
(1987) 05 CAL CK 0004

In the Calcutta High Court

Case No : F. M. A. T. No. 2414 of 82 & F.M.A.T. No. 2414 of 1982

Bagaria More and Co. Ltd. and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-05-1987

Acts Referred:

West Bengal Multi-Storeyed Building Tax Act, 1979 — Section 2(c), 3, 3(3)

Citation : 91 CWN 1164

Hon'ble Judges : Chittatosh Mookerjee, C.J.; Bhagabati Prasad Banerjee, J

Bench : Division Bench

Advocate : S.K. Gupta, Mr. A.N. Mukherjee, Mr. S.K. Bagaria, Mr. A.K. Gupta, for the Appellant; A.P. Chatterjee, Senior Standing Counsel J., Mr. Pulak Chandra Mondal, for the Respondent

Final Decision : Dismissed

Judgement

Bhagabati Prasad Banerjee, J.—This is an appeal against the order and judgment of the learned Trial Judge, dated June 9, and 11, 1982 by which he had upheld the validity of the West Bengal Multi-storied Building Tax Act, 1979 (West Bengal Act No. XVII of 1979) (hereinafter referred to as the said Act). The facts relevant for the purpose of the appeal are as follows:

2. The West Bengal Government for the first time sought to impose tax on Multi-storied building by enacting the West Bengal Multi-storied Building Tax Act, 1975 which was subsequently amended by the West Bengal Act X of 1977. By the said Act of 1975 tax was levied on the multi-storied building. The relevant provisions of Section 3 of the said Act were as follows:

3. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force but subject to other provisions of this Act, there should be charged and levied for every year a tax (hereinafter referred to as "the tax") on every Multi-storied building.

(2) The tax in respect of a multi-storied building shall be payable by the owner

thereof to the State Government.

(3) The tax shall be levied at the rate of one rupee per square meter of covered space of the multi-storied building per year.

Sub-section 2(ii) of the 1977 Act substituted sub-section (3) of Section 3 of 1975 Act by the following sub-section:

(1) (i) Where the total covered space does not exceed fifty square meters - Fifty paise per square meter.

(ii) Where the total covered space exceeds fifty square meters

but does not exceed one hundred square meters - Rupee one per square meter.

(iii) Where the total covered space exceeds one hundred square meters but does not exceed two hundred meters - Rupees three per square meter.

(iv) Where the total covered" space exceeds two hundred square meters - Rupees five per square meter.

(v) In the case of a multi-storied building or part thereof used for commercial or industrial purposes; on the whole of covered apace - Rupees seven and paise fifty per spare meter.

Explanation - For the purpose of this Act: -

(a) "Commercial use" means the use of any multi-storied building or part thereof for the purpose of carrying on any trade or business or for running an office in relation thereto;

(b) "Industrial use" means the use of any multi-storied building or part thereof for carrying on any manufacturing process as defined in the Factories Act, 1948.

3. The "Multi-storied Building" was defined in Section 2(c) of the 1975 Act as follows:

"Multi-storied Building" means a building on any land in an urban area consisting of five stories and above constructed after the first day of April, 1969 and includes any building in such area with less than five-storied constructed prior to that date but raised after that date to a level of five-storied and above.

In the 1977 Act, Section 2(c) of 1975 Act was amended in the following manner;

Multi-storied building means a building on any land in an urban area consisting of five-stories and above.

4. The State Bank of India and others filed writ applications before this Court challenging the validity of the said Act where upon Sabyasachi Mukherji, J. (as His Lordship then was) declared the said 1975 Act along with the 1977 Amendment Act as ultra-vires the provisions of Article 14 of the Constitution of India for the following reasons:

Now, in the light of the principles if I examine the present Act, namely, West Bengal Multi-storied Building Tax Act, 1975 as amended by the Act of 1977 it is manifest in view of the definition u/s 2(b) and (c) read with Section 3 that all multi-storied buildings and multi-storied buildings mean building on any land in the urban area consisting of five storeys and above, have been subjected to the levy of tax at uniform rate though there has been some distinction made as to the rate to be imposed in case of residential and commercial buildings and industrial Buildings. But it is manifest that there are multi-storied buildings, namely, five-storied building in different parts of Calcutta and other towns to which this Act might be applied some of which are in developed areas whose yield of income or capacity to yield income is far greater than the yield of income from building in other area. A five-storied building constructed in Cossipore or Beliaghata in Calcutta long ago cannot be considered to be equal as a five-storied building in Park Street or Chowringhee constructed recently. Their cost of construction their yield and capacity to yield income, their use and their potentiality vary to such a large extent that to treat them alike would be to treat unequals in their essential features as equals in the burden of taxation. This is a tax on multi-storied building in West Bengal. That is the purpose of the tax. It is not a legislation to control multi-storied building or anything like that. It is a tax on building, intended to raise revenue for the purpose of the State and if the tax in question ignores the vital factors which are germanes for imposition of taxing buildings and lands, then, in my opinion the Act in question would suffer from the vice of inequality. It is true as the learned Government pleader said that value of construction of yield from the building may not always be in the wisdom of the legislature the only rational basis of classification. But if the value of construction, the potentiality of the income to be yielded or the income actually yielded, the condition and age of the building these are all ignored the only solitary factor that they are all five-storied buildings or above is taken as the basis for imposition of a tax which is a tax on building. then in my opinion it cannot be denied, that unequals have been treated as equals. The fact that by the amendment the distinction between building constructed before 1969 and thereafter has been abolished, a fact upon which learned Government Pleader relied, does not help the matter, If anything it makes the position worse. From this aspect one might have argued that because of the cost of building after 1969 and land valuation there was some scope of taking the cost of the buildings and land as the basis for classification. But even that position is no longer open now. It may be that in a new city this problem does not arise in such an acute form where buildings have cropped up more or less simultaneously. But as in Bombay so in Calcutta there are areas where some buildings in Burrabazar or Cossipore or even in Chitpore five-storied building had been built a long time ago perhaps in the early part of this century and let out to tenants at very low rent to subject them to be treated equally with buildings in 1970"s and around in the post areas of Calcutta and make only use for residential and commercial or residential basis the sole distinction of difference for the imposition of different rates, in my opinion, is violative of Article 14 of the Constitution.

5. After the said Multi-storied Act, 1975 was declared ultra vires, the impugned Act, namely the West Bengal Multi-storied Building Tax Act, 1979 was enacted on 24th day of September, 1979 with retrospective effect with from 1st day of July, 1975 by the State Legislature. The provisions of the said Act which are relevant for the purpose of this appeal are set out as follows:

2(a) "annual value" means annual value per square metre of the covered space of any multi-storied building or part thereof as determined u/s 6;

(c) "covered space" means the total Floor area excluding the thickness of walls and includes the space of covered courtyard, gangway, garage, verandah, common service area and such other space as may be prescribed;

(d) "Multi-storied building" means a building on any land in an urban area consisting of five storeys and above;

(e) "Owner" includes the person for the time being receiving the rent of any multi-storied building or any part thereof whether on his own account or as agent or trustee or guardian for any person or society or for any religious or charitable purpose or as a receiver or administrator appointed by or under the order of any Court in respect of such building, or who would so receive such rent if the multi-storied building or part thereof were let to a tenant;

Explanation I - A member of a Co-operative Society to whom a multi-storied building or part thereof is allotted or leased under a house building scheme of the society shall be deemed to be the owner of that building or part thereof.

Explanation II - If any person holds any multi-storied building or part thereof under a lease or an agreement for sale or any other document pursuant to which possession has been obtained, such person shall be deemed to be the owner of that building or part thereof;

3. Levy or tax.- (1) Notwithstanding anything to the contrary contained in any other law for the time being in force but subject to other provisions of this Act, there shall be charged and levied for every year a tax (hereinafter referred to as "the tax") on every multi-storied building.

(2) The tax in respect of a multi-storied building shall be payable by the owner thereof to the State Government,

(3) The tax shall be levied per year or part thereof on the covered space of any multi-storied building or part thereof at the rates specified below:

I-(i) where the annual value does not exceed

Rs. 30 per square metre. --Fifty paise per square metre.

(ii) where the annual value

exceeds Rs. 30 but does not --Rupee one per square metre.

exceed Rs. 60 per square metre.

(iii) where the annual value exceeds --Rupees two per square metre.

Rs. 60 but does not exceed Rs. 100 per square metre.

(iv) where the annual value exceeds -- Rupees three per square metre.

Rs. 100 but does not exceed Rs. 150 per square metre.

(v) where the annual value exceeds --Rupees four per square metre.

Rs. 150 per square metre.

II. In the case of a multi-storied building or part thereof used for commercial or industrial purposes, the annual of tax computed in accordance with the proceeding provisions of this sub-section shall be increased by fifty per cent,

5. Annual Value.- Where the annual value or any multi-storied building or part thereof has been computed by a municipal corporation or a municipality or any other local authority under the provisions of any law for the time being in force for the purpose of levying municipal or local tax, that computation divided by the, covered space of such multi-storied building or part thereof, as the case may be, shall be the annual value for the purpose of this Act and if such computation has not been made, the annual value shall be deemed to be the gross annual rent at which the multi-storied building or part thereof might be reasonably expected to let from year to year less an allowance of ten per cent for the cost of repairs and for all other expenses necessary to maintain the building or part thereof." in a state to command such gross rent divided by the covered space of such multi-storied building or part thereof, as the case may be.

6. The appellants herein in the writ petition filed before this Court challenged the validity of the impugned Act on the following grounds -

(a) By the impugned Act tax is sought to be levied on any building which is of five-storied and above; in other words, the buildings which are upto four-storied were not sought to be taxed and as such, there was no intelligible classification between four-storied and five-storied. building and that the said classification had no nexus with the object sought to be achieved by such classification.

(b) That the alleged vices for which 1975 Act was declared ultra vires had not been cured by the. impugned Act.

(c) Section 5 of the said Act provided that where the annual value of any multi-storied building or part thereof had been computed by a municipal authority or other authorities that computation divided by the covered space of such multi-storied building or part thereof as the case may be was taken to the annual value for the purpose of the said Act. By the impugned Act, only the covered space as defined under the Act was liable to be taxed and that after the annual value determination by the municipal authority which includes according to the petitioners, the valuation of land and building together and as such the said

formula for fixing the annual valuation was wholly unworkable.

(d) The criteria laid down for annual valuation as determined by the municipal authority did not and could not fulfil the object of the said Act. The impugned Act provides that the liability to pay tax was on the owner as defined in Section 2(f) of the said Act which provides that the person for the time being receiving rent of multi-storied building or any part thereof whether on his own account or as an agent, etc., or who would so receive such rent if i.e multi-storied building or part thereof were let to tenant and that by virtue of explanation II if any person holds any multi-storied building or part thereof under a lease or agreement for sale or any other documents pursuant to which possession had been obtained, such person should be deemed to be the owner of that building and part thereof. It was alleged that when the legislature decided that the subject matter of taxation is the unit, namely, a flat or a part of the building under the occupation of a separate owner or a tenant and as such there could not be any reasonable classification between the two flats -one situated in a five-storied building and the other situated in a four-storied building and that such a classification which is alleged had. no reasonable nexus with the object sought to be achieved by the impugned Act.

7. The vires of Section 25(2) of the said Act was also challenged. The relevant provisions is as follows:

25(2) Notwithstanding such repeal: -

any amount levied, paid, collected or recovered or purported to have been levied, paid collected or recovered as tax or penalty under the provisions of the West Bengal Multi-storied building tax Act, 1975 (hereinafter referred to as the said Act) or the rules made thereunder or under the provisions of the West Bengal Multi-storied Building Tax Ordinance, 1979, or the rules made thereunder shall be deemed to have been validly levied, paid collected or recovered under the provisions of this Act; and

any proceeding commenced or purported to have been commenced for the assessment, collection or recovery or any amount as tax or penalty under the provisions of the said Act or the rules made thereunder or under the provisions of the West Bengal Multi-storied Building Tax Ordinance, 1979 or the rules made thereunder shall be deemed to have been commenced and conducted in accordance with the provisions of this Act and if not already completed shall be continued and completed in accordance with the provisions of this Act.

8. It was contended that when the 1975 Act was declared ultra vires, the state legislature had no jurisdiction and/or competency to validate the levy and collection made under the Act which was declared ultra vires and such validation of levy and collection in respect of the Act which was declared ultra vires by the Court, is a direct inroad to the judicial, power of the State. It was also contended that he legislature has competency to amend the Act, taking away the basis of the judgment with respective effect and by that process only can validate the

levy and collection which had been already made on the basis of the provision of the law originally declared ultra vires. The levy and collection made on the basis of a law which was declared ultra vires by the Court, could not be validated by the legislature in the manner it has been done.

9. It was contended on behalf of the petitioner that by the impugned Act, the State Government sought to impose tax on multi-storied building on the basis of floorage area. In support thereof reliance was placed on the judgment of the Kerala High Court in the case of *The State of Kerala v. Haji K. Haji K. Kuchipokker Kutty Naha and others* reported in AIR 1987 Ker 114 wherein in Kerala High Court held that classification of buildings on the basis of floorage area adopted in Kerala Buildings Tax Act, 1961 was not founded on an intelligible differentia and was struck down as violative of the provisions of Article 14 of the Constitution of India. Reference was made to the decision of the Mysore High Court in the case of *P. Bhuvanaswariah and others v. The State of Mysore and others* reported in AIR 1965 Mys 170 wherein the Mysore High Court also took the similar view that the classification based on floorage of building was not rational and the said classification had no just relationship with the object of the Act. It was further contended that when the subject matter of taxation is the unit or a part or whole of particular premises, in that event, a particular flat or a part of a building in a five-storied and four-storied building cannot be differentiated as a person occupying a flat in a four-storied and five-storied building enjoys the same benefit and that so far as the person in possession is concerned both in respect of a flat in four-storied and five-storied building stands on the same footing and as such the attempt to impose tax on flats situated in five-storied building is wholly unreasonable and discriminatory.

10. Mr. A. P. Chatterjee, Senior standing Counsel appearing on behalf of the State, submitted in the first place that the definition of "owner" as provided in Section 2 of the said Act was not exhaustive and by Explanation I and II, the definition of owner, the meaning of the owner had been extended and in order to mitigate the hardship of the owners of multi-storied building, the legislature had imposed such liability to the tenant or tenants occupying particular flats in a multi-storied building should be deemed to be the owner for the purpose of levy and collection of tax under the said Act who should be liable to pay such tax. It was also pointed out that the impugned Act did not suffered from the vice of arbitrariness or discrimination inasmuch as the legislature had made a classification between building below five-storied and above five-storied and that such classification is a reasonable classification having nexus to the object of the said Act, It was further contended that the system of valuation of assessment as provided in the said Act is a reasonable one inasmuch as on the basis of annual value as determined by Section 5 of the said Act, tax had to be levied by different rates depending upon the area as provided in Section 3(3) of the said Act. It was also contended that if the annual value of any multi-storied building as a whole had been assessed by the municipal authority as one unit, in that event, the annual value of the whole building has to be determined under the

instant Act and that the said annual value should be split up in respect of a part of the building in occupation of a tenant or a lessee as provided under the said Act proportionately and in respect of separate tenants or owners of a different parts shall be assessed in the manner provided in Section 3(3) of the said Act which could not be said to be arbitrary and or unreasonable by any stretch of imagination. It was further contended that when the annual valuation under the Act had not been determined as provided in the first limb of Section 5 of the said Act, in that event, under the second part of the Section 5 of the said Act, the authority under the said Act had itself to assess annual value of the building on the basis of rental value which should be deemed to be gross annual rent at which the multi-storied building or a part thereof might be reasonably expected to let from year to year less certain allowance and expenses. According to Mr. Chatterjee, the impugned Act had made provisions to meet all the contingencies. It was next submitted by Mr. Chatterjee that the classification of four-storied and less and five-storied and above had a reasonable classification and the economic wisdom of a tax is within the exclusive province of the legislature and that the only question to be considered by the Court is whether there is rationality in the belief of the legislature that capacity to pay the tax increased by and large with an increase of receipt. Mr. Chatterjee contended that the object of the Act was mainly and plainly for collection of additional revenue by the State Legislature had power to make such law by virtue of the provisions of Entry 49 List II of the Seventh Schedule of the Constitution of India. Mr. Chatterjee further contended that classification made in the instant case was founded on intelligible differentia which defined persons that are grouped together from others left out of that group and that the differentia had a reasonable relation to the object sought to be achieved by the Statute in question which is collection of additional revenue for the State.

11. Mr. Chatterjee, learned Advocate appearing on behalf of the respondents, relied upon the decision, of the Supreme Court in the case of New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others, wherein the Supreme Court held that flat rate method according to the floor area could only be applied where the majority of the properties are so nearly alike in character as could be regarded identical for rating purpose. It was further contended that by the impugned Act, the defects for which the earlier Act was struck down, had been removed and that by the impugned Act, and that tax is imposed on the basis of the annual value of the premises in question determined or ascertained under the provision of Section 5 of the said Act which will vary from house to house depending upon the valuation; as determined by the Municipal Authorities and was made final which was binding upon the owner of the premises in question. Multi-storied Buildings Situate in different area will have different valuation and incident rate of taxes would vary in each case and that it was not a case of imposition of tax at a flat rate on the basis of floorage area. It was namely to ascertain annual value on the basis of the municipal valuation is a method which is time tested method and the

same must be accepted as a reasonable basis for determination of the annual value of the premises for the computation of tax.

12. The learned, Trial Judge by the judgment rejected all the contentions of the writ petitioners and declared that the Act as a valid piece of legislation.

13. The impugned Act has imposed a tax on multi-storied buildings as defined in the Act. It was contended that the said Act was discriminatory and violative of the provisions of Article 14 of the Constitution of India, on the ground that there is no basis of making classification between buildings having five-storied or above and buildings below that of five-storied. It was also contended that there was no reasonable basis for making classification between a part or a flat in a multi-storied building and in non-multi-storied building on the ground that parts of the two buildings or flats - one situated at a multi-storied building and the other at a non-multi-storied buildings may be equal and enjoy the same benefits. The decisive question is whether the classification drawn in the statute in question are reasonable in the light of its purpose. In the instant case, the purpose of the law is known, namely, imposition of tax upon multi-storied buildings. In the instant case the Legislature has made classification between multi-storied buildings and non-multi-storied building for the purpose of imposition of tax. In other words, buildings having five floors have been constituted a separate class for the purpose of imposing tax under the impugned Act. The Supreme Court of India in the case of *S. Kodar Vs. State of Kerala*, held while considering question of vires of the provision of Tamilnadu Additional Sales Tax Act, 1970 that A large dealer occupies a position of economic superiority by reason of his volume of business and to make the tax heavier on him both absolutely and relatively is not arbitrary discrimination but an attempt to proportion the payment to capacity to pay and thus to arrive in the end at a more genuine equality. The capacity of a dealer in particular circumstances, to pay tax is not an irrelevant factor in fixing the rate of tax and one index of capacity is the quantum of turnover. The argument that while a dealer beyond certain limit is obliged to pay higher tax when other bear a less tax and it is consequently discriminatory, really missed a point namely that the former kind of dealer are in a position of economic superiority by reason of their volume of business and form a class by themselves. They cannot be treated as at par with comparatively small dealers. An attempt to proportion the payment to capacity to pay and thus bring about a real and factual equality cannot be ruled out irrelevant in levy of a tax on the sale or purchase of goods. The object of a tax is not only to raise revenue but also to regulate the economic life of the society". It is also firmly established principle that in a Taxing Statute the Legislature is vested with the power to decide or to choose the subject matter of taxation. Economic wisdom of a tax is within the exclusive province or jurisdiction of the legislature. The Supreme Court observed in the case of *Ram Krishna Dalmia Vs. Justice Tendolkar* reported in *A. I. R. 1958 S. C. 539* at page 547-548 wherein the Supreme Court had summarised the law on the subject clearly as follows:

It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass test permissible classification two conditions must be fulfilled, namely, (i) that classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a relation to the object sought to be achieved by the statute in question. The classification may be founded on different test, namely, geographical or according to objects or occupation or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

14. In the case of *Khandige Sham Bhat v. Agricultural Income Tax Officer* reported in 1963 S. C. 591, the Supreme Court observed that though a law *ex-facie* appears to treat all that fall within a class alike, if in effect that operates unevenly on persons or property similarly situated, it may be said that the law offends equality clause. It will be then the duty of the Court to scrutinise the effect of the law carefully to ascertain its real impact on the persons or property similarly situated. Conversely, a law may treat persons who appear to be similarly situated differently; but on investigation they may be found not to be similarly situated. To state it differently it is not the phraseology of a statute that governs the situation but the effect of the law that is decisive. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstances arising out, of a peculiar situation some included in a class get an advantage over the others, so long as they are not singled out for special treatment. Taxing law is not an exemption to this doctrine. But in the application of the principles, the court in view of the inherent complexity of fiscal adjustment of the diverse elements, permit a larger discretion to the legislature in the matter of classification, so long it adheres to the fundamental principles underlying the said doctrine.

15. The power of the Legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways. It was further held that it is true that taxation law cannot claim immunity from the equality clause of the Constitution. The taxing statute shall not be also arbitrary and oppressive, but at the same time the court cannot for obvious reasons meticulously scrutinize the impact of its burden on different persons or interests. Applying the principles laid down by the Supreme Court, we are of the view that the classification made between multi-storied buildings and other buildings fully satisfies the two conditions, namely, that the classification is founded on an intelligible differentia which distinguishes things that are grouped together from others left out of the group and that differentia have a rational relation to the object sought to be achieved by the statute in question. Further, in the area of tax and economic legislation there are a great number of good reasons for judicial self-restraint. Such legislation is directed to practical problems, the economic mechanism is highly sensitive and complex and this depend to a great extent upon meticulous assessment of condition which the Legislature alone is

competent to make. 16. The Legislature in the instant case treated all multi-storied buildings differently from non-multi-storied building which admittedly stands on different footing. It is common knowledge that Multi-storied buildings in this city have been started to be constructed in only a short time ago. The Multi-storied buildings compared to older buildings have higher rental value. The Multi-storied buildings, by reason of being high rise more intensively use the land upon which they have been erected Multi-storied buildings can be reasonably differentiated from other buildings. In our view, therefore, the classification made by the Legislature in this behalf is reasonable in the light of its purpose and as such the same cannot be held to be discriminatory and violative of the provisions of Article 14 of the Constitution of India.

17. The method of valuation as provided by Section 5 of the said Act, in our view, provided a reasonable method for sufficient Safeguards, further, the Section 13 of the said Act provides for, an appeal against the order of assessment and there is also a provision for revision u/s 17 of the said Act.

18. The impugned Act was enacted for imposition of tax on multi-storied buildings and that the tax was leviable under Sections of the said Act at the rate specified in Sub-section(3) of Section 3 of the said Act. It was provided in Section 3(3) of the said Act that "In case of a multi-storied building or a part thereof used for commercial or industrial purpose, the amount of tax computed in accordance with the proceeding provision of this Subsection shall be increased by 50%". It was contended that if a part of the multi-storied building is used as a commercial purpose, in that event, the rate of tax of the entire house should increase by 50%. This submission is on the face of it is not correct inasmuch as under the scheme of the Act, it cannot be said that there shall be one assessment for the entire building as a whole. Under the scheme of the Act, there is clear provision for a part of the building and Mr. A. P. Chatterjee, learned Senior Standing Counsel also rightly conceded that if a part of a multi-storied building is used for commercial or industrial purpose, the tax of that part only shall be increased by 50% and the tax on the entire building shall never be increased by 50%.

19. Further the commercial purpose for the purpose of this Act has been explained in Section 3(3) (ii) "means the use of any multi-storied building or part thereof for the purpose of carrying on any trade or business or for running an office in relation thereto". Similarly the "industrial purpose" has also been explained in the similar manner. From this it is crystal clear that if a part of a multi-storied building is used for commercial or industrial purpose the tax on that part only should be increased by 50%. Accordingly, in our view, the appellant's contrary contentions in this behalf have no substance. Under the provisions of the impugned Act, tax is no longer to be levied on the basis of the floorage area as it was sought to be imposed by the provisions of the West Bengal Multi-storied Building Tax Act, 1975; Under the impugned Act, tax is levied on the basis of the annual value of multi-storied building or a part thereof determined in accordance

with the procedure laid down in Section 5 of the said Act. As such, the arguments made by the learned Advocate on behalf of the appellant in this regard have no merit and the case cited by the learned Advocate for the appellant in the case of (1) The State of Kerala and Others Vs. Haji K. Haji K. Kunhippokker Kutty Naha and Others, and (2) P. Bhuvanieswariah and Others v. State of Mysore and Others reported in AIR 1965 Mys 170 have no manner of application in the instant case. The earlier Act was struck down as the tax was sought to be levied on the basis of the floorage area, but in the instant case, tax is not sought to be levied on the basis of floorage area, but on a different basis, namely at different rates on the basis of the annual value determined in accordance with the provisions of Section 5 of the said Act which in our view, is reasonable and the same cannot be said to give rise to inequality. The method for determination of annual value as provided u/s 5 of the said Act is regarded as a valid basis for making assessment and on the said manner and such a method for determination of annual value has been prevailing in his country from a long time. It may be pointed, that when an annual value is determined by the Municipal Authorities, there is a provision for objection and there is further provision for appeal and this annual value is ultimately finalized and on the basis thereof, the municipal taxes are levied and collected. This is a well-known method of valuation which, in our view, is a very reasonable one and the appellant cannot make any complaint in this behalf.

20. We do not find any merit in the contentions that under the scheme of the said Act unequals have been treated as equals resulting in discrimination, inasmuch as the method adopted by the said Act for ascertaining the annual value, in our view is a well recognised and a sound method and each property will have its annual value separately and there is no scope for treating unequals as equals for the purpose of levy and collection of tax under the said Act; Further different rates have been prescribed in Sub-section 3 of Section 3 of the said Act. As such there is no scope of making any complaint that the provisions of Section 8(3) of the said Act has resulted in discrimination.

21. The further contention of the appellant that unit of assessment being a part of a multi-storied building, the impugned Act is discriminatory as it was alleged that there was no basis for making classification between a flat situated in a multi-storied building and four-storied building. Under the scheme of the Act, true where a part of a multi-storied building is in occupation of a lessee or if a person is in occupation of a part of the premises under an agreement for sale in respect of which possession has been obtained or a member of a co-operative society to whom a part of such multi-storied building has been allotted or leased. Such persons were treated to be owner and under the scheme of the Act, in such case the tax shall be imposed on the basis of the annual value of that part of the premises as provided under Sub-section 3 of the said Act. The legislature for the purpose of classifying buildings which are sought to be taxed had selected building, which are five-storied or above and that in such matter when Legislature in its wisdom had chosen to impose tax on such building which on the

face of it forms a distinct class from the class left out of the operation of the Act is a reasonable classification and that the same could not be challenged on the ground of discrimination inasmuch as the classification between the building four-storied and below and building five-storied and above in our view is a reasonable classification and that a flat in a multi-storied building stands on a different footing from that of a flat situated in a four-storied building. Accordingly we do not find any force in the contention on behalf of the appellant that when unit of assessment is a part thereof or a Flat there was no basis of classification between Flats in buildings which are four-storied and below and flats situated in buildings which are five-storied or above.

22. With regard to the contentions of the learned Advocate that the learned Trial Judge's observation in the judgment appealed from with regard to the duty to file return only by the persons mentioned specified in the main definition "owner" had created an anomalous position and that in the absence of a specific provision to make assessment separately laying down elaborate procedure, it will give rise to a confounding controversy which would give scope for proceeding against person who is not liable to pay the tax either for the whole building or for any particular part or parts thereof. On plain reading of the definition of the word "owner" u/s 2(f) of the said Act read with Explanation I and II thereof, the legislature made it abundantly clear that the liability to pay tax is upon the owner as defined in Section 2(f), of the said Act in the absence of the persons who should be deemed to be the owner of the entire or a part or parts of the building as specifically provided in Explanation I and Explanation II to Section 2(f) of the said Act, Section 3(3) read with Section 5 of the said Act provides for levy and collection of the tax under the said Act, in respect of a part of a multi-storied building. As to the contention that under the Act, the assessing authority has the right to levy the tax according to its choice on some who may not have any liability under the law, we are unable to agree that this is a proper reading of Section 3(3) read with Explanation I and II of the said Act. The expression "owner" also includes persons who are also deemed owners and who may be liable to pay tax in respect of the whole of the premises or a part or parts thereof as the case may be. The expression "owner" should be read as owners and deemed owners as the case may be. Where a part or parts of a multi-storied building is in occupation of a deemed owner or owners; whether or not there had been separate municipal valuation or computation separately in respect of that part or parts in occupation of such deemed owner or owners. In case separate municipal valuation had not been made in respect of a part of the multi-storied building for the purpose of levy and Collection of tax under the impugned Act in respect of that part or parts of the building, the annual value thereof had to be computed in accordance with the procedures laid down in the second limb of Section 5 of the said Act. We are unable to agree with the submission of Mr. Chatterjee that in all cases where municipal valuation had not been made separately for a separate part, assessment of tax under the Act had to be made on the basis that whole of the premises which is to be treated as one unit and.

thereafter tax had, to be collected proportionately having regard to the area of the part or parts thereof. The scheme of the Act clearly provides that the person who is deemed as a owner of a part of a building, is liable to pay tax in respect of the very part of which he is the deemed owner and for that purpose a separate assessment has to be made in respect of that part in accordance with the provisions of Section 3(8) read with Section 5 of the said Act. In case assessments are liable to be legitimately questioned. A statute is intended to be legal and it has, therefore, to be read in a manner which makes it legal (rather than in manner which makes it legal) rather than in a manner which made illegal.

23. It was next contended by the learned Advocate appearing on behalf of the appellant that the impugned Act is a tax on multi-storied buildings. But the procedure laid down for determination of annual value not only takes into account the annual value of the multi-storied building or in other words, the covered area but also the uncovered area inasmuch as it was contended that under the Municipal Act, if a premises in question comprised building portion and vacant portion in the same premises, in that event, one single value is determined by the Municipal Authority both for covered and uncovered area and that the first limb of the Section 5 of the said Act provides that the annual value for the purpose of levy of tax under the impugned Act, the annual value of any multi-storied building or a part thereof computed by municipal corporation divided by covered space of such, multi-storied building or a part thereof is determined. Consequently, the value of the vacant land is taken into consideration for the purpose of levy and collection of tax under the impugned Act. There was no material on record and there was no pleading in this behalf that as a matter of fact, the value of a vacant land of the multi-storied building has been taken into consideration or is being considered under the provision of Section 5 of the said Act and consequently, this is a mode prescribed by the Legislature for the purpose of determination of the annual value for computation of tax under the impugned Act; In the absence of any material on record it is not possible to make determination on any hypothetical basis and that it is not known whether while computing the annual value of any particular multi-storied building, some vacant space comprised in the said premises has been taken into consideration or not and therefore on this ground the provision for assessment of annual value could not be declared illegal or ultra vires.

24. It was last contended by the learned Advocate appearing on behalf of the appellants that the learned Trial Judge was wrong in not declaring the provision of Section 25(2) of the said Act as ultra vires. The learned Trial Judge in his judgment held that Section 25(2) of the said Act could not be given effect to because if and return had been filed and assessment completed under the provision of 1975 Act, the tax could not be realised as a method of computation of the tax on the basis of covered space have already been declared ultra vires as mentioned above. Thereafter, fresh returns had to be filed and fresh assessment had to be made under the provision of the 1979 Act, which was passed with retrospective effect from 1st July 1975. The learned Senior Standing

Counsel could not also sustain the validity of the provision of Section 25(2) of the said Act, when the 1975 Act was struck down by this Court and the impugned Act have been passed with retrospective effect so that the period under the said Act may be covered by the impugned Act and assessment could be made on multi-storied building on a basis different from the basis provided in 1975 Act. As the said Act of 1975 was struck down the assessment, if any, made on the basis of the said Act which was struck down should be treated to be invalid and it was beyond the competence of the legislature to validate the proceeding including assessment and collection of tax under an Act which was declared ultra vires and invalid. Firstly, we do not find any reason for enacting the provision of Section 25(2) of the said Act particularly in view of the fact that the impugned Act, namely, the Act of 1979 was passed with retrospective effect, i.e., from 1st July 1975, the date on which, the said Act of 1975 was passed and given effect to. In other words, it was open to the assessing authority to levy and collect tax in respect of multi-storied building determined in accordance with the provision of the impugned Act with effect from 1st day of July, 1975. But the legislature, in our view, had no competence to validate action taken under an Act which was declared ultra vires. Of course it is open to the Legislature to amend, the law with retrospective effect taking the basis of the judgment for which the Act, was declared ultra vires but it is not open to the Legislature to validate the levy and collection made under an Act which was declared ultra vires. In the case of *State of Tamil Nadu and Another Vs. M. Rayappa Gounder and Others*, , the Supreme Court struck down a similar attempt to validate action taken under an ultra vires Act without amending it retrospectively by taken away the basis of the judgment of the Court. It was held that such an action to validate tax under an Act which was declared ultra vires amounted to direct inroad by the Legislature of the State upon the judicial power of "the State. Accordingly, we hold that Section 25(2) of the said Act is ultra vires as it is repugnant to our constitution.

25. It was also submitted on behalf of some housing co-operative societies that the said housing co-operative societies ought to have been 16ft out of the scope of the Act, otherwise the same would be repugnant to Section 89 of the Bengal Co-operative Societies Act. It was further submitted that after distribution of all the flats in the Co-operative Society each member becomes the owner of the flat including undivided portions of the building and as such there is no owner of the whole building. It was also submitted that these individual owners of the flat in multi-storied building would not be treated at par with the owners of their multi-storied building as the same would be treating unequal as equals and consequently violative of the provisions of Article 14 of the Constitution of India. The question whether a particular building is a multi-storied building or not is purely a question of fact, which is left open and to be adjudicated by the assessing authority on the basis of the materials placed before that authority.

26. In our view there is no merit in these submissions. High is a tax on the multi-storied building and in case of Multi-storied Housing Co-operatives, we have already held that the liability to pay the tax will be on the members of the Co-

operative Society in respect of the flat allotted to such member and was occupying as such, who would be liable to pay tax for this flat only. Same is also the position in respect of portions of such multi-storied building under occupation of lessees who are also liable for that portion of the multi-storied building. It is a tax on such multi-storied building and if the member of the housing Co-operative Society occupies a flat in such building he is liable to pay tax for his flat. We do not find any basis for alleging discrimination in the matter. We do not also find any reason in the submission that it would be repugnant to the provision of Section 89 of the Co-operative Societies Act and, as such, this contention fails.

27. We accordingly hold that except in respect of Section 25(2) of the Act all other contentions raised by the writ petitioners were rightly" rejected by the learned Trial Judge. We have found that Section 25(2) is ultra vires, and, therefore, the said provision ought to be declared ultra vires

28. We accordingly modify the judgment of the learned Trial Judge. We uphold his decision dismissing the writ petition so far as the same challenged the provisions of the Co-operative Societies Act except Section 25(2) of the said Act. We declare that Section 25(2) of the Act as ultra vires and command the respondents not to enforce the provisions of Section 25(2) of the Act. Subject to the aforesaid modification we dismiss the appeal without any order as to costs. All interim orders are vacated.

Mookerjee, C.J.

28. I agree.