

(1966) 10 MP CK 0004

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 6 of 1966

Dev Kumar singhji Kasturchandji

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 13-10-1966

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 245, 246, 246(3)
Madhya Pradesh Municipal Corporation Act, 1956 — Section 132, 132(1), 135
Madhya Pradesh Nagariya Sthawar Sampatti Kar Adhiniyam, 1964 — Section 4, 4(3), 4(4)

Citation : AIR 1967 MP 268

Hon'ble Judges : P.V. Dixit, C.J; R.J. Bhawe, J

Bench : Division Bench

Advocate : K.A. Chitale, R.G. Waghmare and V.S. Pandit, for the Appellant; A.P. Sen, General and K.K. Dueby, Government Advocate for Nos. 1 and 3 and B.P. Janjharia, for No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.—This order will also govern the disposal of Miscellaneous Petitions Nos. 73 and from 90 to 99. all of 1965. and Nos. 7 to 9. all of 1966.

2. The petitioners in these fifteen applications under Article 226 of the Constitution are owners of buildings and lands situated within the limits of the Indore Municipal Corporation. They challenge the validity of the Madhya Pradesh Nagariya Sthawar Sampatti Kar Adhiniyam, 1964. (No. 14 of 1964; hereinafter referred to us as the Act), and pray that the said Act be declared to be ultra vires the power of the State Legislature and be struck down as unconstitutional. They also pray that the State of Madhya Pradesh be restrained from enforcing any of the provisions of the Act and from recovering any amount of property-tax from the petitioners under the Act, and further that the demand notices issued to the petitioners for the payment of property-tax be quashed and any amount recovered from them as property-tax be refunded to them.

3. Before stating the contentions of the petitioners attacking the validity of the Act and examining their tenability, it is necessary to refer to the relevant provisions of the Act and of the Madhya Pradesh Municipal Corporation Act, 1956. The Act has been described as "An Act to provide for the levy of tax on lands and buildings in urban areas in Madhya Pradesh." Section 2 gives definitions of the expressions "annual letting value", "assessee", "building". "law relating to local authority", "local authority" "owner", "tax" and "year" Section 3 deals with the appointment of a Property Tax Commissioner and certain officers to assist him. Section 4, which is the charging section in the Act. is in these terms-

"4. (1) There shall be charged, levied and paid for each year, a tax on lands or buildings or both situate in an urban area at a rate of seven per centum of the annual letting value of the land or building.

2. The tax levied under Sub-section (1) shall fall due on such dates as may be prescribed and be payable to the State Government by the owner of the land or building. as the case may be.

3. The tax levied and payable under Sub-section (1) shall be in addition to any other tax for the time being payable under any other enactment for the time being in force in respect of the land or the building, or portion thereof.

4. Notwithstanding anything contained in any enactment for the time being in force or any contract or agreement to the contrary, no owner of building or land shall be entitled to settle or increase the rent payable by any tenant so as to include in it any proportion of the tax payable under this section."

The other provisions of the Act concerning revision of annual letting value, exemptions, preparation of provisional assessment list, objection to the list, finalisation of the assessment list escaped assessment, realisation of tax, appeals etc. are not material here. The constitution and the powers and functions of the Indore Municipal Corporation are regulated by the M.P. Municipal Corporation Act, 1956 Section 132(1) of that Act inter alia lays down that "For the purpose of this Act. the Corporation shall impose a tax payable by the owners of buildings or lands situated within the city with reference to the gross annual letting value of the building or land called the property tax" Sub-section (4) of Section 132 of the Act of 1956 says that "The imposition of any tax under this section shall be subject to the provisions of any other enactment for the time being in force" Section 135(1) of the 1956-Act provides that -

"A property tax at a rate of not less than 1 1/4 per cent and not more than 12 1/4 per. cent of the annual value determined under this chapter shall be imposed by the Corporation upon all lands or buildings or both within the city except the following, namely:--

4. The petitioners have raised several grounds in their applications attacking the validity of the Act. But before us the contentions put forward on their behalf were that the impugned Act enacted by the State Legislature is illegal and invalid as

the property-tax imposed by it is a tax on the income of lands or buildings falling under Entry-82 of List-I of Seventh Schedule to the Constitution; that at any rate it is a tax on capital value of the assets covered by Entry-86 of List-I of Seventh Schedule and thus beyond the competence of the State Legislature; and that the imposition of the property-tax is a colourable exercise of power by the State Legislature. They also contend that even if it be assumed that the State Legislature has the power to impose tax on urban immovable property under Entry-49 of List-II of the Seventh Schedule, the State Legislature having delegated by the M.P. Municipal Corporation Act, 1956, and the M.P. Municipalities Act, 1961, the power to impose tax on lands and buildings in favour of the municipal corporations and municipalities, and further the local authorities have already imposed a tax on lands and buildings in exercise of these powers the State Legislature had no power to levy tax on lands and buildings; and that the State Legislature had no authority or power to impose double tax under Entry-49 of List-II of the Seventh Schedule to the Constitution. The validity of Section 4(4) of the Act, which prohibits the owner of a building or land from passing on to the occupier the burden of tax, has also been challenged by contending that it interferes with the freedom of contract in violation of article 19 of the Constitution. The petitioners also say that the property-tax imposed by the Act is confiscatory in nature and repugnant to Article 19 of the Constitution and that the burden of property-tax under the Act falls unequally on the citizens of the State, and thus the Act offends Article 14 of the Constitution.

5. It will be convenient to deal first with the contention that the impugned tax is a tax on income or capital and is, therefore, beyond the competence of the State Legislature. It is no doubt true that Parliament has exclusive power to impose a tax on income other than agricultural income, falling under Entry-82 of List-I, and a tax on the capital value of the assets within Entry-86 of that List. Taxes on lands and buildings, covered by Entry-49 of List-II, fall exclusively within the competence of the State Legislature. Looking to the substance of the law, the tax imposed by the Act is neither a tax on income nor a tax on the capital value of the assets. The charging section in the present case, namely, Section 4 of the Act, in clear terms levies not a tax on income or on capital value of the assets, but a tax on lands or buildings. It is true that the basis of the tax imposed is the annual letting value of the land or building. But the annual letting value of a land or building is not necessarily "actual" income or "capital value" of the asset. The property-tax imposed by the Act is without any relation to the actual income or to the capital value of the lands or buildings. No doubt, the annual letting value can be adopted as an artificial standard for determining, for purposes of Income Tax, the income derived from lands and buildings or for measuring the capital value of the assets for imposition of a tax on capital value. But from this it does not follow that every tax imposed in relation to the annual letting value of lands or buildings is a tax on income or on the capital value of the assets.

6. The question of the nature of the property-tax imposed by the impugned Act is really concluded by the decision of the Federal Court in AIR 1949 81 (Federal

Court) . In that case, the question arose whether the urban immovable property tax levied by the Punjab Urban immovable Property Tax Act, 1940, was a tax on income. The Punjab tax had also, as its basis, the annual value of the lands and buildings. It was held by the Federal Court that in substance the Property-tax levied by the Punjab Act fell within item 42 of List-II of Schedule-VII of the Government of India Act, 1935, and was not a tax on income falling within item-54 of the Federal List. The Federal Court summed up its conclusion thus .

"The charging section in the present case in Section 3, which in clear terms levies not a tax on income but a tax on buildings and lands. It is true that we must look not to the mere form but to the substance of the levy, and the tax must be held to be invalid if in the guise of a property tax it is really a tax on income. There is, however, nothing in the impugned Act to show that there was any intention on the part of the Legislature to get at or tax the income of the owner from the building. It is true that annual value was used as the basis, but it was very different from the annual value which may be used for getting at the true profits or income. The annual value, as has been pointed out, is at best only notional or hypothetical income and not the actual income. It is only a standard used in the Income Tax Act for getting at income, but that is not enough to bar the use of the same standard for assessing a provincial tax. If a tax is to be levied on property, it will not be irrational to correlate it to the value of the property and to make some kind of annual value the basis of the tax. without intending to tax income."

The Federal Court approved the decision of a Full Bench of the Bombay High Court in *Sir Byramjee Jeejeebhoy, Kt. Vs. The Province of Bombay*, where also the point raised was whether the urban Immovable property tax levied by Section 22 of the amended Bombay Finance Act, 1932. was beyond the powers of the Bombay Provincial Legislature on the ground that it was essentially a tax on income. The learned judges of the Bombay High Court held that the Act was not ultra vires and the tax levied by the Bombay Act was neither a tax on income nor a tax on the capital value of the assets. In the judgment which the learned Chief Justice delivered in the Bombay case, a reference was made to the decision of the House of Lords in *London County Council v. Attorney General*, 1901 A.C. 26 and it was observed:--

"It is clear from that case, and from others in which it has been followed, that in a statute imposing income-tax, that is a tax on total income, the tax relating to land is none the less Income Tax because it is assessed on the annual value of the land and not on the actual income. But it does not follow from that proposition that every statute which charges a tax in relation to annual value of land is charging a tax on income. Prima facie, a tax on the annual value of land is not a tax on income, and recognition of that fact seems implicit in the decision of the House of Lords. I further said -

"If the tax is not a tax on income the other question remains whether it is tax on capital value of the assets of the land within item 55. The Advocate General

submits that item 55 is directed only to a tax on the whole of the assets other than agricultural land of individuals and companies, and that it is directed to what is known as a capital levy. An analysis of the language employed in items 54 and 55 respectively affords scope for this argument but whether the contention be sound or not, in my opinion, it is impossible to say that this tax, although it is a tax on lands and buildings, is a tax on fee capital value of the lands and buildings it is imposed without any relation to the capital value except so far as such value can be ascertained by reference to rateable value".

The Federal Court quoted with approval the following passage occurring in the judgment delivered by Broomfield J. in the Bombay case -

"Suppose a tax were imposed of X rupees on every house in Bombay, payable by the owner. That would be a crude and unequal Impost, but perfectly legal. It would be more equitable, but still I imagine perfectly legal, If the tax were graded according to the size of the building, the number of storeys or rooms, or according to the extent of frontage on important streets, or according to the cost of construction. Why should it not be permissible to go a little further in the direction of making the amount of the tax correspond to the importance and value of the properties, by employing the standard basis of assessment of municipal property taxes? If annual value had been equivalent to income that would not be possible, for income may not be taxed by the Provincial Legislature. But when you speak of income being taxed within the meaning of item 54 what has to be considered in my opinion is actual income, and not the hypothetical income arbitrarily adopted for Income Tax purposes."

On the question whether the tax imposed by the Bombay Act was a tax on capital and within the mischief of item 55 of the Federal List. Broomfield J said -

"It was rather faintly suggested that if the impugned tax is not a tax on income it must be a tax on capital and within the mischief of item 55 What is meant by the capital value of assets in that item is by no means clear, and the argument threw little light on the matter. It may be that what is intended is a tax on the total value of assets in the nature of a capital levy In any case the measures of the capital value of assets would appear to be the market price. That would obviously be affected by several factors. e.g. mortgages and charges, of which the impugned tax takes no account. I do not see therefore that item 55 is of any more assistance to the plaintiff than item 54 With the question whether the urban Immovable property tax constitutes an unfair burden on the tax payer we are, of course, not at all concerned. Looking at the essential character of the tax from the legal point of view. I think it may be described as a tax on lands and buildings, imposed on the owners qua owners, and assessed by a somewhat arbitrary but not inequitable standard. which is not dependent either on the income of the assesseees or on the capital value of the properties."

7. Following the decision of the Federal Court in AIR 1949 81 (Federal Court) , it must be held that the impugned tax is neither a tax on income nor on the capital

value of the assets but is one falling within Entry-49 of List-II and the State Legislature had, therefore, the power to impose it. Shri Chitale, learned counsel appearing for some of the petitioners, referred us to the decision of the Supreme Court in *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, and said that the authority of the Federal Court's decision in AIR 1949 81 (Federal Court) has been shaken by the decision of the Supreme Court in *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*. In *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, the imposition of a rate by the Municipal Corporation of Ahmedabad on vacant lands was challenged. The rate was levied u/s 73 of the Bombay Municipal Boroughs Act, 1925, read with the Explanation to Section 75. The Explanation provided that in the case of lands the basis of valuation may be either capital or annual letting value. The Ahmedabad Municipal Corporation framed a rule for rating open lands providing that the rate on the area of open lands shall be levied at 1 per centum on the valuation based upon capital. It also framed a rule, defining "valuation based upon capital". In the Supreme Court it was contended on behalf of Gordhandas that the two rules framed by the Corporation were ultra vires Sections 73 and 75 of the 1925-Act inasmuch as they permitted the fixation of rate at a percentage of capital value which was not permitted by the Act; for the word "rate" used in Section 73(1) (1) had acquired a special meaning by the time the Act came to be passed and meant a tax on the annual value of lands and buildings and not on their capital value. It was also urged that if the Act permitted the levy of a rate on a percentage of capital value of the lands and buildings rated thereunder, it was ultra vires the Provincial Legislature because of item 55, List I of the Seventh Schedule to the Government of India Act, 1935. The Supreme Court construed the meaning of the word "rate", and held that the Explanation to Section 75 did not empower the Municipal Corporation to fix the rate at a certain percentage of the capital value and, therefore, the tax levied under the two rules framed by the Corporation at a percentage of the capital value was ultra vires. In this view of the matter, which the majority of the Judges hearing *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, took, the question whether the Explanation to Section 75 would be ultra vires the Provincial Legislature because of item 55 of List-I of the Seventh Schedule to the Government of India Act, 1935, inasmuch as it authorised the municipality to levy the rate at a percentage of the capital value was not considered by the Supreme Court. Thus in the Supreme Court case no question arose whether the rate imposed by the Ahmedabad Municipal Corporation was a tax on the income or a tax on capital value.

8. If, as we think, the impugned Act is merely and simply an Act imposing a tax on lands and buildings, then it is clear that the State Legislature had the power to enact the legislation under Entry-49 of List-II of the Seventh Schedule to the Constitution and the objection of the petitioners that the Act is a piece of colourable legislation must be rejected. The "colourable character" of the Act was suggested on two grounds, namely, first, that it invaded a municipal source of

revenue and, secondly, it also aimed at reducing "ownership" of urban property. It is now well-settled that if an enactment is within the legislative competence of the State Legislature, then the motives which impelled it to act are really irrelevant and have no bearing on the question whether the Act is or is not a piece of colourable legislation (see *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, : *State of Mysore Vs. S.S. Makapur*, , *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, and *The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi and Another*, . These decisions of the Supreme Court make it very clear that when legislative power is granted, the motive or object of the Legislature in exercising it is not relevant to the question of the validity of its exercise. In the Act there is no attempt to encroach or trespass upon the powers of Parliament, or any patent, manifest, direct, disguised. covert or indirect transgression of the limits of legislative authority of the State Legislature. The objection that the Act is a piece of colourable legislation must, therefore, fail.

9. On the question whether the State Legislature having, u/s 132(1) and Section 135 of the M.P Municipal Corporation Act, 1956, empowered the Indore Municipal Corporation to impose a tax on land and buildings and the said Corporation having imposed that tax in exercise of that power, the State Legislature could enact the impugned legislation imposing a tax on lands and buildings, Shri Chitale submitted that the property tax is the mainstay of municipal finance; that Entry-49 of List II. which gives to the State Legislature the power to impose tax on lands and buildings, is designed for local bodies only; and that the State Legislature having delegated this power of taxation to the municipal corporations and councils by enacting the M.P. Municipal Corporation Act, 1966, and the M. P. Municipalities Act, 1961. cannot now itself levy a tax on lands and buildings, and thus invade a municipal source of revenue. Learned counsel proceeded to say that the effect of this delegation was that the Corporation alone could impose a tax on lands and buildings u/s 132(1) of 1956-Act subject to the limitation prescribed by Section 136 thereof, and Sub-section (4) of Section 132, making the imposition of any tax u/s 132 subject to the provisions of any other enactment for the time being in force, only meant that a tax imposed by the Corporation u/s 132 would be subject to the provisions of any other enactment if the State Legislature has already occupied the field and, imposed a tax in exercise of its powers under Entry-49 of List-II and not otherwise.

10. In our judgment, this contention is not sound. It must first be noted that the M.P. Municipal Corporation Act, 1966, has been enacted by the State Legislature in exercise of its powers under Article 246(3), read with Entry-5 of the State List of the Seventh Schedule That Entry gives to the State Legislature exclusive power to make laws for "Local government, that is to say. the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration." Now, as pointed out by the decision of a Full Bench of this Court in *Achchela Lohar Vs. Janpada Sabha and Another*, , it is

permissible for the State Legislature to create local bodies and municipal corporations and to authorise them to levy taxes, rates or tolls for the purpose of raising revenue in order to enable those bodies to perform the various duties imposed upon them by the statute creating them, the power of taxation is obviously subject to the limitation that the corporations or local bodies can impose taxes only for the purpose of the Act under which they have been constituted and, further the State Legislature cannot authorise these local bodies to impose a tax which the State Legislature itself has no right to levy. The local bodies can be validly authorised to raise only those taxes which the State could raise under and by virtue of relevant Entries. When the State Legislature has this power to constitute local bodies and vest them with power and jurisdiction, then in the creation of local authorities by a statute and in investing them with powers and jurisdiction including the power of taxation, there is no "delegation of power" in the strict sense of the expression, that is to say, in the sense of the Legislature completely abdicating its functions. It has further been pointed out in *Achhelal Lohar Vs. Janpada Sabha and Another*, that the word "delegation", as generally used, does not imply a parting with powers by a person who grants delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself. It is, therefore, not correct to say that when municipal corporations have been empowered under the 1966 Act to impose a tax on lands and buildings for the purposes of that Act, the State Legislature has completely effaced itself in the matter of imposing a tax on lands under and by virtue of Entry 49 of List-II. Now, there are no words in Entry-49 to suggest that a tax on lands and buildings is to be levied only for the purposes of local government as explained in Entry-5 of List-II, and it would be wholly wrong to read into that entry words which do not occur there and thereby to limit the scope of the power of taxation under Entry-49 to purposes of local government only. By virtue of that Entry, the State Legislature can empower the local bodies to impose a tax on lands and buildings for the purposes of the Act creating the local bodies, as well as levy a tax itself for the purposes of general revenue.

11. The power of the State Legislature to impose a tax for general revenue is not taken away by the empowerment by it to the municipal corporations to impose a tax on lands and buildings. Nor is the State Legislature precluded by Sub-section (4) of Section 132 of the 1956-Act from imposing a tax on lands and buildings after the corporation has exercised its power u/s 132(1) (a) of imposing a tax on lands and buildings. In our opinion, the construction put on Sub-section (4) of the Section 132 by Shri Chitale is a forced and unnatural construction. That sub-section no doubt provides that the "imposition of any tax under this section shall be subject to the provisions of any other enactment for the time being in force". The expression "any other enactment for the time being in force" does not mean an enactment which was already in force at the time the corporation imposed a tax u/s 132(1)(a) ; but means any legislation enacted whether before or after the imposition of the tax by the corporation. The general sense of the phrase "for the time being" is that of time indefinite, and refers to indefinite state of facts

which will arise in future and which may vary from time to time. See *Ellison v. Thomas* (1862) 31 LJ Ch 867. If with this construction Sub-section (4) of Section 132 is read along with Section 4(3) of the impugned Act, then it is plain that the tax imposed by the Corporation on lands and buildings and the tax imposed by the impugned Act can validity co-exist.

12. It is quite true that a tax on lands and buildings is the mainstay of municipal finance and the levy of such a tax by the State is a direct attack on a municipal source of revenue. The appropriation of the tax for State's purposes may severely restrict the expansiveness of municipal revenue and may affect municipal activities. If the municipal bodies and corporations have to perform certain duties, they must have adequate revenue. Anything that impairs, the adequacy of that revenue also impairs the capacity for work of the local bodies and thereby impedes progress. To say that a municipal body must not protest against the imposition of property-tax by the State as the State is bigger than any municipal body and needs money is simply to evade the issue. It has been stated in the returns that the imposition of the tax by the State is not unfair as under Sections 132 and 135 the Corporation can impose tax on lands and buildings at a rate between 4 1/4 per cent and 12 1/2 per cent. and that at present the Indore Municipal Corporation levied a tax on lands and buildings only at the rate of 7.03 per cent. It would obviously be a wrong inference to draw from the fact that the Corporation has not imposed the tax at the maximum rate permissible that the Corporation did not require more revenue . The untapped portion is a reserve which ensures the expansiveness of the revenue which is essential for a progressive municipality or municipal corporation . To appropriate any part of that reserve-strength for State purposes is to weaken the reserve and to impair the expansive-ness of the revenue and consequently to hinder progress. But these are all general considerations having a bearing on the economics of taxation and the propriety of both the State and the Corporation imposing the tax. They do not affect the legality of the imposition either by the Corporation or by the State. On the theory and principles of sound taxation, double taxation of property may be open to objection if the two taxes, together imposed on property constitute a burden greater than it can or ought to bear. But if both the State Legislature and the local or municipal authority possess the power to levy the tax, then the Constitution does not prevent the same person or object being subjected to both the State and municipal taxation. This proposition has been laid down by the Nagpur High Court in *Mulji Sicka and Co. v. District Council, Bhandara* AIR 1945 Nag 71, which was followed by the Bombay High Court in *Cantonment Board, Poona Vs. Western India Theatres Ltd.,* . The decision of the Bombay High" Court was aff (sic) by the Supreme Court in *Western India. (sic) v. Cantonment Board*, AIR (sic) SC (sic). The learned Judges of the Bombay High Court, in the case of AIR 1964 Bom 261 while upholding this kind of double (sic), observed-

".....Instances are not wanting in this country in which taxes are levied twice upon the same thing, once for the benefit of the Provincial Government and in

the second instance for the benefit of the Local Self-Government bodies, for example, the District Local Board or the Municipality. The two instances which occur to one at once are that of land revenue and local fund cess and the urban property tax levied in the City of Bombay for the purpose of Provincial Government and the house tax which is levied by the Municipality at Bombay for its own finances. When a similar question arose before the Judges of the Nagpur High Court in the case of AIR 1946 Nag 71, they found themselves unable to accept the contention that there was anything in the Constitution which retired them to hold that a tax was illegal on the ground that it involved double taxation in respect of the same subject-matter and with respect we are in agreement with the view which had been expressed in that case."

In the matter of double taxation by the State and municipal bodies a policy of forbearance, adjustment and co-ordinated action is no doubt necessary. But the objection that as the Corporation has already levied a tax on lands and buildings under the M. P. Municipal Corporation Act, 1956, the State Legislature is, therefore, in law precluded from levying a tax on lands and buildings, cannot be accepted.

13. Coming to the contention that Sub-section (4) of Section 4 of the Act, which prohibits the owner of a land or building from passing on to the tenant the burden of the tax imposed by the Act. violates the freedom of contract guaranteed by Article 19 of the Constitution, it cannot be considered so long as the protection of Article 19 against any legislative provision stands suspended by the declaration of Emergency by the President under Article 352 of the Constitution --see *Makhan Singh Vs. State of Punjab* (and connected appeals), . As Entry 49 of List II is not so worded as to suggest that a tax imposed by virtue of that Entry is to be paid only by the occupier, or by the owner and occupier both, and not by the owner alone, and as the impugned Act received the assent of the President, it cannot be urged that Section 4(4) of the Act is ultra vires the powers of the State Legislature and. therefore, invalid.

14. There are no doubt limits to taxation. If those limits are crossed, then apart from the evils flowing in the field of economics and public finance, a tax may become invalid in law because of its confiscatory character and effect. If the magnitude of the tax is such as to eliminate the owner or to compel him to part with the taxed property for the payment of that tax assessed on him, or if it destroys the businesses of the persons taxed, then such a tax would be confiscatory in character and invalid--see *A.G. of Alberta v. A. G. of Canada* AIR 1939 AC 53; *Srinivasamurthy v. State of Mysore* AIR 1959 SC 894, and *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, . The contention that the tax imposed on lands and buildings by the impugned Act is confiscatory and invalid cannot however be examined because of the declaration of Emergency by the President under Article 352 suspending the protection of Article 19, and also for the reason that it is a point which necessarily involves an investigation into facts and the petitioners have placed no material before us to

show the alleged confiscatory character of the tax..

15. The plea of invalidity of the Act on the ground that it infringes Article 14 of the Constitution must also be rejected. The Act applies to urban immovable property and in itself creates no discrimination. "Urban" and "Rural" property are two distinct and defined classes of property. If, therefore, the Legislature has chosen to impose tax on urban property only, it cannot be held that there has been discrimination between "urbanities" and "ruralities" contrary to Article 14 of the Constitution. On this point also, the petitioners have not chosen to place before us any material to show that the burden of property-tax under the Act falls unequally, in violation of article 14, on the owners of the urban property. We, therefore, decline to express any opinion on the plea of unconstitutionality of the Act resting on Article 14 of the Constitution.

16. For the foregoing reasons, the Madhya Pradesh Nagarlya Sthawar Sampatti Kar Adhiniyam, 1964, is held to be valid and constitutional, and all these petitions are dismissed with costs of the Respondent-State. Counsel's fee for the respondent-State in each case is fixed at Rs. 200/-. The outstanding amount of security deposit, if any after deduction of costs, shall be refunded to the petitioner in each case.