(1990) 03 CAL CK 0009

In the Calcutta High Court

Case No : Matter No. 813 of 1984 and Other Fifteen Writ Petitions

Brooke Bond India Ltd. APPELLANT

Vs

State of West Bengal RESPONDENT

Date of Decision : 23-03-1990

Acts Referred:

Bengal Municipal Act, 1932 — Section 140
Constitution of India, 1950 — Article 13, 14, 19(1), 19(6), 21
Government of India Act, 1919 — Section 45A
West Bengal Town and Country Planning Act, 1979 — Section 102
West Bengal Urban Land Taxation (Amendment) Act, 1983 — Section 10, 11, 3(2), 6, 7
West Bengal Urban Land Taxation Act, 1976 — Section 12, 16, 17, 18, 19

Citation : (1995) 1 ILR (Cal) 193

Hon'ble Judges : Monoranjan Mallick, J

Bench : Single Bench

Advocate : P.P. Ginwalla, Bhaskar Gupta, Pradip Ghosh and Samir Chakraborty, for the Appellant;R.N. Bajoria and J.P. Khaitan, for the Respondent

Final Decision : Dismissed

Judgement

Monorakjan Mallick, J.—The writ Petitioners in all these writ petitions have challenged the constitutional validity of the West Bengal Urban Land Taxation Act, 1976 (hereinafter referred to as the Act). All these writ Petitioners have moved these writ petitions after a public notice has been issued by the Government of West Bengal drawing the attention to every owner of land and buildings situated within the urban agglomerations falling within the category ''A'' and ''B'' as specified in the Urban Land (Ceiling and Regulation) Act, 1976, that every, owner is required to pay the urban land tax as well as land tax under the provisions of the West Bengal Urban Land Taxation Act, 1976, as amended by the West Bengal Urban Land Taxation (Amendment) Act, 1983.

2. The Respondent; State of West Bengal, have opposed all these writ petitions by filing affidavit-in-opposition in each of these writ petitions. In all these writ petitions as the constitutional validity of the various provisions of the Act have

been challenged, they have taken up together for reasons of convenience.

3. Mr. Ginwalla, learned Counsel appearing in the writ petition filed by Brooke Bond India Ltd., has challenged the constitutional validity of Sections 4, 3 and 35 of the Act. He has also urged that the tax imposed by the said Act is unreasonable, confiscatory and expropriator in nature. He has also submitted that Sections 17, 18 and 19 of the Act providing for payment of development charge and conversion charge is ultra vires, as it is beyond the competence of the State Legislature. He has also submitted that no guideline has been laid down in the Act as to the manner in which the tax is to be determined subject to the upper limit.

4. Mr. Bhaskar Gupta, learned Advocate appearing for the Orient Paper & Industries Ltd. and Anr., have adopted the submissions made by Mr. Ginwalla and have further raised additional grounds challenging Sections 4 and 4A of the'' said Act. Mr. Pradip Ghosh learned Advocate appearing on behalf of the Peerless General Finance & Investment Co. Ltd. and Kolay Properties Pvt. Ltd., has adopted the arguments made by Mr. Ginwalla, and also submitted some additional grounds of challenge of Section 4 of the said Act. He has also challenged Section 12 of the Act alleging that it is violative of Article 21 of the Constitution. The learned Advocates appearing in the other writ Petitioners have not made separate arguments challenging the constitutional validity of the. Act but have adopted the arguments made by Mr. Ginwalla, Mr. Bhaskar Gupta and Mr. Pradip Ghosh.

5. Mr. R. N. Bajoria, learned Counsel appearing on behalf of the State of West Bengal and other Respondents in all these writ petitions has refuted all these submissions made by the learned Advocates for the writ Petitioners and has sought to controvert all the submissions challenging the constitutional validity of the Act and has urged that none of the provisions of the Act as amended by 1983 Amendment Act can be struck down as ultra vires.

6. I would now record, in detail, the submissions'' made by Mr. Ginwalla challenging the various previous provisions of the Act.

7. Following are the submissions made on behalf of . Mr. Ginwalla:

(a) Section 4 of the Act provides that a tax referred to as ''Urban Land Tax'' shall be levied by the State Government for every financial year commencing from April 1976 upon the quantity of land occupied by any building and on land appurtenant to such building in one more of the urban agglomerations and collected from the owner of such building. The urban land tax so far as it relates to land occupied by any building shall be levied at the rate of 1 % of the market value of such land. Once land is occupied by any building, then the land and the building become distinctive entity and the land occupied by the building ceases to hay a separate existence as land and it can no longer be taxed as such. Once a building is constructed on vacant land, the building can only be the subject-matter of the tax. Further, the, land on which a building is constructed cannot have a market value which is separate from the building constructed thereon. There can be no land which is appurtenant to land and therefore land cannot be separately assessed when there is a building thereon.

(b) The Act treats all land with building on an equal footing irrespective of'' the condition of the building, location of the building whether the same is self-occupied or tenanted and no classification and/or categorisation is made on the said basis. Therefore, the act is discriminatory and violative of Article 14 of the Constitution as it treats unequal as equals.

(c) Section 3 of the Act which provides for levy of land tax is ultra vires as it does not provide for any classification and it treats all categories of land wherever situate on an equal footing and the said lands are sought to be taxed at the same rate, namely, on the quantity of land retained at 1 % of the market value of such land.

(d) Sections 17, 18 and 19 providing for payment of development charge and conversion charge is ultra vires as it is beyond the competence of the State Legislature.

(e) Section 35 of the Act confers unguided power to the State Government to exempt any-person or class of persons, either wholly or in part, from the liability to pay any tax or charge under tire Act and is therefore discriminatory and violates Article 14 of the Constitution.-(f) The Act is unreasonable, confiscatory and expropriator in nature and no guideline has been laid down in the Act as, to the manner in which the tax is to be determined subject to the upper limit, because Section 4 only lays down the upper limit of the tax and states that urban land tax so far as it relates to land occupied by any building shall be levied at the rate Of 1 % of the market value of such land.

8. The submissions made by Mr. Bhaskar Gupta, learned Counsel, may be briefly stated as follows:

(a) Section 4 of the Act contained un-chartered and unguided powers and is, therefore, arbitrary and unreasonable and infringes Articles. 14 and 19(1)(g) of the Constitution.

(b) There is no provision in the Act including'' Section 4 or 4A thereof which provides the manner in which land occupied by building is to be assessed. Section 4 of the Act seeks to tax both vacant (and land occupied by any building. Section 4(2) of the Act provides that in respect of the land occupied by any building urban land would be levied @ 1% of the market value of ''such land'', i.e. -the land occupied by the building. But Section 4A of the Act does not provide to any mode or manner as to how the market value of land occupied by building is to be determined for the purposes of the said Act, because Section 4A of the said Act speaks of ''land'' alone. There is-no definition of the word ''land'' either in the Act or in the Urban Land (Ceiling and Regulation) Act, 1976. Therefore, the ordinary dictionary meaning of land has to be taken. The dictionary meaning of the land means vacant land, therefore, there is no provision for any mode or manner as to how the market value of land occupied by any building is to be determined. For example, for the Bengal Municipal Act 1932, wherein also tax is levied on land occupied with building guideline has been provided as to how and in what manner assessment has to be made in respect of building and land together in Section 140 of the Bengal Municipal Act, but no machinery or guideline is provided in the Act including Section 4(2) or Section 4A thereof as to how land occupied by any building is to be assessed.

(c) The arbitrariness and the unguided and un-chartered power which is provided in Section 4 of the Act would be apparent from the fact that if a particular land belongs to ''A'' and the building thereon belongs to ''B'', there is no provision in the Act empowering the owner of the building to recover the tax under the Act from the owner of the land, although the owner of the building" has to pay tax under the Act. Although the lax is on the quantity of land, the same is to be recovered form the owner of the building in view of the definition of the term ''owner'' as contained in Section 2(cc) of the Act.

(d) Assuming it is argued that either under the provision of the Contract ^ct or under the terms of agreement to be incorporated, the owner of the building can recover the proportionate tax on the land on which building is situated from the owner thereof, but no menas can the owner of the building realize from the owner, the amount in respect of past period, and even under the Contract Act such recovery cannot be effected in the absence of any provision to that effect in the subject agreement or contract. In the premises, in any event the retrospective operation of Section 4 of the Act in respect of land occupied by any building is illegal, invalid and bad.

9. Following arguments have been made by Mr. Pradip Ghosh:

(a) Section 41 of the Act seeks to impose the tax on the land occupied by any building but not on the building itself. The land occupied by any building merges with the building and ceases to have any separate or distinct existence apart from the building. Thus, the tax is sought to be imposed on something that has no separate existence of his own and cannot be the subject-matter of tax under Entry No. 49 of List II of the 7th Schedule to the Constitution, namely, land and building even though the expression ''land and building'' in Entry No. 49 has been interpreted to mean land or building or both. There can be tax on the vacant land or a tax on building, but there cannot be any tax on land occupied by building, as the land no longer remains but becomes a part of the building having merged with the building.

(b) According to preamble of the Act the object of the Act is to impose a tax on land only arid not on building. But the tax that is imposed u/s 4 is not on land but on integral part of the building. Therefore, there is a direct contradiction between the object of the legislation and the imposition of the tax actually made. ^

(c) Sections 4 and 4A require the Constitution as the tax sought to be imposed by those provisions is arbitrary and discriminatory and violative of Article 14 of the Constitution. The market value is to be determined in the manner provided in Section 4A. For this purpose, the Commissioner or the persons appointed under Sub-section (i) of Section 8 will form an opinion as to the price which the land would have fetched if sold in the open market. in the relevant financial year and in doing so he shall take into consideration of the sale price of the land in the same or comparable locality, this introduces air absurd and unworkable method which is bound to lead to arbitrary determination of market value and would inevitably lead to discrimination. It is hardly possible for any one to arrive at a reasonable sum as the market value, applying the test mentioned above.

(d) The expression of Section 4A in so far as the same treats the land which has a building thereon as part with vacant land is* arbitrary, discriminatory and would result in an artificially inflated market value being determined in respect of the land receiving interest of land which has already been used as a site in the building.

(e) Section 12 requires every owner? of building to submit returns and to pay tax in advance on the market value of urban land according to his won estimate. u/s 32 any person who fails to submit the Annual Return or knowingly furnishes incorrect information is liable to be punished for imprisonment. But it is impossible for the owner to submit any return on the basis of his own estimate since their cannot be a market value in respect of the land occupied by any building. Thus, the owner is exposed to the risk of a prosecution if he fails to submit the return because of his inability to arrive at an estimate of such market value. If he gives market value on the basis of conjecture he may be exposed to the prosecution on the ground of giving incorrect information. The liability imposed by Sections 12 and 32 are closely linked up with the provision of Sections 4 and 4A and arbitrariness of the said provision will affect the purpose of obligation u/s 12 and may result in a prosecution. According to the expanded scope of Article 21 of the Constitution, the law which exposes a person to the loss of his liberty must be just, fair and reasonable and such law must face the test of Article 14 of the Constitution. Such law cannot be arbitrary.

(f) The provisions of the Act are violative of Article 19(1)(g) of the Constitution. The Petitioners are carrying on business and the properties mentioned in the petitions are their business assets, particularly in the case of Kolay Properties Pvt. Ltd., the business is that of real property. Therefore, any unreasonable impost on the said properties will amount to an unreasonable restriction to the fundamental rights to carry on business under Article 300A of the . Constitution. In judging the reasonableness of the restriction one has to consider the provision of Article 19(6) which permits reasonable restriction being imposed in the interest of/ general public. In order to satisfy the test of reasonable connection between the restriction imposed and the object which is sought to be achieved. But in this case the object of the Legislature being taxing the urban land, but the tax is being imposed on an integral part of the building which is dearly beyond the declared object of the Act. The restriction cannot be considered to be reasonable within the meaning of Article 19(6) of the Constitution.

10. Thus, according to Mr. Ghosh, the provisions of the Act are violative of Articles 14, 19(1)(g) and 21 of the Constitution.

11. The West Bengal Urban Land Tax Act, 1976, originally came into force on April 1, 1976. It has been amended by the West Bengal Urban Land Tax (Amendment)'' Act, XX of 1977, which came into force with effect from April 1, 1977, and West Bengal Urban Land Tax (Amendment) Act, 1983, West Bengal Act of 1983, which has been brought into force retrospectively with effect from March 1, 1976. This is an Act to provide, for taxation of urban (and. The pre-able of the Act reads thus:

?whereas it is expedient in the public interest to provide for the taxation of urban lands and for matter connected therewith or incidental thereto; It is hereby, enacted in the twenty-seventh year of the Republic of India? by the Legislature of West Bengal, as follows.

12. The following main provisions of the Act are reproduced below:

Chapter I Preliminary (1) Short title and commencement:

(i) This Act may be called the West Bengal Urban Land Taxation Act, 1976.

(ii) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

(2) Divisions:

(i) In this Act, unless the context otherwise requires (a) ''Commissioner'' means the Commissioner of Urban Land Taxes, West Bengal, appointed u/s 8;

(b) ''development'' means the carrying out of building engineering or other operation in, over or under any land, or the making of any material change in any existing building or buildings, at a cost exceeding rupees twenty-five thousand, which has the effect of increasing the value of such land or building,

(c) ''financial year'' means the year ending on the 31st day of March, (1)(cc) ''owner'' includes any person for the time being receiving or entitled to receive, whether on his own account or as an agent, trustee, guardian or manager 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, the rent or profits of any land or building or both situated in any urban agglomeration in relation to which the term ''owner'' is used, and includes a mortgagee in possession.

Explanation?For the purposes of this Act, if any person holds any land or building or both under a lease for a period'' of ten years or more including its unexpired portion, such person shall be deemed to be the owner of such land or building, _and the taxes and charges leviable under this Act shall be collected from such person ;

(d) ''prescribed'' means prescribed by rules made under this Act, and (e) ''retained land'' means the quantity of vacant land. which a person is entitled to hold in terms of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976).

(2) Words and expressions used in this Act but not defined shall have the same meaning as in the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976).

Chapter II Land Taxes: (3) Levy of land tax. ^ (1) Subject to the provisions of Sub-section (3), a tax (hereinafter referred to as the land tax) shall be levied by the State Government for every financial year upon the quantity of retained land 1 (in one or more of the urban agglomerations and collected from the owner of such land at such rates and in such manner as hereinafter provided; 1(1) Provided that no land tax shall be levied on retained land if such land does not exceed two hundred square meters in any urban agglomeration falling within category A and three hundred square meters in any. urban agglomeration falling within category D in the State of West Bengal) 1(2) The (and tax shall be levied per annum on the quantity of retained land at one per cent, of the market value of such land.

(3) Notwithstanding anything contained in Sub-section (1) Sub-section (2), no land tax shall be leviable in respect of any retained land for a period 2 (seven) financial years commencing from the first day of April 1976.

(4) Urban Land Tax.

(1) A tax (hereinafter referred to as the urban land tax) shall be levied by the State Government for every financial year commencing from the first day of April 1976, upon the quantity of land occupied by any building 1 (and land appurtenant to such building in one or more of the urban agglomerations and collected from the owner of such building) at such rates and in such manner as hereinafter provided.

(2) The urban land tax, so far as it relates to land occupied by any building, shall be levied at the rate of one per cent, of the market value of such land; .

Provided that no urban land tax shall be levied on the market value of first three hundred square meters of such land in any urban agglomeration failing within category A, or on the market value of first four hundred square meters of such land in any urban agglomeration falling within category D, specified in Schedule 1 to the Urban Land (Ceiling and Regulation) Act 1976 (33 of 1976).

(3) The urban land tax, so far as it relates to land appurtenant to any building, shall be levied on the market value of such land at half the rate specified in Sub-section (2);

Provided that no urban land tax shall be levied in respect of such quantity of land as is required to be kept vacant under the provisions of any law for the time being in force;

Provided further that the land required to be kept vacant under the first provision shall in no case exceed five hundred square meters.

(4) No urban land tax shall be levied upon any land until the construction of a building has been completed thereon or until the building is brought into use whichever is earlier''s.

(5) Notwithstanding anything contained in Sub-section (1), no urban land tax, shall be levied and collected in respect of the land occupied by a building or the land appurtenant thereto if the building is used for carrying on any manufacturing process as defined in the Factories Act, 1948 (63 of 1948).

(Explanation ***) .

4A. Determination of market value:

For the purposes of this Act, .the market value of land shall be estimated to be the price which in the opinion of the Commissioner or the person appointed under Sub-section (1) of Section 8 and having jurisdiction, as the case may be, such land would have fetched if sold in the open market in the relevant financial year.

Explanation - In determining the market value of land, the Commissioner or the person appointed /under Sub-section (1) of Section 8 and having jurisdiction, as the case may be, shall take, into consideration the sale price of land in the same or comparable locality.

4B. Period of validation of market value determined.

The market value determined under this Act with reference to any financial year shall remain in force for such period as the State Government may, from time to time by notification in the Official Gazette, specify in this behalf and such period shall commence from such financial year.

Chapter III Development Charge and Conversion Charge 5. Development charge. The State Government shall, with effect from such date as may be notified in the Official Gazette levy a charge (hereinafter referred to as the development charge), on the carrying out of any development in any of the urban agglomerations.

(2) The development charge shall be levied at such rates as may be specified, by the State Government by notification in the Official Gazette, so, however, that such rates shall not exceed ?

(i) in an urban agglomeration falling within category A rupees one lakh per hectare of land,

(ii) in an urban agglomeration falling within category D? rupees forty thousand per hectare of land ;

Provided that the State Government may, in the public interest, by notification published in the Official Gazette for lower rates of development charge for different types of development.)

(3) The development charge shall be collected from the owner of the land or building falling within any of the urban agglomerations as aforesaid).

6. Conversion charge.

(1). The State Government shall with, effect from such date, as may be notified in the Official Gazette, levy a charge (hereinafter referred to as the conversion charge) on any and or building or both situated in any of the urban agglomerations whenever such land or building is changed from one use to another which is more beneficial in nature either by operation of law or by act of parties.

(2) The conversion charge shall be levied as such rates as may be specified by the State Government by notification in the Official Gazette so, however, that the rate shall not exceed for conversion-

(i) from agricultural use to commercial use, 35 per cent of .the increase in value of the land or building, as the case may be;.

(ii) from agricultural use to industrial use, 53 per cent of the increase in value of the land or building, as the case may be;

(iii) from commercial use to industrial use, 25 per cent of the increase in value of, the land or building, as the case may be ;

(iv) from residential use to commercial use, 30 per cent of the increase in value of the land or building, as the case may be;

(v) from residential use to industrial use, 40 per cent of the increase in value of the land or building, as the case may be;

Provided that no conversion .charge shall be levied in respect of any land or building where the area occupied by such land or building or both does not exceed five hundred square meters.

Explanation?For the purposes of this Act?

(1) ''commercial use'' means the use of any land or building or part thereof for the purpose of carrying on of any trade or business or for running an office in relation thereto ;

(2) ''industrial use'' means the use of any land or building or part thereof for carrying on any manufacturing process as defined in the Factories Act, 1948 (63 of 1948).

(3) The increase in the value of any rand or building on account of the change in

use shall be determined by the Commissioner in such, manner as may be prescribed.

(4) The conversion charge shall be collected from 1 (the owner of such land or building).

(5)?

7. Bar on conversion of agricultural land to non-agricultural use?

Notwithstanding anything to the contrary contained in any other law for the time being in force no person shall change any land situated within any of the urban agglomerations from agricultural to any other, use, except with the previous permission in writing of the Commissioner, Obtained in such manner as may be prescribed.

Chapter V. Assessment and Collection of Tax 12. Owners to submit returns:

(1) Every (owner) liable to pay any tax under this Act shall, within a period of six months from the beginning of the financial year, furnish to such authority, containing such particulars and in such manner as may be prescribed, an annual return of tax payable by him.

(2) Before any owner furnishes the return required by Sub-section (1), he shall estimate the amount which in his opinion is the market value of the urban land, and shall pay into any treasury or the Reserve Bank of India or the State Bank of India, in advance paid in the prescribed manner, the full amount of tax or taxes due from him under this Act according to such estimate.

(3) If the (owner) discovers any omission or other error in any return furnished by him, he shall at any time before the date due for furnishing the next return furnish a revised return sand shall, before he tiles the revised return, pay in the! prescribed manner into (any) Treasury or the Reserve Bank of India or the State Bank of India the excess amount of tax, if any, which was due from him than was shown in the original return.

(4) For the purpose of determining the amount of land tax or urban land tax the extent of retained land or land occupied by any building with land appurtenant thereto, as the case may be, and on the first day of April of the financial year to which the interim relates, shall be the basis.

Chapter VI Assessment and Collection of Charges 16. Assessment of development charge?

(1) Any (owner)-who intends to carry out any development shall apply to the Commissioner in such manner as may be prescribed, for the assessment of development charge payable by him.

(2) The Commissioner shall, on such application on being made, or if no such application in made, after serving a" notice on the (owner) liable for development charge, and after allowing reasonable opportunity to the (owner) concerned of

being heard determine the amount? of development charge, if any, leviable under this Act.

17. Payment of development charge?

(1) The (owner) on whom development charge is assessed shall pay the amount within such date, not more than sixty days from? the date fixed by? the Commissioner, to (any) Treasury or Reserve Bank of India or State Bank of India and upon such payment the Commissioner shall grant a certificate to the effect that the development charge has been paid,

(2) In the event of non-payment of the development charge within the due date, the Commissioner may, after giving an opportunity to the (owner) of being heard, impose a penalty not exceeding one and a half times the development charge, shall then be deposited in a Treasury or in Reserve Bank of India, or the State Bank of India with such date as may be fixed by the Commissioner.

32. Penalties. Any (owner) who (a) converts any agricultural and to any non-agricultural use without obtaining prior permission in writing of the Commissioner.

(b) fails to submit annual return under Chapter V, (c) knowingly furnishes incorrect information or . documents, or (d) obstructs the Commissioner, or any person or authority appointed under this Act, in the exercise of his powers, shall be punishable with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both and, when the offence is a continuing one, with a daily fine not exceeding fifty rupees during the period of the continuance of the offence.

(2) All offences punishable under this Act or Rules made thereunder shall be cognizable and bail able.

(3) No Court shall take cognizance of any offence under this Act or the Rules made thereunder except on complaint made with the previous sanction of the Commissioner.

35. Power to exempt?

The State Government may, if it considers necessary so to do in the public interest, exempt any person or class of persons, either wholly or in part, from the liability to pay and tax or charge under this Act.

13. I would first consider the submissions made by the learned Advocates for the Petitioners that Section 4 of the Act is ultra vires. The constitutional validity of Section 4 has been challenged mainly on four grounds, namely, (1) the State Legislature has no competence to levy tax on the land occupied by building and land pertaining thereto ; (2) provisions of Section 4 are violative of Article 14 of the Constitution being both discretionary and arbitrary ; (3) tax imposed by Section 9 is confiscatory and imposes an unreasonable restriction on the land to carry on business and whole property and is violative of Articles 19(1)(g) and 300A of the Constitution ; (4) retrospective operation of Section 4 in respect of

land occupied by building is invalid or illegal.

14. The first point for decision as to whether the West Bengal Legislature has any legislative competence to levy tax on the land occupied by building and the land appertaining thereto. The submissions in this respect on behalf of the learned Advocates for the Petitioners are that once a land is occupied by building then the land and the building become one distinct identity and the land so occupied by the building ceases to have a separate existence as land and can no longer be taxed as such, and once a building is constructed on the vacant land the building can only be the subject-matter of the tax. It is also urged that there can be no land which is pertaining to land and consequently land can only be separately assessed when there is no building thereto. In support of this submission, the Supreme Court decision made in D. G. Gouse and Co. v. State of Kerala AIR 1980 S.C. 275 (277-78, Paras. 21, 23), Per Singhal J has been referred \\o. Another decision of the Supreme Court made in State of Karaia v. P.P. Hassan Koya AIR 1968 S.C. 1201 (1202, Para. 5), Per Shah J has also been cited in which, the Supreme Court has held that in the matter of?

determining compensation payable in respect of land and building, compensation cannot be determined by certaining the value of the land and the "break up: value" of the building separately, as the land and the building constituted one unit, and the value of the entire unit must be determined with all advantages and potentialities.

15. Mr. P. N. Bajoria, learned Counsel appearing on behalf of the Respondents has submitted that the above submissions are not at all acceptable. According to him, the issue in question is fully covered by the decision of the Supreme Court in Assistant The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc., Per Ramaswami J Mr. Bejoria submits that Madras High Court disputing the competency of the State Legislature urging that the Madras Act is beyond the competence of the State Legislature and that the Supreme Court has negatived such contention. by holding that in pith and substance the Madras Urban Land Tax Act 12 of 1966 is imposing a tax on urban land at a percentage of the market value and is entirely within the ambit of Entry 49 of List II and within the competence of the State Legislature and does not in any way. trench upon the field of legislation of Entry 86 of List. I. It is also submitted by Mr. Bajoria that 0.G. Gouse''s case(Supra) has also approved this finding of the Supreme Court in the case of Assistant Commissioner of Urban Land Tax, Madras v. Buckingham Carnatic Co. Ltd. { Supra).

16. Mr. Bajoria also submits that the principle laid down in the case O. G. Gouse v. State of Kerala will not be applicable to this case, because in that decision the Supreme Court was not considering the question as to whether the State Legislature had any competence to impose tax on land when such land was occupied by building. But D. G. Gouse''s case is directly on the point and Buckingham Carnatic''s case is a decision in a different context.

17. Mr. Ginwalla has sought to distinguish the principle laid down in the Buckingham Carnatic''s case on the ground that under the Madras Act when the Urban Land Tax was imposed by the Statute the land was vacant land and the State Legislature had got the competence to legislate on such vacant land even though subsequently buildings were constructed thereon.

18. The contention of Mr. GinwaHa as well as of Mr. Bajoria is required to be considered in detail. There can be no doubt that Tamil Nadu Urban Land Tax Act, 1966, has been upheld by the Supreme Court as constitutionally valid. Mr. Bajoria has drawn my attention to some provisions of the Madras Act to bring home the point that the Madras Act also was an Act in which the tax was imposed on land occupied by the building and the contention of Mr. GinwaHa that when the Act was passed by the Legislature, the imposition was made only on urban vacant land or land site on which subsequently the buildings might have, been raised.

19. The following provisions of the Tamil Nadu Act have been pointed out by Mr. Bajoria in support of his submissions. In Section 2(9) the occupier has been defined as follows:

Occupier includes any person for the time being paying or liable to pay to the? owner, rent or any portion of the rent of the urban land or of the building constructed on the urban land or part of such land or building in respect of which the word is used or the damages on account of occupation of such land, building or part.

Section 2(10) defines owner as such:

Owner includes any person (including a mortgagee?in possession) for the time being receiving or entitled to receive, whether on his own account or as agent, trustee, guardian, Manager or Receiver for another person or for any religious or charitable purposes, the rent or profits of the urban land or of the building constructed on the urban land in respect of which the word is used.

He also points out that the definition of urban land in Section 2(3) clearly shows that when the Tamil Nadu Act has? been enacted was already urban land on which there was building.

20. Section 2(13) of the Tamil Nadu Act defines urban land as follows:

Urban Land means any land which is used or is capable of being used as a building site and includes garden or grounds, if any, appurtenant to a building but does not include any land which is registered as wet in the Revenue accounts of the Government and -used for the cultivation of wet crops. Explanation ; For the purpose of this clause any site on. which any building has been constructed shall be deemed to be urban land.

21. On considering the definition of occupier, owner and urban land as is found in Tamil Nadu Act, I am of the view that the Tamil Nadu Act is an Act of imposition

of tax on urban land, even if such urban land was occupied by any building at the time when the said Act came into force. So, Mr. Bajoria is correct in his submission that under the Tamil Nadu Act the land which was used for building at the time When the said Act was passed, was included within the concept of urban land for taxation. This has also been made clear by the explanation to the definition of urban land wherein it has been, specifically stated that any site on which any building has been constructed shall be deemed to be the urban land. It is also submitted by Mr. Bajoria that the tax on urban land is to be levied under the Tamil Nadu Act u/s 5 for every fasli year from the date of commencement of the Act from the owner of such urban land the rate specified in the schedule. Therefore, even if at the commencement of the Act, the urban land was a vacant land, then as soon as the building is constructed thereon, the levy of urban land tax thereof would continue to be imposed even when, it ceases to be a vacant land and the site is covered by the building thereon. It is also to be seen that only land and not the building standing thereon whenever there is a building has been made the subject-matter of taxation both u/s 5 of the Tamil Nadu Act and Section 4 of the West Bengal Act. So, I have no doubt in my mind that the Tamil Nadu Act is also a State legislation imposing a tax on the urban land occupied by the building and there is no material difference between the Tamil Nadu Act and the West Bengal Act in this respect.

22. Before the Madras High Court, the Tamil Nadu . Act was challenged specifically oh the ground that the Act sought to levy tax on land occupied by building and the State Legislature had no legislative competence to levy tax on land occupied by building. The Madras High Court in the case of V. Pattabhiraman Vs. The Assistant Commissioner of Urban Land Tax, North Madras (North West) Ayanavaram and Others, did not find fault with the Tamil Nadu Act on the ground that the Tamil Nadu Act was the imposition of tax on urban land alone and did not impose any tax on the building where there is a building on such, land. In the said judgment the Full Bench of the Madras High Court negatived the contention that the power under Entry 49 of the State Legislature was to tax land and building and not the land alone for the buildings without the land. The Division Bench did not see any reason as to why if the power is used to tax land and building, it cannot on principle be used for taxing any of them independently. The Madras High Court has struck down the Tamil Nadu Act only on the ground that the route of determination of market value under Tamil Nadu Act without further guideline was arbitrary and bad. However, the Supreme Court in appeal set aside the judgment of the Madras High Court and upheld the provision regarding the determination of market value as fair and reasonable and negatived the contention that such determination of. the market value was arbitrary or violative of Articles 14 and 13 of the Constitution. This aspect of the case will be dealt with at the appropriate stage. But there can be no doubt that even the Madras High Court upheld the competence of the State Legislature to legislate under Entry 49 the land alone even if such land is occupied by building. Before the Supreme Court the Petitioners preferred appeal along with the State

Government and also challenged the legislative competence, of the-State Legislature to tax land occupied by building. The Supreme Court has negatived such contention and the following observation of the Supreme Court at p. 176 Is reproduced below:

It was then said that as Entry 49 of. List II provides for taxes on lands and buildings, the impugned Act which imposes tax on? lands alone cannot be held to fall under that Entry, it was submitted that when the Legislature taxed land deliberately the legislation fell under List II of Entry. 45, i.e., "land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights and alienation of revenues" and not under Entry 49 of that List.

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Before the Government of India Act, 1935, lands and buildings were taxed separately and all that was done under the Government of India Act, 1935, and the Constitution was to combine the two entries relating to Sand and building into a single entry. Section 45A of the Government of India Act, 1919, provided for making rules under the Act for the devolution of authority in respect of provincial subject to local Governments and for the allocation of revenues or other monies to those Governments.

The Government of India by a notification dated December 16, 1920, made rules under that provision called the ''scheduled tax rules''. These rules contained two schedules. The first schedule contain eight items of tax or fee. The Legislative Council of a province may without obtaining the previous sanction of the Governor-General make and take into consideration any law imposing for the purposes of the local Government any tax included in schedule I. Schedule II contain eleven items of tax. In making a law imposing or authorising any local authority to impose for the purposes of such local authority any tax in schedule II, the Legislative Council require no previous sanction of the Governor-General. In Schedule II, item No. 2 was taxed on land or land values and item 3 was a tax on buildings. In the Government of India Act, 1935, the two entries were combined in List II, Entry 42 is tax on land and building and hearths and windows.

The Legislative history of Entry 49 of List II does not; therefore, lend any support to the argument that, Entry 49 of List II relating to tax on land and buildings cannot be separated. On the other hand, we are of the opinion that Entry 49 ''Taxes on lands and buildings'' should be construed as taxes on land and taxes on buildings and there is no reason for restricting the amplitude of the language used in the entry. This view is also borne out by authorities?.

In support the Supreme Court has followed the two earlier decisions in Raja Jagannath Baksh Singh v. The State of U.P. AIR 1962 S.C. 1562 (1571-72,), Per Gajendragadkar J. and H.R.S. Murthy Vs. Collector of Chittoor and Another, .

23. Mr. Ginwalla has also sought to distinguish the decision of the Supreme Court in Buckingham Carnatic''s'' case (Supra) by submitting that before the Supreme Court the arguments against the legislative competence of the State Legislature which he is now forwarding on the basis of the judgment of the Supreme Court in D. G. Ghouse''s case (Supra) have not been there ''for consideration'', and when in the same case the Supreme Court has clearly held that when a building has been constructed on the land,-the land has no separate entity and it has been merged with the building, then the land occupied by building cannot be separately taxed as land and that is a matter open for decision and he can submit that in view of the later decision of the Supreme Court, the West Bengal Act imposing tax on urban land occupied by building is an invalid legislation because when a land is covered by the building the land loses its separate entity and is covered by the building alone and such land covered by the building cannot be separately taxed under Entry 49 of List II of the Seventh Schedule.

23A. It therefore becomes necessary at this stage to decide as to whether D. G. Gouse''s case has altered the position since the decision of the Supreme Court in Buckingham Carnatic''s case to decide afresh by this Court as to when the State Legislature has legislative competence to impose tax on land occupied by building. On carefully considering the decision of the Supreme Court in D. G. Gouse''s case, I am of the view that the said decision does not at all lay down the proposition that the land occupied by the building or the land appurtenant thereto cannot be the subject-matter of taxation as land alone under Entry 49 of List II of the Seventh Schedule. In that decision, the Supreme Court was considering the constitutional validity of the Kerala Building Tax Act. In that Act, for the purpose of determining the annual value of the building under the Kerala Building Tax Act even though it was a tax only on building u/s 6(4) provided for determination on the value of the land on which the building is constructed for assessing the annual value of the building. It was urged that for assessing the tax on building the value of the land could not be taken into consideration. It was also urged that if the value of the land was taken into consideration in determining the value of the building, then it not amount to imposition of tax on the land which the said Act did not seek to impose.

24. in the light of the above submissions made, the Supreme Court in that decision held that the land on which the building was constructed became the part of the building and there is no illegality in including the value of the land for the purpose of determining the value of the building for levying the building tax under the Kerala Act- The following observation of the Supreme Court in D. G. Gouse''s case (Supra) (279, Para. 33) reads as follows:

33. What the Legislature has done .under the Act is to make it clear that the tax is on building, and not on the grounds on which they stand, or on land. It has denied (in Clause (e) of Section 2) what a ''building'' means. It has also defined in Clause (a) of Section 2 what is refer by ''annual value'' of a building and Clause (f) of the same section defines ''capital value''. Section 6 prescribes the

mode of determining the capital value of a building according to the formula of sixteen times the annual value prescribed in Clause (f) of Section 2. Having made these necessary provisions section states that a .tax, referred to as ''building tax'' in the Act, shall be charged at the rate specified in the schedule etc?.

25. In view of the above, I am unable to accept the contention of the Petitioner that under Entry 49 of List II of 7th Schedule, the State Legislature has no legislative competence to levy a tax on land occupied by building. It cannot be disputed by the learned Advocates appearing for the writ Petitioners that under Enter 49 of list II, it is permissible to levy a tax either on land as .well as building or on land or on building. This is also the consistent view of the Supreme Court for which the two decisions in Assistant Commissioner''s case (Supra) and another in D. G. Gouse''s case Supra (277, Para, 19) may be referred to. In D. G. Gouse''s case the Supreme Court was only considering the Petitioners'' contention that the tax levied by the Kerala Act were two separate taxes, one on land and the other on building although the charging section imposed only tax on building. It has already been indicated that this contention was not accepted by the. Supreme Court in the above decision. The following observation in D. G. Gouse''s case Supra (277, Para, 19) makes this point clear?

19. The real controversy in . this case is that relating to the nature of the tax, for it has been vehemently argued before us that it is not merely a tax on buildings, but is a tax on the buildings as well as on the lands of those buildings.

26. So Mr. Ginwalla''s submission that The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc., has been over-ruled by the Supreme Court in D.G. Gose and Co. (Agents) Pvt. Ltd. Vs. State of Kerala and Another, , is not acceptable. The other decision which Mr. Giriwalia has referred to on this point is the case of State of Kerala v. P P. Hassakaya (Supra). This decision of the Supreme Court is in respect of lading down the principle of determining compensation payable in respect of land and. building under the provision of the Land Acquisition Act. The Supreme Court has observed that in respect of land/and building compensation cannot, be determined by assessing the value of land and the break up value of the building separately, and as the land and the building constitute one unit, the value of the entire unit must be determined with all its advantages and potentialities and that the method which is jointly resorted to in determining the value of the land with building that the method of capitalization of return actually received or which might reasonably be received from the lands and buildings.

27. This decision of the Supreme Court has been rendered in an entirely different perspective. It in no way lays down that when a land is occupied by a building, the land loses its entity in such way that the Legislature cannot separately levy tax on land when such land is occupied by building. Therefore, this decision of the Supreme Court does not support Mr. Ginwalla''s submission on the point. I have already indicated that the Supreme Court in Buckingham Carnatic''s case

(Supra) clearly held that Tamil Nadu Act levying tax on urban land even if the said land is occupied by building is a valid legislation under Entry 49 of List II of title Seventh Schedule. The. said decision still holds good and has not been overruled either expressly or impliedly by any subsequent decision of the Supreme Court, So, I am unable to accept the contention of Mr. Ginwalla that Section 4 of the Act should be struck down as the West Bengal Legislature has no legislative competence to levy tax on urban land occupied by the building.

28. The second contention of all the learned Advocates appearing for all the writ Petitioners is that Section 4 is liable to be struck down as it is arbitrary and discriminatory. The contention of Mr. Ginwalla and the other learned Advocates on this point may be briefly indicated as follows:

(1) The Act treats land with buildings on an equal footing irrespective of the condition of the building, location of the building, whether the same is self-occupied or tenanted, no classification and/or categorisation is made on the said basis. Consequently, the Act is discriminatory infringing Article 14 of the Constitution as it treats unequal as equals.

(2) Section 4 provides for levy of urban tax at the rate of 1% of the market value of such land without attempting to classify the land on the basis of locality, Capacity to yield income^ nature of the ownership, whether leasehold or free hold, the condition of the premises, whether the same is self occupied or tenanted etc.

(3) There is no provision in the Act including Section 4 or 4A which provides the manner in which the land occupied by building is to be assessed. Even when the particular land belongs to A and the building belongs to B, there is no provision in the Act empowering the owner of the building to recover the tax under the Act from the owner .of the land although the owner of the building has to pay the tax under the Act.

(4) It would appear from the provision of Section 4 as amended by the West Bengal Urban Land Tax (Amendment) Act, 1983, urban land tax is td be levied on the market value of urban land on which there is a building and the market value is to be determined in the manner provided in Section 4A. For this purpose Commissioner or the person appointed under Sub-section (1) of Section 8 will form an opinion as to the price which the land would be fetched if sold in the open market in the relevant final order, and in doing so he shall take into consideration the sale price of the land in the same or* comparable locality. But this introduces an absurd and unworkable method which is bound to lead to the arbitrary determination of market value.

(5) Even though Section 4 seeks to tax both vacant land- and land occupied by building, but Section 4A does not provide any mode or manner as to how the market value of the land occupied by building is to be, determined for the purpose of the said Act, because Section 4A speaks of ''land'' alone and the, Act has not defined ''land'' nor has the Urban Land (Ceiling and Regulation) Act,

1976, defined the word ''land'' and therefore the ordinary dictionary meaning of the word ''land'' has to be taken and as the Dictionary meaning of land ''means vacant land'', then there appears to be no mode or" manner provided in the Act for determination of the market value of land occupied by building.

29. It is urged by Mr. Ginwalla that the Act treats all land with buildings on an equal footing irrespective of the condition of the building, location of the building, whether the same is self-occupied or tenanted and no classification and/or categorisation is made on the said basis rendering Section 4 violative of Articles 14 of the Constitution as it treats unequal as equals. The decisions of the Supreme Court in Dr. Dr. Balbir Singh and Others Vs. M.C.D. and Others, (per Bhagwati J.) and another decision of the Supreme court in Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, (per Sinha C.J.) have been referred to. It has also been pointed out that the West Bengal Urban Land Taxation (Second Amendment) Act, 1977, in so far as it amended the West Bengal Urban Land Taxation Act, 1976, was held to be unconstitutional by G. N. Ray J. in Parshava Properties Ltd. and Another Vs. State of West Bengal and Others, that under the said Act, tax at a uniform rate had been sought to be enforced for all buildings situated within any category of urban agglomeration in West Bengal without considering the year of construction, the capacity to yield income, the use and potentiality of the building, and other circumstances which may appropriately be taken into consideration. It is urged that even after Section 4 has thereafter been amended by the West Bengal Urban Land Taxation (Amendment) Act of 1983, the ground on which the provision of Section 4 as contained in West Bengal Urban Land Taxation (Second Amendment) Act, 1977, was struck down, still remains the same and the present section should also be held to be arbitrary and discriminatory and liable to be struck down being violative of Article 14 of the Constitution.

30. Mr. R. N. Bajoria, learned Counsel appearing on behalf of the Respondents, has strongly refuted the above contentions of Mr. Ginwalla. He has argued that in the case of Parshava Properties Ltd. and Another Vs. State of West Bengal and Others, the learned Judge struck down s, 4 which stood before its amendment of 19Q3 as the tax was sought to be levied at a specific rate per sq.- meter without any reference to the value of the properties. In view of the above, the learned Judge held that the same specific rate of tax was made applicable to all properties irrespective of the different characteristics without taking into considerations and that ail lands would not fetch the same value.

31. On considering the submission of the learned Advocates for the Petitioners and for the Respondents, I am of the view that Section 4 as amended by 1983 amendment seeks to levy the tax with reference to the value of the property. As the uniform rate of tax of different areas of three-urban agglomerations to which the Act is extended was previously taxed at a specific rate per sq. meter, the learned Judge found it arbitrary and- not reasonable. The following observation of G. N. Ray J. in the above judgment is reproduced below:

In such. I of the Urban Land (Ceiling and Regulation) Act, 1976, various urban agglomerations in different States of India have been mentioned. Entry No. 15 of the said Schedule I enumerates the three urban agglomerations in the State of West Bengal and different areas have been .brought within the urban agglomeration and both municipal, non-municipal areas have been included within such urban agglomeration. Many of the areas included in the . urban agglomeration in West Bengal are comparatively small places and not developed towns and cities. They are also not equally important from the stand-point of trading and/or commercial activities, the said areas are also not industrial towns. It is quite evident that the potentiality to earn rent from the buildings situated in various units of the urban agglomeration in West Bengal as referred to in the Entry No. 15 of Schedule I,- is not the same. The circumstances, the imposition of tax an building situated within the said urban agglomeration under 1977 Act cannot be held to be reasonable.

32. Sub-section (2) of Section 4 as amended by the West Bengal Act 13 of 1983 which comes into force retrospectively with effect from April 1, 1976, provides that the -Urban Land Tax Act so far as it relates to land occupied by any building shall be levied at the rate of 1 % of the market value of such land, when the tax is levied on the market value of the property it takes into account all varying factors of. different properties situated in different localities. The market value may be high,or low depending upon its location, advantages and disadvantages. I am of the view that when a tax is levied with reference to the market value of the property, no objection can be raised that the unequal are treated as equal. The value of the property will vary with reference to its location and other advantages and disadvantages. The market value would also vary with the capacity of the property to yield income. The nature of the ownership whether leaseholds or freehold, the condition of the premises, whether self-occupied or tenanted would also enter into the market value of the property.

33. Mr. Bajoria has referred to me the decision of Spencer and Co. Vs. State of Mysore and Others, , Per Sikri C.J. In that decision the Supreme Court has rejected the contention that the levy of tax at a percentage of market value was violative of Article 14 of the Constitution. He has referred to me paras. 14 and 15 of the said judgment. It states as follows:

14. But market value of land always bears a definite relationship to the actual or potential income being derived or derivable from the land and there cannot be any objection to a levy at uniform rate on the market value.

15. Reference was made to the decision of this Court in The State of Kerala Vs. Haji K. Haji K. Kutty Naha and Others etc., There the facts were again quite different. The Legislature adopted the floor-area of the building as the basis of tax irrespective of all other considerations. The market value of the property stands on a different footing, because, like income the market value of property is one of the indices of the benefit which the owner derives or can derive from it ''and the very concept of market value takes into account the present or the

potent ional .income and other relevant considerations.

34. On considering the above decision of the Supreme Court, I am of the view that the contention of Mr. Ginwalla in this respect does not appear to be'' acceptable. In my view, the various characteristics of the land, whether residential or non-residential, self-acquired or tenanted, whether located in a thickly populated area or less populated area will be reflected in the market value of the land. The market value of the land would vary with reference to the above varying factors and the. value of the property which is more advantageous regarding location or situation would be higher than that of one which is comparatively less advantageous relating to location and in other respects. Consequently, the value of the two plots of lands situated in different areas or the value of the self-acquired property or tenanted property or a residential property or a non-residential property would definitely differ. Consequently, an urban land having higher market value would pay higher tax whereas an urban land having lesser market value would pay lesser tax.

35. Mr. Ginwalla has also argued that it would be impossible to assess the market value of a self-occupied building from which no income is earned by the owner and, therefore, no urban land tax could be levied. It is well-settled that for the purpose of Income Tax Act of 1961, tax in respect of the national income from the house property is required to be assessed irrespective of whether the property has been let out or self-acquired. The Supreme Court in Bhagwan Dass Jain Vs. Union of India (UOI) and Others, , Per Venkataramaiah J.: (1981) Bhagwan Dass Jain Vs. Union of India (UOI) and Others, has upheld the levy of a tax of income on the notional basis. There can be no doubt that in respect of the market value of the property which is self-acquired that can be no difficulty to assess the market value even if the property be self-acquired by taking recourse to the method of arriving at the market value on the basis of the notional income derived from such property and determination of such market value on the basis of the notional income, is also a recognised method of determination of market value.

36. Mr. Ginwalla has further argued that in the absence of classification of various category of land as self-acquired or tenanted for the purpose of determination of market value makes Section 4(2) arbitrary. Mr. Bajoria seeks to refute the above arguments of Mr. Ginwalla by referring .before me several decisions of the Supreme Court and has urged that merely because further or mini classification has not been-made or that there is room for further classification of the urban land occupied by the building for the purpose of levy of the urban land tax for the said land, the said provision cannot be struck down as violative of Article 14 of the Constitution, he has referred to me two decisions of the Supreme Court in Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another, , Per Beg J.

37. In the case of Murthy Match Works the Supreme Court has held that the question of, classification is primarily for legislative judgment and ordinarily does

not become a judicial question. At para. 15 of the said judgment it has been observed as follows:

A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the judicature cannot rush in where even the Legislature warily treads. All these operational restraints on the. judicial power must weigh more emphatically where the subject is taxation.

38. The Supreme Court has clearly held in the above decision that merely because there is room for classification it does not allow that legislation without classification is always unconstitutional and the Court cannot struck down a law because it has not make the classification which commends to the Court as proper. It has also been observed that refusal to make rational classification where grossly dissimilar subjects are treated by the law violates the mandate of Article 14 of the Constitution, but a Court cannot strike down a law on the score that there is room for further classification. It has also been pointed out be Mr. Bajoria that the above view has been reiterated by the Supreme Court in Ganga Sugar Corporation Ltd. and Others Vs. State of Uttar Pradesh and Others, , per Krishna Iyer, J. and V. Venugopal Rau Varma v. Union of India AIR J969 S.C. 1094, per Shah J which is an earlier decision on this matter, the same principle has been followed. Mr. Bajoria has also pointed out that the Supreme Court in R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, , per Krishna Iyer J has observed as follows:

A law has to be adjudged for its constitutionality by the generality of cases it covers, not by the freaks and exceptions it martyrs.

39. On carefully considering the above decisions of the Supreme Court, I am of the view that only because the Legislature has not made further classification of the urban land, namely, whether it is self-acquired or tenanted or whether it is freehold or leasehold, the section cannot be struck down as arbitrary.

40. Mr. Ginwalla has referred to me the decision of Dr. Balbir Singh v. M.C.D. {Supra)Mf. Bajoria has submitted that the above decision of the Supreme Court has no relevance in the facts of the present case., On carefully considering the above submissions and on perusal of the above decision of the Supreme Court, I am of the view that the said decision has no relevance in the facts of the present case, the Supreme Court did not decide the question of vires of any provision of Delhi Municipal Act with reference to Articles 14 and 19 of the Constitution in that judgment. Any observation made in the judgment is in the nature of a suggestion from the Court for the grant of rebate. It is also clear that even though under the Income Tax Act there was no classification made for levy of the tax between the property which is self-acquired and tenanted, the Supreme Court in Bhagwan Dass Jain''s case (Supra) has upheld it.

41. Mr. Bhaskar Gupta has raised the point that when a particular land belongs to A and the building belongs to B, there is no provision in the Act empowering the owner of the building to recover the tax under the Act from the. owner of the

land although the owner of the building has to pay the tax under the Act in case of an urban land occupied by building. He, therefore, urges that the provision is arbitrary. He also points out that the 1983 amendment has given retrospective effect to the levy. of tax with effect from April 1, 1976, and under no circumstances it is possible for the owner of the building to recover such tax imposed upon him with effect from April 1, 1976, from the owner of the land.

42. Mr. Bajoria has submitted that the submission of Mr. Gupta is not acceptable. He points out that the question of recovering any tax u/s 4 of the Act from the owner of the land does not arise because in the case Of land occupied by building the tax has been imposed on the owner of the building who uses the land. He points out that the Legislature can levy tax either on the occupier or on the owner or from the owner of the building or from the owner of the land. When the Legislature in its wisdom in the matter of levy of urban ''land'' tax on the land occupied by the building decides to levy the tax on the owner of the building, then there cannot be any lack of any legislative competence to do that.

43. In support, Mr. Bajoira has referred to me the decision of the Federal Court in AIR 1949 81 (Federal Court) , Per Fazl Ali J. and The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment, .

44. On considering the above decisions, I am of the view that the Federal court in Ralla Ram''s case has held that tax could be levied either on the owner or the occupier of the building. This judgment was in the matter of Item No. 42 of List II of the Seventh Schedule of the Government of India Act, 1935, which substantially correspond to Entry 49 of List II of the Seventh Schedule to the Constitution.

45. In Western India Theatres Ltd. v. Cantonment Board the question arises whether entertainment tax could be levied on the owner of the Cinema House. The Supreme Court has upheld such imposition of the entertainment tax upon the owner of the Cinema House even though Entry 50 of List II of the Seventh Schedule states as follows: "taxes on luxuries or entertainments or amusements". It was argued that the said Entry would not give authority to the Legislature to impose the amusement tax upon the owner of the Cinema House and any amusement tax under the said Entry should be confined to persons receiving the luxuries or entertainments or amusements. The Supreme Court has held that every? Entry of the Seventh Schedule has to be given liberal interpretation, that the. Entry contemplates luxuries, entertainments, amusements as objects on which the tax, is to be imposed, and if words .are to be so regarded, there is ho reason to differentiate between the giver and the receiver of the luxuries,. entertainments or amusements and both may, with equal propriety, be made amenable to tax.

46. On considering the above decisions, I am of the view that even if in the matter of land occupied by the building the tax is imposed upon the owner of the building who uses the land, then there does not appear to be any lack of

legislative competence for the State Legislature to do so. Therefore, since the tax is on the owner of the building, where the urban land is occupied by building, there is no question of recovering any tax by the occupier of the building from the owner of the land. Therefore, the provision of the Act does not also provide for recovery of any such s tax by the occupier of the building from the owner of the land. It is also to be noted that whether a private arrangement or agreement is made between the owner of the land and the owner of the building as to the right to reimburse the tax . levied on the land has no relevance to determine the constitutional validity of the levy of the, tax upon the owner of the building.

47. It is true that the 1983 Amendment has been given retrospective effect. But the fact that Section 4 as amended by 1983 Amendment Act has been given retrospective operation does not render the Act* either ultra vires or illegal. It is to be noted that the Act came into force on April 1, 1976. It was amended in the year 1977 by the West Bengal Urban Land Taxation (Second Amendment) Act, 1977. The said Amendment was challenged before the Calcutta High Court and in Parshava Properties Ltd. v. State of West Bengal (Supra) the said Amendment was struck down as violative of Article 14 of the Constitution. Thereafter, Amendment was made in the Act in 1983 and the present Section 4(2) has been incorporated with retrospective effect from April 1, 1976. There is no doubt that the retrospective amendment'' was necessary to remove or cure the defects pointed out by the Court. It is well-settled that the Legislature can give an Act retrospective effect, and when an Act specifically gives retrospective effect to its enactment then only because of such retrospectively such legislation cannot be struck down as illegal or arbitrary. In this particular case the 1983 Amendment has been made to cure the defects of the charging section which originally came into force with effect from April 1, 1976. Therefore, the Amendment has been given retrospective effect to cure the defect. It is not a case in which a tax is levied by the Legislature with retrospective effect from-before the date on which it came into force. The urban land tax had been levied by the Act in the year 1976, but as the charging section for the levy of the tax was held by the Court of law to be ultra vires, the Amendment Act of 1983 has been enacted to cure the defect with effect from the date on which the tax was first imposed, i.e. with effect from April 1,1976. There is also no doubt that a similar question arose in the case of Tamil Nadu Urban Land Tax Act in the case of Assistant Commissioner (Supra). The Tamil Nadu Act had also been struck down earlier on the ground that it levied the specific rate of tax on different lands or properties. Thereafter, the said Legislature made amendment to the Tamil Nadu Act with retrospective effect and the said retrospective amendments were also challenged. The Supreme Court in appeal from the judgment of the Madras High Court in the Assistant Commissioner''s case has upheld the validity of the imposition of the urban land tax under the Tamil Nadu Act retrospectively from April 1, 1963, he from the date when the Tamil Nadu Act first came into force. The following observation of the Supreme Court at para 12 in the above case is set our hereunder. The impugned Act provides for the retrospective operation of the Act.

Section 2 states that except Sections 19, 47 and 48, other sections shall be deemed to have come into force in the City of Madras on the 1st, day of July, 1963, and Sections 19 and 47 shall be deemed to have come into force in the city of Madras on the 21st May* 1966. It also provides that Section 48 shall come into force on the date of the publication of the Act in the Fort St. George Gazette. Section 6 enacts that the market values of the urban lands shall be estimated to be the price which in the opinion of the Assistant Commissioner or the Tribunal such urban land would have fetched or fetch if sold in the open market on the date of the commencement of the Act, that is, from 1st July, 1967. The urban land tax is, therefore, payable from 1st July, 1963. It is contended on behalf of the Petitioners that the retrospective operation of the law from 1st July,-1963, would make it unreasonable. We are Unable to accept the argument of the Petitioners as correct. It is not right to say as a general proposition that the imposition of tax with retrospective effect per se renders the law unconstitutional. In applying the test of reasonableness to a taxing statute. It is of course a relevant consideration that the tax is being enforced with retrospective effect but that is not conclusive in itself. Taking into account the legislative history of the present Act we are of the opinion that there is no unreasonableness in respect of the retrospective operation of the new. Act.

48. In para 14 of the said judgment the Supreme Court has clearly refuted the arguments of the Petitioners that the imposition of tax retrospectively from April 1, 1963, is an unreasonable restriction, regard being had to the legislative background.

49. The similar situation has also arisen in respect of the West- Bengal Act. The charging section has been struck down by Calcutta High Curt and by the 1983 Amendment by curing the defect pointed out in the judgment of the High Court in Parshava Property''s case (Supra) the amended provision has been given effect to with effect from April 1\\ 1976, i.e. from the elate on which the levy of urban tax under the Act was first made. As there is sufficient justification for the Legislature to give retrospective operation, to .1983 Amendment the same cannot be struck down as unreasonable restriction.

50. Mr. Ginwalla has submitted that the tax imposed by the Act is confiscatory. It is also submitted that it puts unreasonable restriction in the carrying out of the business in house property because the tax imposed is exceedingly high. Mr. Pradip Ghosh has also similarly challenged the Act as violative of Article 19 of the Constitution. Mr. Bajoria, learned Advocate on behalf of the Respondents, has urged that there is no factual basis for the above submission. According to him, the learned Advocate for the Petitioners have built up their arguments on mere surmises and conjecture. He submits that the rate of tax being quite tow, namely, 1% of the market value, the rate of tax cannot be considered either excessive or confiscatory. It is submitted that when the rate of tax is related to the market value, then the property having low income may not fetch high value area, consequently, the market value of such property will be very small. The

urban tax on such property would necessarily be very low. It is also urged that if the property fetches a high market value as it is capable of earning a high income, then the person paying urban land tax cannot have any grievance. He has also submitted that the validity of the tax cannot be judged with reference to the sources from which the tax can be paid. Even if in some extreme case there is any hardship in paying the tax because of lack of funds that would not make the legislation unconstitutional. He has referred before me the decision of Raja Jagannath Baksh Singh v. State of Uttar Pradesh. In that decision a land holding tax has been challenged being violative of Articles 14 and 19(1)(f) of the Constitution, the Supreme "Court has observed that the tax being oh land holding the? measure of the tax is fixed in the light of the annual value of the land holding, and consequently, it is difficult to understand how the Schedule can be successfully challenged as being inconsistent with Articles 14 and 19. Mr. Ginwalla has referred to the decision of Moopil'' Naifs ease (Supra) in which the taxing statute was struck down by the Supreme Court. But in Moopil Naifs case a flat rate of tax was imposed, but it has already been indicated that G. N. Ray J. has also struck down the West Bengal Urban Land, Taxation (Second Amendment) Act, 1977, imposing flat rate of tax as arbitrary. But when the Act after its Amendment in 1983 has done away with flat rate of tax and has made the tax with reference to the value of land, then on the basis of Mobpil Nair''s case it cannot be held that the Act as it now stands is confiscatory in nature. I am of the view that there is no such basis for the submission made by the learned Advocates for the Petitioners that the Act is confiscatory in nature. The arguments has also been advanced by the learned Advocate for the Petitioners that it is a colorable piece of legislation. But I am unable to hold that there is any basis for taking the view that it is a colorable piece of legislation.

51. Mr. Ginwalla has also challenged Section 4 read with Section 4A of the Act as arbitrary, discriminatory and violative of Article 14 of the Constitution on the ground that the land occupied by building cannot be sold separately and consequently there cannot be any market value of the land occupied by the building. It is also submitted that the explanation to Section 4A makes it obligatory to take into consideration only the market value of the similar land in the locality and ignores all other factors which are relevant for determining the value of the land. Mr. Bhaskar Gupta, learned Advocate for some of the Petitioners, has sought to point out that Section 4A only provides for ''valuation of land'' which would mean only vacant land and not built up land for which there is no provision for valuation. Mr. Pradip Ghosh, the learned Advocate, has also challenged both Section 4 and Section 4A on the ground that there are no guidelines for determining the valuation of land u/s 4A and it would be purely on the subjective satisfaction of the officer. Mr. Ghosh has also pointed out that Section 6 of the Tamil Nadu Act is not in pari material with Section 4A of the West Bengal Act and the Supreme, Court decision in Buckkingham and Carnatic''s case (Supra) cannot be a binding precedent to uphold Section 4A of the Act. He has also pointed out that after the decision of the Buckingham and

Carnatic''s case the . Supreme Court in several decisions have expanded dimension of Article 14, first in E.P. Royappa Vs. State of Tamil Nadu and Another, which has further been developed in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , Per Bhagwati J. He has drawn my attention to the observation of the Supreme Court in Ajoy Hasia''s case (p. 498, para. 16) which reads as follows: r From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other to the whim and caprice or an absolute monarch. Where an Act is arbitrary it is implicit in it that it is unequal both according to the political logic and constitutional law and is therefore violative of Article -14.

52. He has also drawn my attention that arbitrariness would writ large if while purp6rting to arrive at such market value of the land,, the authority has to act according to the guideline given in the explanation to Section 4A. He has pointed out that there are series of decisions of the Supreme Court giving the proper guideline as to how the market value of land shall have to be determined, but such established principle laid-down by the Supreme Court in series of decisions has been given a complete go bye and the artificial method of ascertaining the market value has been provided in Section 4A which renders Section 4A unreasonable and arbitrary and consequently violative "of Article 14 of the Constitution.

53. Mr. Bajoria on behalf of the State of West Bengal has urged before me that none of the above contentions is acceptable. He" submits that Section 4 of the West Bengal Act and Section 6 of Tamil Nadu Act are in pari materia with each other. The fact that the explanation has been added to Section 4A which is not there in Section 6 of the Tamil Nadu Act does not make any difference. It is urged that in Section 4A sufficient guidelines have been given to the Commissioner to determine the market value of the land, and there is nothing to indicate that the Commissioner has to talk into consideration the explanation only of the purpose of ascertaining the market value. According to him, the explanation provides for one of the recognised methods for determination of the market value, and when the sale price of land in the same-and comparable locality is not available then the Commissioner shall have to determine the market value on the basis of established and well recognised method or methods for determining the market value.

54. Section 4A is again reproduced here along with Section 6 of the Tamil Nadu Act.

4A. Determination of market value. For the purposes of this Act, the market value of land shall be estimated to be the price which in the opinion of the Commissioner of the person appointed under Sub-section (1) of Section 8 and having jurisdiction, as the case may be, such land would have fetched if sold in the open market in the relevant financial year. Explanation:

? In determining the market value of land, the Commissioner or the person appointed under Sub-section (1) of Section 8 and having jurisdiction, as the case may be, shall take into consideration the sale price of land in the same or comparable locality.

? Section 6 of the Tamil Nadu Act reads as follows: '' 6. For the purpose of this Act, the market value of any urban land shall be estimated to be the price which in the opinion of the Assistant Commissioner, or the Tribunal, as the ease may be, such urban land would have fetched or fetch, if sold in the open market on the date of the commencement of this Act.

55. On a clear reading of Section 4A of the West Bengal Act and Section 6 of the Tamil Nadu Act it is clear that both the sections provide that the market value of the land shall have to be estimated by the price which in the opinion of the concern authority, such land would have fetched if sold in the open market. I find that the main Sections 4A and 6, but from the explanation of Section 4A of the West Bengal Act are exactly the same. In my view, the explanation* does not limit the zone of consideration of the Commissioner regarding the determination of the market value. It will not be correct to hold that the market value shall have to be estimated ''only in consideration of the Sale price of similar or comparable land in the locality. The main general provision of Section 4A has not in any way been restricted by the explanation. In my view the explanation has given an additional guideline to the Commissioner regarding the determination of market value with reference to the market price of the same or similar land in the locality which is one of the recognised methods of determining the market value. There is. no doubt that before Madras High Court, Section 6 was challenged on the ground that this was an excessive delegation of power which the concerned authority was bound to exercise in a most arbitrary and capricious manner. The Madras High Court struck down Section 6 of the Tamil Nadu Act on the ground that it is violative of Articles 14 and 19(1)(f) of the Constitution. But the Supreme Court in Buckingham and Carnatic''s case (Supra) has upheld the validity of Section 6 of the Tamil Nadu Act. The following observation of the Supreme Court is reproduced below:

9. We proceed to consider the argument that no machinery is provided for determining the market value and the provisions of the new Act, therefore, violate Article 14 of the Constitution We see no justification for this argument. The procedure for determining the market value and assessment or urban land is described in Chapter III of the new Act. Section 6 provides that the market value of the urban land "shall be estimated to be the price which in the opinion of the Assistant Commissioner, or the Tribunal, as the case may be, such urban land would have fetched or fetch, if sold in the open market on the date of the commencement of this Act." It was . said on behalf of the Petitioners that the opinion which the Assistant Commissioner has to form is purely subjective and may be arbitrary. We do not think that this contention is correct. Having regard

to the language and context of Section 6 of the new Act we consider that the opinion which the Assistant Commissioner has to form under that section is not subjective but should be reached objectively upon the relevant evidence after following the requisite formalities laid down in Sections 7 to 11 of the new Act.

The Supreme Court has further held at page 176 as follows:

Thus the Act envisages a detailed procedure regarding submission of returns, the making of an assessment after hearing objections and a right to appeal to higher authorities. We are hence unable to accept the contention of the Petitioners that the provisions of Section 6 of the new Act are violative of Article 14 of the Constitution.

10. It is necessary to state that the High Court decided the case in favour of the Respondents mainly on the ground that investment of the power to determine value of the urban land under Sections 5, 6 of the Act constituted excessive delegation of authority and so violative of Articles 19(1) and 14 of the Constitution (See the judgment of Veeraswami J. who pronounced the main judgment in the High Court). But Mr. V.K.T. Chari did not support this line of reasoning in his arguments before this Court. On - the other hand, learned Counsel conceded that the power of determining the value of the urban land being judicial or., quasi-judicial in character the doctrine of excessive delegation of authority has no application.

56. Before the Supreme Court also it was contended that the contractor''s method of valuing the land occupied by building was not appropriate method of valuing the land occupied by building specially when applied to comparable land. The Supreme Court has refuted the contention on the ground that this argument has no bearing on the constitutional validity of the charging section or the material provision of the Act. But the Supreme Court has pointed out that it will be open to. the writ Petitioners to challenge the validity of the valuation in any particular case by way of an appeal under the statute or to move the High Court for grant of a writ under Article 226 of the Constitution.

57. In my View, the grounds on which the Supreme Court have upheld the validity of the charging section, namely, Section 6,of the Tamil Nadu Act apply with all force in upholding the validity of Section 4A. The fact that an explanation has been added to Section 4A which was not in the Tamil Nadu Act would not make any difference. In the West Bengal Act there is also an elaborate procedure for the Commissioner to ascertain the valuation which determination shall be quasi-judicial.

58. It is sought to be argued on behalf of the Petitioners that the land occupied by building cannot be sold. In my view, the above submission is not correct. There is always a buyer for land whether the land is a vacant land or a land occupied by a building. It is not always correct to assume that when the land is occupied by building the land and the building would belong to one person. There may be always such cases where land belongs to one and the building standing

thereon to another. It has already been indicated that it is not sound proposition that land ceases to be land when the building is constructed on it.

59 Mr. Bajoria has pointed out that there is no substantial foundation for taking the view that it is impossible to assess the value of the land when a building is constructed on it. The owner of the land leasing out the land to the lessee in terms of the lease has always a reversionary interest in such land and the market value of the land of such land can be determined. He also points out that under the Wealth Tax Act separate valuation of the land and buildings thereon are made in the assessments of the respective owners and the value of the land and the building erected thereon are also determined by separately computing the value of the land and the building built upon it. He has also pointed out that in D.G. Gouse and Co. v. State of Kerala (Supra) the Supreme Court has upheld the Kerala Building Tax in which the value of the land occupied by building was to be added to the value of the structure.

60. On hearing the submissions of both the parties, I am of the view that it cannot be a sound proposition of law that a land ceases to be the land as soon as the building is constructed upon it or that as soon as the building is constructed on a vacant land, the land without such building ceases to have any value. It is also true that in D.G. Gouse & Co''s case, under the Kerala Building Tax Act for the purpose of the building tax, not only the value of the building but also the value of the land was to be taken into consideration, and such provisions have been upheld by the Supreme Court as valid.

61. I am of the view that even where the land occupied by a building cannot be sold separately the value of the land with the building thereon has to be determined with reference to a hypothetical market. Such hypothetical assessment of valuation has-been upheld by the Supreme Court. In the case of Spencer Co. v. State of Mysore (Supra) the Supreme Court has observed that the actual sale or actual existence of market value is riot contemplated for making valuation for the purpose of the Wealth Tax Act. The Supreme Court has observed -.4hat when a statute uses the words ''if sold in the market'' it does not contemplate actual sale or the actual state of the market,, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market and on that basis, the value has to be found out and that a hypothetical case is contemplated and the Tax Officer must assume that there is an open market in which the assets can be sold. The similar view has been held by the Supreme Court in Purshottam N. Amarsay and Another Vs. The Commissioner of Wealth Tax, Bombay, .

62. I am unable to accept the contention of Mr. Ghosh that there is no sufficient guideline for the Commissioner to make the valuation of the land u/s 4A. There are well-known methods for determining the value of the land occupied by building separately. Some such methods are contractors method, land and building method, rental method, Land Residual Technique etc. The Commissioner can adopt any one of these methods. What method would be/applicable in a

given case would depend upon the facts of that case. There is also no doubt that if the Commissioner'' determines the value which is contrary to the proper principles applicable to the case, such valuation may be struck down either by the Appellate authority or by the writ Court under Article 226 of the Constitution. But that has nothing to do with the constitutional validity of Section 4A. The explanation to this section merely required the price of similar land to be taken into consideration but does not provide that no other method of valuation is to be taken into account or that the Commissioner has to assess the market value only on the basis of the market value of the land of the similar land in the locality. Moreover, if comparable land which is similar in ail respects is not available then either its value has to be ignored or it has to be suitably adjusted for the dissimilarities. The explanation does not in any way curtail the full effect and scope of the main provision contained in Section 4A. The Commissioner, in ; my view, while determining the valuation of the land land building has to do it objectively. Such determination of valuation would be quasi-judicial in nature. There is a provision for appeal and revision against such valuation.

63. Mr. Bhaskar Gupta has sought to point out that Section 4A only provides for valuation of vacant land and is silent about land occupied by a building. He submits that when the word ''land'' used in Section 4A has not been defined in the Act or in the Urban Land Ceiling and Regulation Act, 1976, then the ordinary Dictionary ?meaning of the word ''land'' has to be taken into consideration for ascertaining the true meaning of the word ''land'' in Section 4A and when their ordinary Dictionary meaning of the word ''land'' is vacant land, then it must have to be held that Section 4A only provides for the method of determination of market value of vacant land only and not land occupied by the building.

64. I am of the view that such a restricted meaning of the word ''land'' in Section 4A cannot be held to be the intention of the Legislature. The Act is a tax legislation both for vacant land as well as for land occupied by building. The word ''land'' is the genus'' and ''vacant land'' and ''land occupied by building'' are the species. Whether it is vacant land or land occupied by building by the Commissioner has to estimate the market value of the land only. It has already been indicated that the land does not cease to be the land as soon as it is built up. It still retains its character. It has already been indicated that even, if when the land is occupied by building, the land as, such may not have any actual market, but the Commissioner can assess valuation of such land ascertaining a hypothetical market for such land. In that view of the matter, I am unable to accept the contention of Mr. Bhaskar Gupta that s:4A is silent about the determination of the market value of land occupied by the building.

65. I am fully aware that the Supreme Court in several decisions from Royappa''s case (Supra) have given new dimension to Article 14 of the Constitution. Every Act has to be fair and reasonable.. Arbitrariness is not antithesis of equality and any act which is arbitrary violates Article 14 of the Constitution. But I am unable to hold that there is any material before this Court to hold that Sections 4 and 4A

are in any way arbitrary to be struck down being violative of Article 14 of the Constitution. There is a provision for ascertainment of the market value of both vacant land and the land occupied by building by taking recourse to well-established - principles on which the valuation of the land is made and the Commissioner can adopt any such method for determination of the market value of the land for the purpose of the Act. The tax is related with the market value and is imposed at the rate of 1 % of the market ''value. The tax imposed is neither excessive nor confiscatory in nature.

66. I am not of the view that either Section 4 or Section 4A is violative of Articles 14 and 19(1)(g) of the Constitution.

67. Mr. Ginwalla has also challenged Section 3 of the Act as ulta vires as it does not provide for any classification and treats all categories of land whichever situate on an equal footing and the said lands are sought to be taxed at the same rate i.e. on the quantity of land retained at 1 % of the market value of such land.

68. Mr. Ginwalls has also challenged Section 4 of the Act on that ground also. But while considering the above question raised in connection with .the validity of Section 4, I have in details considered his submissions and has held that it is not a case in which Section 4 is liable to be struck down as arbitrary on the ground that in the absence of any classification of land the charging section seeks to treat unequal as equals. It has been rightly pointed out by Mr. Bajoria that when u/s 3 the land tax upon the quantity of retained land shall be levied per annum on the quantity of retained land as 1 % of the market value of such land in view of Sub-section (2) of Section 3 as amended by the West Bengal Act XIII of 1983, then there is no question of unequal lands being treated equals. A plot of land in urban agglomeration which is more advantageous would fetch higher market value and on the contrary a plot of land which is disadvantageous and/or drawbacks would have a lesser market value. Mr. Ginwalla''s contention would have been correct if a flat rate of tax with reference to measurement was imposed as was the case in the earlier provision of the Act which has been a truck down . by G. N. Ray J. and after which the said charging section has been suitably amended by Amendment Act of 1983. I have already pointed out that the Supreme Court in Spencer AND Co, v. State of Mysore (Supra) has refuted the contention that the levy of a tax on a percentage of a market value violates Article 14 of the Constitution. Therefore, the contention of Mr. Ginwalla in this respect connot be accepted.

69. Mr. Ginwalla has also urged that the State Legislature has no legislative competence to levy the development charge and conversion charge as made in Section 5 and Section 6 of the Act respectively and has challenged the said two sections as ultra vires along with Sections 16, 17, 18 and 19 lying down the procedure for assessment and payment of development charge and conversion charge relate to the activity of developing or converting of land and is not a tax on land or building. He points out that the State has no power to impose a tax on

a matter with regard to which is has not been given express power to tax, that the power to tax the activities of development and conversion are neither provided in List II or List III of the Seventh Schedule and it cannot be assumed that the competence of State Legislature to levy such charges comes under Entry 49 of List II as that Entry relates to land and building only and not on any activity of development or conversion. Mr. Ginwalla has submitted that Sections 5 and 6 seek to levy charges on the activity of development and conversion and not on land which could only be levied by Parliament under the residuary Entry 97 of List I of the Seventh Schedule of the Constitution. He also points out that on mere expenditure of Rs. 25,000 development charges are required to be paid and it may be a mere case of white-washing or repairing. He also points out that no rules have been prescribed u/s 6(3) for determining the increase in the value of the land on account of conversion, and even when a conversion may not be beneficial, tax has to be paid, and the fact that the land is put to different use does not alter the land and therefore the levy of conversion charges is illegal.

70. Mr. Bajoria appearing for the State of West Bengal has submitted that the levy of development charge and conversion charge is not a levy of tax on the activity of development or conversion but a tax on the land itself. According to Mr. Bajoria, when a land is developed or converted to another use its capacity to earn increases and, therefore, with reference to such development or change in user the tax is levied on land.

71. On considering the submissions made by Mr. Ginwalla and Mr. Bajoria, I am of the view that the contention of Mr. Bajoria in this respect is correct. There is no doubt that under Entry 49 of List II of the Seventh Schedule tax may be levied by the State Legislature with reference to the use to which the land is put. The decision of the Supreme Court in Ajoy Kumar Mukherjee Vs. Local Board of Barpeta, is exactly on that point. In that decision, the Supreme Court has held that the entries in the three legislative lists have to be interpreted in their widest amplitude and, therefore, if a tax can reasonably be held to be a tax on land it will come within Entry 49. The following observation of the Supreme Court in Ajoy Kumar''s case are reproduced below:

4. The first question which falls for consideration, therefore, .is whether the impost in the present case is a tax on land within the meaning of Entry 49 of List II of the Seventh Schedule to the Constitution. It is well-settled that the entries in the three legislative lists have to be interpreted in their widest amplitude and, therefore, if a tax can reasonably be held to be a tax on land, it will come within Entry 49. Further, it is equally well-settled tax on land may be based on the annual value of the land and would still be a tax on land and would not be beyond the competence of the State Legislature on the ground that it is a tax on income see AIR 1949 81 (Federal Court) . It follows, therefore, that the use to which the land is put can be taken into account in imposing a tax on it within the meaning of Entry 49 of List II, for the annual value of the land which can certainly be taken into account in imposing a tax for the purpose of this Entry

would necessarily depend upon the use to which the land is put?.

72. In Ajoy Kumar''s case (Supra (1562) the tax was levied on the land which is used as a market. It was urged that the State Legislature did not have any legislative competence under Entry 49 of List II to impose tax on the market. But the Supreme Court upheld the validity of tax on the view that it was a tax on the land with reference to its use as market. In H. R. S. Murthy''s case (Supra) the imposition of land cases under Sections 78 and 79 of the Madras District Board Act, 1920, was also challenged on- the ground that the State Legislature did not have legislative competence to impose such cases under Entry 49 of the State list. It was argued that as the impugned cases was payable only in the event of the mining lessee winning the materials and so paying the royalty and. not when no minerals were extracted, it was in effect a tax on the minerals won and, therefore, on mineral rights. The Supreme Court has negatived such contention and has held that in the context of Sections 78 and 79 of the Madras District Board Act, 1920, land cases is in truth a tax on land within Entry 49 of the State list.

73. On considering the provisions of Section 5 of the Act, I am of the view that the development charges levied under that section is broadly a tax on land with reference to the carrying out of any development which has the effect of increasing its value. Similarly, conversion charges u/s 6 is also a tax on land with reference to the change in its user which has the effect of increasing the value of the land. As legislative Entry under the Seventh Schedule has to be liberally construed the said levy of changes under Sections 5 and 6 of the Act comes within the legislative competence of the State Legislative under Entry 49 of List II of the Seventh Schedule. It is true that the State Government has not yet framed rules prescribing the manner in which the increase in the value of any land or building on account of change in user is to be determined has not been prescribed. But before levying such charge the rule has got to be framed and the levying of charge without framing such rules may be struck down by Court as illegal or arbitrary. But only because no rule has yet been framed the legislative enactment cannot be struck down as arbitrary.

74. It may be true that every charge in user may not enhance the value of the land or building. But if there is no increase in value there can be no question of levying the conversion changes. Rules will have to be framed by the State Government as to the manner in which increase in value or change in user to be determined. But in Naraindas Indurkhya Vs. The State of Madhya Pradesh and Others, , Per Bhagwati J the Supreme Court has refused to strike down the act on the ground that'' large discretionary power has been conferred upon the State Government to frame rules, and no -rule has as yet been made prescribing the machinery which it would adopt in selecting and prescribing text books. The following observation of the Supreme Court in Narain Das''s case follows:

We may point out that the State. Government has yet made rules u/s 8 of the Act of 1973 prescribing the machinery which it would adopt in selecting and prescribing text books. It is quite possible that when such machinery is prescribed by the State Government it will allay any apprehension of possible misuse or abuse of power by the State Government. If, on the other hand, it is found that such machinery operates so as to deny equality of treatment to private publishers similarly circumstanced, it may become vulnerable to attack under Article 14 of the Constitution. Similar question would arise in levying the development changes u/s 5 of the Act. The word ''development'' has been defined in Section 21(1)(b) of the Act. The said definition indicates that development postulates the increase in the value of the land. In view of the clear provision of Section 5 it is not possible to accept the submission of Mr. Ginwalla that if the owner of the building does repair or white-washing for Rs. 25,000 or more he would be liable to pay the development charges. As the development charges are inextricably connected with the development which means increase in value then until and unless there takes place any increase in the value of the land or building, there cannot be any possibility of the levying of the development charges, and if the authority imposes such levy illegally it can be challenged as illegal.

75. Mr. Ginwalla has also urged that the provisions of Sections 5 and 6 suffer from excessive delegation in the matter of fixation of rates of development and conversion charges as the legislative has merely specified the maximum rate of development and conversion charges only and no guideline has been framed for the imposition to levy the charges. In. support the decision of Supreme Court in Corporation of Calcutta and Another Vs. Liberty Cinema, has been referred to. But in that decision there was delegation of power to the local bodies of fixing rates of taxes. But in this case the legislation has fixed the upper limit upto which the charges can be levied. In the case of Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, , Per Subba Rao J the Supreme Court has held that it is open to the Legislature to delegate the power of fixing the rate of purchase tax or sales tax, if the Legislature prescribed the reasonable upper limit. In that decision the Supreme Court has distinguished the decision in the case of Liberty Cinema (Supra). The Supreme Court has also reiterated the same principle in the case of Sitaram Bishambhar Dayal v. State of U.P. AIR 1972 S.C. 1168 (1170, Para. 7), Per Hedge J that it is open to the Legislature to delegate the power of fixing the rate of purchase tax or sales tax if the Legislature prescribes a reasonable upper limit.

76. In view of the above decisions of the Supreme Court contention of Mr. Ginwalla that the provisions of Sections 5 and 6 suffer from excessive delegation of essential legislative power to the State Government is not at all acceptable. It is also urged by Mr. Ginwalla that in levying development charges u/s 5 of the Act the State Government is resorting to double taxation as there is a provision for levying development charges u/s 102 of the West Bengal Town and Country Planning Act of 1979.

77. I am of the view that the object of the West Bengal Town and Country

Planning Act of 1979 is quite distinct and separate from the present Act. Under the Act the development charges levied have to be utilized for the purpose of the development of the area of the concerned development authority. But the levy of development charges under this Act is for the general needs of the State. The Supreme Court in Avinder Singh and Others Vs. State of Punjab and Others, , Per Krishna Iyer J and in Mathra Prashad and Sons Vs. State of Punjab, have upheld the imposition of what may be called the double taxation. In the case of Avinder Singh the Supreme Court has held that "if on the same subject-matter the Legislature chooses to levy tax twice over there is no inherent invalidity in the fiscal adventure save where other prohibitions exist."

78. In view of the above, I am unable to hold that Sections 5 and 6 of the Act read with Sections16, 17, 18 and 19 of the Act are ultra vires.

79. Mr. Pradip Ghosh has challenged Sections 12 and 32 of the Act as violative of Article 21 of the Constitution. He submits that Section 12 requires every owner of land or building to submit return and to pay tax in advance on the market value of urban land according to his own estimate, that u/s 32 any person who fails to submit the annual return or knowingly furnishes incorrect information shall be liable to be prosecuted and may be punished with imprisonment for six months or with fine and that provisions of Section 4 or 4A not giving any guideline in estimating the market value of the land occupied by building, there is every possibility that any estimate made by the owner would be incorrect and consequently for no fault of the owner he will be subjected to criminal prosecution u/s 32 of the Act, that in view of the mandate of Supreme Court in Maneka Gandhi''s case (Supra) any law which exposes a person to the loss of liberty-must be fair and reasonable and that consequently Section 12 read with Section 32 of the Act violates Article 21 of the Constitution. While considering the submissions made by the learned Advocates for the Petitioners that there is on possibility of estimating the market value of the land occupied by building u/s 4A of the Act, it has been clearly held that the submission of the Petitioners is not acceptable as under the frame-work of Section 4A, because the Commissioner can reasonably estimate the market value of the land occupied by building under any of the recognized methods of estimating the market value of land occupied by building, and consequently, I am unable to hold that an owner "cannot submit return giving his own estimate of the market value of the land occupied by building for the purpose of payment of advance tax. If the owner submits return making reasonable estimate of market value of land occupied by building, cannot be exposed to criminal prosecution. Therefore, the contention of Mr. Ghosh that Section 12 read with Section 32 is not fair and reasonable and thus violates Article 21 of the Constitution cannot be accepted as correct.

80. Mr. Ginwalla lastly submits that Section 35 is discriminatory and infringes Article 14 of the Constitution as it confers unguided power to the State Government to exempt any person or class of persons either wholly or in part from the liability to pay any tax or charge under the Act.

81. In support Mr. Ginwalla refers to the case of K.T. Moopil Nair v. State of Kerala (Supra) Head-note B. In that decision Section 7 of Travancore Cochin Land Taxation Act, 1955, which gave the Government the power to wholly or partially exempt any person or class of persons from the provisions of the Act was held discriminatory in effect as the Act did not lay down any principle or policy for the guidance of the exercise of .discretion by the Government in respect of selection contemplated by Section 7. He has also relied up on the famous case of Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, .

82. On perusal of the provisions o-f Section 35 it is clear that the power to exempt any person or class of persons from payment of tax or charges under the Act has been conferred upon the State Government which power it can only exercise in the public interest. The interest of public shall be the paramount consideration for the State Government in the matter of exemption. Therefore, the Legislature did not give the State Government unguided power, the State Government has to exercisers discretion in the matter of exemption only in public interest and if any exemption is granted by the State Government being actuated by any private interest or with an oblique or ulterior motive such action of the State Government will be submitted to challenge before a High Court under Article 226 of the Constitution and can be quashed on the ground that it is mala fide or that it is not in public interest.

83. Mr. Bajoria has rightly pointed out that the Legislature cannot visualize all the circumstances and cannot also make provision for everything in the legislation itself and is competent to leave matters of details to the State Government which is to administer the law, like the power to grant exemption in an appropriate circumstance. He has also referred to me the decision of Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others, which power conferred upon in State Government to amend the schedule to the Sales Tax Act for grant of exemption was challenged before the Supreme Court on the ground that it was excessive delegation of essential legislative functions but the same was rejected by Supreme Count on the finding that the power conferred upon the State Government to amend the schedule relating to exemption is in consonance with the accepted legislative practice relating to the topic and is not unconstitutional.

84. In this connection the observation of the Supreme Court in Narain Das v. State of M.P. Supra (1250, Para. 32) being very relevant should be looked into. It states thus ;

Now it is true, and there can be no doubt about it that the power conferred on the State Government is a large discretionary power and no machinery is laid down by the Legislature which would ensure just and proper execution of the power by the State Government but on that account alone the conferment of the power cannot be held to be invalid. Whenever a discretionary power is conferred on any authority, there is always a potential danger of its misuse or abuse, however, much the Legislature may try to hedge it with safeguards. But the mere possibility that the power may be misused or abused cannot per se induce the Court to deny the existence of the power. It cannot be overlooked that the Legislature has confided this power not to any petty official but? to the State Government and that itself is a guarantee that the power would be exercised in conformity with the policy or principle laid down in the Statute. As said by this Court in Matajog Dobey Vs. H.C. Bhari, .

A discretionary power is not necessarily a discriminatory power and abuse of power is not easily to be assumed where the discretion is vested in the Government and not in a minor official.

85. In this case the power of exemption has been conferred upon the State Government which the State Government has to exercise as a discretionary power only in public interest. The Supreme Court has observed in the above decision that a discretionary power is not necessarily a discriminatory power and abuse of power is not easily to be assumed where the discretion is conferred upon a Government and not to a petty official. It has also been pointed out that in case of abuse of power by the State Government any person aggrieved has his remedy in challenging the order of exemption by invoking Article 226 of the constitution. Therefore, I am unable to accept the submission of Mr. Ginwalla that Section 35 is liable to be struck down on the ground it has the effect of delegating the essential power of the legislature to the State Government.

86. In the result, I am unable to hold that the West Bengal Urban Land Taxation Act, 1976, as amended by the West Bengal Urban Land (Amendment) Act of 1983 is ultra vires. .

87. I am of the view that the provisions of the Act as amended by the 1983 Amendment Act are constitutionally valid.

88. All the writ Petitioners are dismissed.. This judgment shall govern all the writ petitions.

89. All interim orders and vacated.

90. There is no order as to costs.

91. On behalf of the writ Petitioners it is submitted that operation of this judgment and order may be stayed for some time, so that an appeal can be preferred to by them.

92. I am of the view that in the meantime under the provisions of the Act the State has to take some steps to implement that Act for the purpose of recovering urban land taxes from the writ Petitioners, therefore, the writ Petitioners may get sufficient time to obtain a stay order from the appellate Court.

93. In the circumstances, I am not granting any order of stay of operation of my judgment and order after upholding the constitutional validity of the Act.

