not arise inasmuch as it had paid one- time tax in respect of the property in question which was assessed in the transferor's hands, which position had also been accepted by the Tribunal.

VIII. It may be mentioned that the provision enabling amendment of assessment order *inter alia* due to change in ownership of property is obviously applicable only in case where the liability to assessment arises under the Act on account of such transfer. There may be a case where under the original assessment the property has been held to be exempt in the hands of the owner say, for example, a property belonging to religious and charitable trust. Now, if such property is transferred by the trust then on account of change in ownership the same would be liable to tax under the Act in the hands of the transferee and, for that purpose, it would be necessary to amend the assessment order by invoking Section 15, read with Section 13 of the Act. Such levy would also satisfy the conditions of charging Section 13.

It may be noted that Section 3(1B) of the Act provides for payment of one-time tax instead of payment of tax from year to year. The cases where the assessee exercises option to pay one-time tax are governed by Section 3(1B). Consequently, the provisions of Section 13 and Section 15 can be invoked in cases where one-time tax has been paid only subject to Section 3(1B). Clause (c) of Section 3 (1B) takes care of situation necessitating amendment of assessment order in relation to a property in respect of which one-time tax has been paid. This clause applies only in the case of building and, that too, when such building is re-built or enlarged. The case on hand is not covered by clause (c) inasmuch as this only involves assessment of land. Hence, in view of the fact that one time tax in respect of the land in question has already been paid by the owner there is no question of amending the assessment order by subjecting the land to additional tax liability on the basis of change in its ownership. A property in respect of which one-time tax has been paid can only be subjected to tax liability in the hands of the owner or the transferee if it falls under the stipulations of clause (c).

IX. In this case, the exemption certificate has already been issued exempting

the property in question from future liability under the Act and, therefore, in our view, no further assessment can be made by the authorities by way of re-assessment or otherwise for re-determining the liability for payment of tax under the Act. The tax liability will only arise in a case where an additional portion is added or the property is rebuilt which will be subjected to separate assessment and the assessee will be at liberty to pay yearly tax on the basis of such separate assessment or the assessee may opt for payment of one-time tax in respect of such additional portion. Thus the question of amending the original assessment already made in the hands of the previous owner does not arise. Moreover, a harmonious combined reading of Sections 3(1B), 13, and 15 of the Act makes it clear that the power of reassessment or amendment of assessment cannot be invoked by the Assessing Authority in cases where the lands and buildings have been exempted from future tax liability on account of onetime tax payment in terms of Section 3(1B) of the Act.

X. Section 15 of the Act has been enacted for the purpose of carrying out requisite corrections in the original assessment order on account of certain happenings. The section independently does not empower redetermination of market value and tax liability which can only be done, if at all, in consonance with the provisions of Section 13, read with Sections 3 and 4. Clerical corrections like change in the name of the owner on receipt of intimation regarding transfer of property or giving effect to the change in rate of tax or extinguishing liability due to applicability of exemption or destruction of property etc. can alone be effected while exercising powers under Section 15 of the Act. Fresh assessment in the hands of transferee can be done only if the conditions of Section 13, as discussed hereinabove, are satisfied. Likewise fresh assessment on account of building, rebuilding or enlarging building will also be possible only in terms of clause (c) of Section 3(1B) or Section 13 of the Act.

XI. The provisions mentioned in Section 13 are arbitrary inasmuch as they tantamount to tax the property again merely on the incidence of transfer having taken place or, in other words, invoking the provisions of Section 13 on mere change in ownership of the property becomes an incidence of tax which is clearly beyond the legislative competence and beyond the scope of Entry 49 of List II of VIIth Schedule; and, thus arbitrary.

27. The impugned demand of tax has been raised by the respondent No. 2 vide order dated 13-10-97, therefore, in our opinion, the question of levying interest on such

demand for the period anterior to the said date is void and without jurisdiction. In our view, Entry 49, List II of VIIth Schedule gives power to levy tax on land and building and not on the owners of the lands and buildings. In this view of the matter, Sections 13 and 15 intending to levy tax on the owners of the property are beyond the legislative competence and violative of Article 265 of the Constitution of India and, therefore, are liable to be struck down.

28. Accordingly, the writ petition, along with the petitions mentioned in the appended schedule, is allowed in the following terms:

> (a) The impugned assessment order for re-determination is quashed and set aside. Orders dated 13-10-97 and 28-10-97 and the demand notices issued in pursuance thereof are quashed and set aside.
>
> (b) It is declared that no fresh proceedings can be carried out in respect of land and building which has been once subjected to assessment and the option under the onetime tax scheme has been made in respect thereof.
>
> (c) Section 13(1)(b) and Section 15(b), as referred to hereinabove and quoted herein below :
>
> "13(1)(b).- "is acquired, by transfer or otherwise" and Explanation, "acquired by transfer or otherwise" used in clause (b) of this sub-section shall not include acquisition by inheritance."
>
> "15(b).- any change having taken place in the ownership of the land or building; except by way of inheritance or",
>
> are declared *ultra vires* the Constitution of India and, consequently, impugned orders and proceedings being non-est and without jurisdiction are set aside.
>
> (d) The order of the Rajasthan Taxation Tribunal dated 8-12-97 is set aside.

29. There shall, however, be no order as to costs.

Petition allowed.

Cases Referred.

1. AIR 1970 SC 169
2. AIR 1972 SC 1061
3. AIR 1980 SC 271
4. (1996) 3 SCC 105
5. (1995) 98 STC 32

6. (1991) 4 SCC 139,(1991) 3 JT (SC) 268
7. (1989) 1 SCC 101
8. AIR 1967 SC 1480
9. (1965) 55 ITR 741
10. AIR 1970 SC 169
11. AIR 1972 SC 1061
12. AIR 1980 SC 271
13. (1996) 3 SCC 105
14. AIR 1999 SC 1630
15. (1999) 3 Ker LT 147
16. (1965) 55 ITR 741
17. (1921) 1 KB 64, 71
18. (D.B. Civil Writ Petition No.511/89)
19. (1991)4 SCC 139
20. (AIR 1962 SC 83)
21. (AIR 1989 SC 38)
22. (AIR 1967 SC 1480)