

(1980) 10 MAD CK 0050

In the Madras High Court

Case No : Writ Petition No"s. 3427 of 1977 etc.

G.N. Venkataswamy

APPELLANT

Vs

Tamil Nadu Small Industries Development Corporation Ltd.

RESPONDENT

Date of Decision : 07-10-1980

Acts Referred:

Madras Revenue Recovery Act, 1864 — Section 52A, 62, 63
Tamil Nadu Revenue Recovery (Amendment) Act, 1972 — Section 52

Citation : AIR 1981 Mad 318 : (1981) ILR (Mad) 246 : (1981) 94 LW 411 :
(1981) 2 MLJ 254

Hon'ble Judges : Ismail, C.J.;Sathar Sayeed, J

Bench : Division Bench

Advocate : D. Raju, C.R. Krishnamurthi, M.N. Krishnamani, J.R.K. Bhavanandain, V. Radhakrishnan, S. Ramalingam, K. Ramachandran, M. Velusami, K.T. Palpandian, E. Padamanablian, R. Muthukumaraswam, L.P. Veeraraghavan, G. Subramaniam, B. Kumar, S. Jagadeesan, M. Muthuswami, P. Vedavalah and K. Doraiswami and G. Ramaswami, for N. Ganapath L.A., Thirumoorthy, Titus Jesudoss, Nalini Chidambaram, E.S. Govindan and T.V. Ramanujam, for the Appellant; A.G. assisted by Govt. Pleader and T.R. Rajagopalan, R. Mohan, R. Krishnamurthi, Dujip Singh and G. Venkataraman, for the Respondent

Judgement

Ismail, C.J.

This batch of writ petitions raises common questions regarding the validity of Section 52-A of the Tamil Nadu Revenue Recovery Act (I of 1864) as amended by the Tamil Nadu Act 12 of 1972, hereinafter referred to as the Act. The said Section 52-A reads as follows:-

"52-A, Recovery of sumc due to the Tamil Nadu Agro-Industries Corporation and another. Corporations etc:- without prejudice to any other mode of recovery which is being taken or may be taken, all loans granted and all advances made to any person-

(i) by the Tamil Nadu Agro Industries Corporation Limited. Madras or

(ii) by such other Corporation (the shares of which have been contributed, underwritten or guaranteed by the State Government) as may be notified in this behalf by the State Government in the Tamil Nadu Government Gazette, or

(iii) from out of the Amalgamated Tamil Nadu Shares of the Post War Services Reconstruction Fund and the Special Fund for Reconstruction and Rehabilitation of Ex-servicemen, together with interest on such loans and advances, and all sums due to the Corporations mentioned in Clauses (i) and (ii) may be recovered in the same manner as arrears of land revenue under the provisions of this Act."

Pursuant to Section 52-A (U) the Government of Tamil Nadu have from time issued notifications, notifying the Corporations such as the State Industries Promotion Corporation of Tamil Nadu Ltd. the Tamil Nadu Small Industries Development Corporation Ltd., the Tamil Nadu Industrial Investment Corporation Ltd., the Tamil Nadu Small Industries Corporation Ltd., the Tamil Nadu Textile Corporation Ltd., the Tamil Nadu Handicrafts Development Corporation, the Tamil Nadu Ceramics Ltd., the Tamil Nadu Handloom Finance and Trading Corporation Ltd., the Tamil Nadu Theatre Corporation Ltd. the Tamil Nadu Forest Plantation Corporation Ltd., the Tamil Nadu Tea Plantation Corporation, the Tamil Nadu Dairy Development Corporation, the Tamil Nadu Harijan Housing and Development Corporation, the Tamil Nadu Sugar Farm Corporation and others, as Corporations for the purpose of the said section. The petitioners in these cases have borrowed monies from some of these Corporations which have been impleaded as respondents in these writ petitions. For the purpose of recovering the amounts due from the petitioners to the said Corporations, proceedings were initiated under the Act and the Tahsildars concerned have issued notices calling upon the petitioners to pay , the amounts and in certain cases, distraint orders have also been made.

2. The petitioners have come to this Court under Article 226 of the Constitution of India complaining against the said action on the ground that Sec. 52-A of the Act is itself ultra vires. According to the petitioners, the Tamil Nadu Legislature lacks competency to enact Section 52-A because none of the entries contained in List II or List III of the Seventh Schedule to the Constitution will cover the Section in question. Their further contention is that the said Section violates Article 14 of the Constitution, because it confers an unguided power on the State Government to notify any Corporation, pro-vided its shares have been contributed, underwritten or guaranteed by the State Government, without declaring disclosing any legislative policy in than behalf. Yet another contention of the petitioners also relates to Article 14 of the Constitution and according to them, the Legislature. has treated un equals as equals in violation of Article 14. They also contend that with regard to the amounts payable by them to the respective Corporations, before the notification of the said Corporations u/s 52-A (ii) of the Act, the provisions of the Act cannot be set in motion.

3. As against this, the case of the State as well as the Corporations, as put "forth in the counter-affidavits filed by them in the writ petitions, is that the law

enacting Section 52-A into the Act falls within the Entry 45 of List II of the Seventh Schedule to the Constitution and that therefore the Legislature is competent to enact the particular Section. They further contend that the provisions of Section 52-A (ii) of the Act are not violation of Article 14 of the Constitution, because the notification can be made only with regard to Corporations, the shares of which have been contributed, underwritten or guaranteed by the State Government and therefore there is no violation of Article 14 of the Constitution.

4. In the course of the arguments during the hearing of the writ petitions, the learned Advocate General also relied on Entry 43 of List II of the Seventh Schedule to the Constitution. The learned Advocate General obviously drew inspiration for relying upon Entry 3 of List II of the Seventh Schedule to the Constitution from the decision of the Calcutta High Court in *N.C. Mukherjee and Co. Vs. Union of India (UOI)*, .

5. In view of the above contentions of the parties, the primary question that arises for consideration is whether the Tamil Nadu Legislature has the necessary competence to enact Section 52-A of the Act by the Amending Act 12 of 1972.

6. The Act received the assent of the Governor on the 5th May, 1864, and of the Governor-General on the 20th June, 1864. It was enacted to consolidate the laws "for the recovery of arrears of revenue in the then Madras Presidency. The preamble to the Act stated:-

"Whereas it is advisable that the laws relating to the collection of the public revenue should be consolidated and simplified; it is hereby enacted as follows: "

Section I of the Act defined the term "landholder" and also stated:

"Public revenue due on land shall, for the purposes of this Act be taken to include : cesses or other dues payable to the State Government on account of water supplied for irrigation."

According to Section 2, the land, the buildings upon it and its products shall be regarded as the security of the public revenue. Section 3 provides that every landholder shall pay to the Collector or other officer empowered by him to receive it, the revenue due upon his land on or before the day on which it falls due, according to the kistbandi or other engagement, and where no particular day is fixed, then within the time when the payment falls due according to local usage. u/s 4. when the whole or portion of a kist shall not be so paid, the amount of the kist or of its unpaid portion shall be deemed to be an arrear of revenue. Section 5 onwards provide as to how the arrears of revenue can be recovered. Section 5 itself states:-

"Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of the defaulter's movable and immovable property, or by execution against the person of the

defaulter in manner hereinafter provided." The other sections deal with the manner in which movable and immovable property of the defaulter can be sold and execution against the person of defaulter can be effected.

7. It has been accepted on all hands that the procedures provided for in the Act are drastic and summary and that the said procedure has been provided only for the purpose of speedy recovery of the land revenue payable to the Government, since the Government require the same for carrying on their administration.

8. It is against the background of these provisions contained in the Act, we have to consider the question as to the validity of S. 52A.

9. As we have pointed out already, the petitioners contend that none of the entries contained in List II and List III of the Seventh Schedule to the Constitution authorises the Tamil Nadu Legislature to enact Section 52-A; on the other hand, the learned Advocate General contends that Entries 3, 43 and 45 of List II and Entry 43 of List III of the Seventh Schedule to the Constitution taken together confer competency on the State Legislature to enact the Section in question.

10. Now we shall refer to the Entries relied on by the learned Advocate General.

"Entry 3 List II: Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Court; Officers and servants of the High Court; procedure in rent and revenue Courts; fees taken in all Courts except the Supreme Court.

Entry 43 List II: Public debt of the State.

Entry 45 List II: 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.

"Entry 43 List III: Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that State."

11. It is easier to dispose of the claim of the learned Advocate-General based on Entries 3 and 43 of List II and Entry 43 in List III of the Seventh Schedule: to the Constitution.

12. As far as Entry 3 of List II of the Seventh Schedule to the Constitution is concerned, as we have observed earlier, the learned Advocate-General got the inspiration from the decision of the Calcutta High Court in *N.C. Mukherjee and Co. Vs. Union of India (UOI)*, , already referred to. In that case excess profits tax due under the Excess Profits Tax Act, 1940, was sought to be recovered as an arrear of land revenue under the Bengal Public Demands Recovery Act (3 of 1913) read with the Bengal Public Demands Recovery (Validation of Certificates and Notices) Act 11 of 1961. One of the contentions that was put forward on behalf of the petitioners in that case was that the West Bengal Legislature had no

competency to enact the said Act. Dealing with that question, the Calcutta High Court held that the said Act was within the competency of the West Bengal Legislature. Out of the two Judges who constituted the Bench, Bachawat, J., after referring to the provisions of the said Act, observed in paragraph 15 of his judgment as follows:

"In my opinion the Bengal Public Demands Recovery Act, 1913 may fairly be said to be a law with respect to administration of justice, constitution and organization of revenue Courts and procedure of revenue Courts and with respect to land revenue including the collection of land revenue and is well covered by the Entries 3 and 45 of the State List. The State Legislature is competent to make such a law. It follows that the west Bengal Act XI of 1961 is also a law with respect to the matters enumerated in Entries 3 and 45 of the State List and consequently the State Legislature has power to make this law."

13. The other learned Judge, namely, Chatterjee. J., held that Entry 3 of List II completely covered the matter. After referring to the provisions of Act 3 of 1913, the learned Judge observed N.C. Mukherjee and Co. Vs. Union of India (UOI), :

"I would, therefore, conclude that the Certificate Officer, the Collector, the Commissioners and the Board of Revenue while dealing with matters under the Public Demands Recovery Act are Courts within the meaning of item No. 3 and Public Demands Recovery Act; the Board of Revenue has powers to deal with contempt as if it were a High Court u/s 7 of Act II/1913 (The Board of Revenue Act). The powers, as stated above, of the revenue Courts are not confined to particular items of revenue but to generally all matters of revenue, as may be gathered from the Schedule referred to above. I am therefore of opinion that the matter is covered by item No. 3 and Act XI of 1961 is a valid Act."

The said conclusion that the Bengal Act was within the competency of the State Legislature under Entry 3 of List U of ;he Seventh Schedule to the Constitution was arrived at on the basis of the provisions contained in that Act Bachawat, J., himself referred to the important provisions of the said Act in the Mowing terms:

"The Certificate Officer may sign and file a certificate u/s 4 of the Act on being satisfied that a public demand is due to the Collector; and he may sign and file the certificate u/s 6 on being satisfied that a public demand payable to a person other than the Collector is recoverable and that recovery by suit is not barred by law. The certificate under S. 6 may be filed upon the requisition of such other person signed and verified in the prescribed manner, the requisition being chargeable with the amount of the court-fee payable on a plaint for recovery of the demand. At the stage of the signing and filing of the certificate the certificate-debtor is not heard But at a subsequent stage the debtor is entitled to file a petition u/s 9 denying his liability and by. Section 10 the Certificate Officer is required -to hear the petition, take evidence if necessary and determine whether the debtor is liable for the whole or any part of the amount for which the certificate was signed and he may modify or vary the certificate accordingly.

Section 37 requires the Certificate Officer to determine all questions arising between the certificate holder and certificate debtor or their representatives relating to the making, execution, discharge or satisfaction of the certificate and the confirmation or setting aside of a sale held in execution of the certificate. By Section 48 every Collector and Certificate Officer acting in discharge of his functions under the Act is deemed to be acting judicially within the meaning of the Judicial Officers Protection Act", 1850 and by Section 49 they have the powers of a Civil Court for the purposes of receiving evidence, administering oaths, and enforcing attendance of witnesses and compelling the production of documents. The orders passed under the Act are made subject to appeal, revision and review by Sections 51, 53 and 54. Appellate powers are given to the Collector, the Commissioner and the Board of Revenue and revisional powers are given to the Commissioner, and the Board of Revenue. By Section 56 (2) certain provisions of the Indian Limitation Act, 1908 are made applicable to all proceedings under the Act as if a certificate filed under it were a decree of a Civil Court. By Section 57 a Certificate Officer is deemed to be a Court and any proceedings before him is deemed to be a civil proceeding within the meaning of Section 14 of the Indian Limitation Act, 1908. It is plain that the Certificate Officer is charged with the duty to decide disputes in a judicial manner. The parties are entitled as a matter of right to adduce evidence and to be heard in support of their claims and objections. The Officer is also under a duty to decide the matter before him on a consideration of the evidence adduced and in accordance with law. He has power to give decisions which of their own force bind the parties and he truly represents the judicial power of the State I am satisfied that the Certificate officer, the Commissioner and the Board of Revenue in matters where they adjudicate on the rights of the parties, are revenue Courts within the meaning of Entry 3 of the State list."

14. Most of these important provisions are not present in the Act and on realising this, the learned Advocate General himself had to admit that S. 52-A of the Act could not be brought within the ambit of Entry 3 of List II of the Seventh Schedule to the Constitution.

15. At this stage, it is convenient to dispose of the claim of the learned Advocate-General, based on Entry 43 of List III of the Seventh Schedule to the Constitution. We have already extracted that entry. The contention which the learned Advocate-General put forward before us was put forward before the Calcutta High Court also in the decision to which we have drawn attention already, namely, *N.C. Mukherjee and Co. Vs. Union of India (UOI)*, . In that case *Bachawat, J.*, observed (at pp. 170 and 171):

"Now plainly the Bengal Public Demands Recovery Act, 1913, is not a law with respect to Entry 43 of the Concurrent List; it is not a law with respect to recovery in the State of West Bengal of claims regarding public demands arising outside that State. Under the Bengal Public Demands Recovery Act, 1913 there can be no recovery in the State of West Bengal of claims in respect of Public demands

arising outside the State. u/s 4 of the Act read with Section 3 (3a) the Certificate Officer may file a certificate for public demands payable to the Collector of the district where he holds office. Under Section 6 of the Act read with Section 5 the Certificate Officer may file a certificate in respect of the public demand payable to any person other than the Collector only if the public demand is payable within district where he holds office, see *Secretary of State Vs. Syed Sadek Reza*, . Consequently certificates under the Act can be filed only, if "respect of demands accruing or arising within the State. Each State has devised a machinery which it has considered suitable for the recovery of its own public demands. The Bengal Public Demands Recovery Act, 1913 is a State Law providing for speedy recovery of the public demands of the State of West Bengal. See *Purshottam Govindji Halai Vs. Shree B.M. Desai, Additional Collector of Bombay and Others*, . Section 46(2) of the Indian Income Tax Act, 1922, enables recovery of the arrears of Income Tax as if they are arrears of land revenue through the Collector on the requisition of the Income Tax Officer, but such requisition can be forwarded only to the Collector of the place where the demand is payable, see *D. N. BHATTACHARYA Vs. COMMISSIONER OF INCOME TAX, WEST BENGAL*, . If public demand arising within a State is sought to be recovered outside the State, such recovery may be made by recourse to the machinery of the Revenue Recovery Act, 1890 (Central Act 1 of 1890) under which on the requisition of the Collector of the district in which the arrears of land revenue accrued, the Collector of another district in India may recover the amount of the arrears as if it were an arrear of land revenue which has accrued in his own district. The Revenue Recovery Act, 1890 is therefore truly a law with respect to Entry 43 of the Concurrent List. But , the Bengal Public Demands Recovery Act, 1913 is not such a law, see (1962) 46 TTR 104. Our attention is drawn to the legislative practice on the point and to the fact that the assent of the Governor-General u/s 5 of the Indian Councils Act, 1892 was obtained to the passing of the Bengal Public Demands Recovery Act, 1913 and to the fact that the assent of the President under Article 254(2) of the Constitution was obtained to the passing of the amending West Bengal Acts XV of 1955 and XV of 1957. The first two cases have been considered in the judgment in *AJIT KUMAR GANGULI Vs. UNION OF INDIA*, . I may add that the assent of the President to the West Bengal Act XV of 1957 though not necessary might have been obtained by way of abundant caution".

The other learned Judge, Chatterjee, J. observed (at page 174 of AIR):

"The said Act, however has been challenged. It is urged that the State legislature has no power to amend the provisions of the Bengal Public Demands Recovery Act except with the consent of the President as it is governed by item No. 43 of List No. III. Item No. 43 relates to recovery in a State of all claims arising outside that State. u/s 42 of the Income Tax Act the amount is to be realised as if it were an arrear of land revenue or, in other words, as if it were an arrear of land revenue payable to the Collector, district 246-Varganas. Therefore, the claim arises in the State and does not arise outside the State."

Having regard to the express language of Entry 43 of List III,, namely, recovery in a State of claims arising outside that State, and the decision of the Calcutta High Court referred to above, the learned Advocate-General did not rely upon this Entry also, to support the competency of the Tamil Nadu Legislature to enact Section 52-A of the Act.

16. That leaves out only two entries, namely, Entry 43 and Entry 45 of List II of the Seventh Schedule to the Constitution. It is difficult to understand how Entry 43 of List II can be relied upon at all. That entry as already stated, relates to „Public debt of the State". Consequently it refers to Public debt owing by the State to others and not to any debt owing to the State. The expression "public debt" has a connotation of its own. In fact, there is the Public Debt Act, 1944 (Central Act XVIII of 1944). That Act is an Act "to consolidate and amend the law relating to Government securities and to the management by the Reserve Bank of India of the public debt of the Government." u/s 1A of the said Act, that Act applied to Government securities created and issued whether before or after the commencement of that Act by the Central Government or a State Government other than the Government of Jammu and Kashmir. Section 2 (2) of that Act defined "Government security" as meaning "(a) a security, created and issued, by the Government for the purpose of raising a public loan, and having one of the following forms, namely:- (i) stock transferable by registration in the books of the Bank; or (ii) a promissory note payable to order; or, (iii) a bearer bond payable to bearer; or. (iv) a form prescribed in this behalf; (b) any other security, created and issued by the Government in such form and for such of the purposes of this Act as may be prescribed." in fact. prior to that Act, there was the Indian Securities Act 1920.

17. The Public Debt Act 1944 was amended by Act VI of 1949. The object "of that amendment was :-

"Until 1946 the Indian Securities Act, 1920, governed the securities issued by both the Central and the Provincial Governments. The working of this Act disclosed certain defects and It was considered necessary to amend it, particularly in the context of the very large increase of the public debt during the war years. Under the Government of India Act, 1935. the Central Legislature was competent to change only the law in respect of Central securities and the provisions of the Indian Securities Act were accordingly replaced, so far as the Central public debt was concerned, by a comprehensive new Act, the Public Debt (Central Government) Act, 1944, which was brought into effect from the 1st May 1946 leaving the provincial securities to be regulated by the Indian Securities Act, 1920. As the money market is common to the whole country and the public debt of the Central and Provincial Governments is administered by a single agency, namely. The Reserve Bank, it is obviously desirable to have uniform legislation for regulating the public debt of both. The provincial Governments concur in this view and the Chambers of the Legislatures of all the provinces in India have passed resolutions recommending that the securities issued by their

respective Governments and their public debt should be regulated by an Act of the Dominion Legislature. It is accordingly proposed to amend the Public Debt (Central Government) Act so as to extend it to cover the public debt of all the Provincial Governments." See Gazette of India, 1949. Part V. p. 37:-

18. The said Act was further amended in 1956 by Act LVII of 1956. The object of that amendment was :

"The public debt and securities of the Union and Part A States are at present administered by the Reserve Bank of India in accordance with the Public Debt Act, 1944, and the Rules made thereunder. The "Act, at present does not extend to securities created and issued by the Governments of Part B states. Some of these States have their own Public Debt laws while others have acquired public debt only recently and have no regular law on the subject. Securities issued by the Governments of Part B States are in all parts of the country and the public debt of Part B States is also being administered by the Reserve Bank of India. It is, therefore, desirable that there should be uniformity of procedure in respect of the public debt of the Union and all Part A and Part B States and that the Public Debt Act, 1944 should apply to securities issued by the Government of Part B States as it applies to securities issued by the Central Government or a Part A States. The Legislatures of Part B States other than that of the State of Jammu and Kashmir have passed resolutions in pursuance of Art. 252 of the Constitution empowering Parliament to pass the necessary legislation on the subject. The Bill accordingly amends the Public Debt Act, 1944, so as to make it applicable to securities issued by the Government of Part B States other than the Government of Jammu and Kashmir and makes certain other minor and incidental amendments in that Act".-See Gazette of India 1956, Extraordinary Part II, Section 2, page 772.

19. Thus it is clear that the expression public debt of the State occurring as item 43 of List II of the Seventh Schedule to the Constitution connote. only borrowing by the Government from the public and does not take in any amount payable by the Public.. to the Government. As a matter of fact, the argument of the learned Advocate⁴⁰General in this behalf was that since in these cases the shares of the Corporations have been contributed, underwritten or guaranteed by the State Government, the amounts payable to the Corporations will be public debt due to the State, and therefore the section in question will fall within the scope Of Entry 43, "Public debt of the State.,, once the learned Advocate-General realised that the expression "Public debt of the State" has a meaning of its own, as reflected in the Public Debt Act referred to above, he did not pursue the matter.

20. Consequently we are left only with one entry, namely, Entry 45 of List II of the Seventh Schedule to the 96ⁿstitution, in support of the competency of the Tamil Nadu Legislature to enact Section 52-A. In this connection the learned Advocate-General relied on certain decisions of the Supreme Court laying down the general principles relating to the construction of the scope of the various entries occurring in the different Lists in the Seventh Schedule to the

Constitution, particularly the decisions of the Supreme Court in *The State of West Bengal Vs. Anwar Ali Sarkar*, ; in *I.C. Golak Nath and Others Vs. State of Punjab and Another*, , in particular the head note "K" therein", in *The Check Post Officer and Others Vs. K.P. Abdulla and Bros.*, and in *Jagannath Vs. The Authorised Officer, Land Reforms and Ors*, , in particular paragraph 29 thereof.

21. In our opinion, the general principles as to the manner of construction of the different entries found in the three lists in the Seventh Schedule to the Constitution have been well settled and it is not necessary to recapitulate the same. The decision in *The State of West Bengal Vs. Anwar Ali Sarkar*, elaborately dealt with the -scope of Article 14 of the Constitution.

22. In *I.C. Golak Nath and Others Vs. State of Punjab and Another*, , referred to already, the Supreme Court stated (at p. 1666):

"There is an essential distinction between Constitution and Statutes. Comparatively speaking, Constitution is permanent; it is an organic statute; it grows by its own inherent force. The constitutional concepts are couched in elastic terms. Courts are expected to and indeed should interpret, its terms without doing violence to the language to suit the expanding needs of the society. In this process and in a real sense they make laws. Though it is not admitted, the said role of this Court is" effective and cannot be ignored, Even in the realm of ordinary statutes, the subtle working of the process is apparent though the approach is more conservative and inhibitive,"

23. In *The Check Post Officer and Others Vs. K.P. Abdulla and Bros.*, : the Supreme Court held (at pp. 793, 94):

"A legislative entry does not merely enunciate powers; it specifies a field of legislation and the widest import and significance should be attached to it. Power to legislate on a specified topic includes power to legislate in respect of matters which may fairly and reasonably be comprehended therein:" A taxing entry therefore, confers power upon the Legislature to legislate for matters ancillary or incidental including provision for preventing evasion of tax. Sub-sections (1) and (2) of Sec. 42 are intended to set up machinery for preventing evasion of sales tax. But, in our judgment, the power to confiscate goods carried in a vehicle cannot be said to be fairly and reasonably comprehended in the power to legislate in respect of taxes on sale or purchase of goods. By sub-section (3) the officer in charge of the check post or barrier has the power to seize and confiscate any goods which are being carried in any vehicle if they are not covered by the documents specified in the three sub-clauses. Sub-section (3) assumes that all goods carried in a vehicle, near a check post are goods which have been sold within the State of Madras and in respect of which liability to pay sales tax has arisen, and authorises the check post officer, unless the specified documents are produced at the check Post or the barrier, to seize and confiscate the goods and to give an option to the person affected to pay penalty in lieu of confiscation. A provision so enacted on the assumption that goods carried in a

vehicle from one State to another must be presumed to be transported after sale within the State is unwarranted. In any event power conferred by sub-section (3) to seize and confiscate and to levy penalty in respect of all goods which are carried in -a vehicle whether the goods are sold or not is not incidental or ancillary to the power to levy sales tax. A person carrying his own goods even as personal luggage from one State to another or for consumption, because he is unable to produce the documents specified in clauses (1), (ii) and (iii) of sub-section (3) of Section 42, stands in danger of having his goods forfeited. Power under sub-section (3) of Section 42 cannot be said to be ancillary or incidental to the power to legislate for levy of sales tax."

24. In *L. Jagannath v. Authorised Officer, Land Reforms, Madurai*, AIR IW2 SC 425 referred to already, the Supreme Court was concerned with the legislative competence of the Tamil Nadu Legislature to enact the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 58 of 1961. Reliance was placed in that case on Entry 18 of List II of the Seventh Schedule to the Constitution to support the validity of the said legislation. Entry 18 of List II of the Seventh schedule to the Constitution reads as follows (at p. 436):

"Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents, transfer and alienation. of agricultural land; land improvement and agricultural loans; colonization."

The Supreme Court in dealing with that Entry stated (at p. 436):

"In our view, Entry 18 in List II like any other Entry in the three Lists only gives the outline of the subject matter of legislation and therefore the words in the entry are to be construed in their widest amplitude. The field of legislation covered by the entry is not to be narrowed down in any way unless there is anything in the entry itself which defines the limits thereof. Entry 18, in our opinion, is meant to confer the widest powers on the State Legislature with regard to rights in or over land and such rights are not to be measured by or limited to the rights as between landlords and tenants or the collection of rents. The words which follow the expression "rights in or over land, are merely by way of illustration. The specification itself shows that the genus of the rights mentioned is not the one which landlords have vis-a-vis their tenants or vice versa. All kinds of legislation regarding transfers and alienations of agricultural land which may affect the rights therein of landlords and tenants are envisaged by the entry as also improvement of land and colonisation of such land. If the State Government seeks to enforce a measure by which the condition of barren or unproductive lands can be improved, it can do so even if the measure curtails the rights of landlords and tenants over them. If the State wants to enforce a measure of acquiring lands of people who hold areas over a certain ceiling so as to be able to distribute the same among the landless and other Persons, to give effect to the directive principles in Article 39(b) and (e) of the Constitution, it is not possible to say that the same would be outside the scope of Entry 18 in List II read with Entry 42 in List III. Such a measure can aptly be described as a

measure of agrarian reform or land improvement in that persons who have only small holdings and work on the lands themselves would be more likely to put in greater efforts to make the land productive than those who held large blocks of land and are only interested in getting a return without much effort. The measure does not transgress the limits of the legislative field because it serves to remove the disparity in the ownership of land. Persons who lose the ownership of lands in excess of the ceiling imposed are compensated for the lands acquired by the State and distributed among others. Acquisition of land would not directly be covered by Entry 18 but read with Entry 42 in List III, the State has the competence to acquire surplus land so as to give effect to the policy in Article 39 of the Constitution."

25. It is well settled- that the function of the Lists in the Seventh Schedule to the Constitution is only to demarcate the legislative fields between Parliament and the States and not to confer any power; each of the Union and State Lists starts by enumerating first, entries dealing with general Legislative powers as distinct from taxation power entries which are separately enumerated thereafter. Thus Entries 1 to 81 in List I and Entries 1 to 45 in List II deal with general legislative powers, while Entries 82 to 92 in List I and Entries 46 to 62 in List II deal with taxation powers. List III contains 1 to 47 entries which deal only with general legislative power. It does not contain any entry regarding taxation power. Entry 96 in List I and Entry 66 in List II and Entry 47 in List III enable a State legislature to levy fee in respect of the matters in the respective Lists including taxation entries. While interpreting the entries, it is the duty of the Court to interpret them in their plain, natural and grammatical meaning and read them in their fullest and widest amplitude so as to extend their scope to all ancillary and subsidiary matters which can reasonably and fairly be comprehended in them.

26. It is against the background of these general principles, we have to consider the scope of Entry 45 List of the Seventh Schedule to the Constitution and to find out whether the impugned section, namely, Section 52-A falls within the scope of that Entry.

27. Before we proceed to consider this question, we shall make one thing clear. It is admitted that the amounts due to the Corporations in these writ petitions are not land revenue, as ordinarily understood, nor are the said amounts due to the State. The Corporations with which we are concerned are all companies incorporated under the Companies Act, 1956, and are called Government Companies. There-fore these Corporations are different from the Government, even though their shares had been contributed, underwritten or guaranteed by the State Government. We have to take into account these two admitted positions before we can consider whether the State Legislature is competent to enact the provision in question for recovery of the amounts due from the petitioners to the different Corporations, in the same manner as arrears of land revenue, under the provisions of the Act.

28. In the first place, the expression "land revenue", occurring in Entry 45 of List

II of the Seventh Schedule to the Constitution is not a new expression; it was an expression, having a definite connotation at the time when the Constitution was framed. In fact, this Entry, namely, Entry 45 corresponds to Entry 39 of List II of the Seventh Schedule to the Government of India Act 1935 and is in identical language.

29. One of the earliest of the Acts, as far as Madras is concerned, is the Madras City Land Revenue Act, 1851 (Central Act X11 of 1851). The preamble to that Act stated:

"Whereas it is expedient that the land revenue accruing due to the Government within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras, should be ascertained and collected in as summary a manner as in other parts of the territories under the Government; It is enacted as follows:"

As a matter of fact, for the expression "Government, occurring in the above preamble, the original expression was "East India Company", which was subsequently replaced by "the Crown at Madras". and thereafter replaced by the present expression "Government. Section 1 of this Act stated :

"All assessable lands not the property of the Government within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras, of which the rate of assessment is not known, or which have not heretofore been assessed, shall be assessed at the rates customarily charged upon lands of a similar description in the neighbourhood according as they may be situated respectively within or without the Presidency Town of Madras."

The other provisions dealt with the rate of assessment as well as recovery of land revenue assessed. This Act was amended by the Madras City Land Revenue (Amendment) Act 1867, The Amendment Act received the assent of the Governor on the 28th May, 1867 and of the Governor-General on the 27th June, 1867 and took effect from the 1st July, 1867. The preamble to this Act stated:

"Whereas, in the preamble to Act XII of 1851, it is declared to be expedient that the land revenue accruing due to the Government of Madras within the town of Madras should be ascertained and collected in as summary a manner as in other parts of the territories under the said Government, and it is enacted in Section 9 of the said Act that the claim of the Government for land revenue has priority over all claims upon the land; and whereas in other parts of the said territories the land itself is the security for the revenue assessed thereon and is liable to be sold for the discharge of arrears, and there is no sufficient reason for exempting land situated within the town of Madras from the same liability; and whereas it is expedient to give additional powers to the distraining officer appointed by the Collector of Madras u/s 7 of the said Act. It is hereby enacted as follows :7, Section 1 of this Act stated:

"The word "revenue", as used in this Act, shall mean assessment, quit-rent,

ground-rent or other charge upon the land payable to the Government."

Section 3 of this Act provided:

"The land and the buildings thereon shall be regarded as the security of the public revenue."

30. As we have already stated, the Act was enacted to consolidate the Laws for the recovery of arrears of revenue in the then Madras Presidency. We have also referred to the preamble to the Act. In fact, the Act provided in Section 62 thereof that Regulations I and II of 1803 shall be inoperative as respects arrears of revenue recoverable under the Act. Section 63 of the Act provided:

"Nothing in this Act shall be held to bar the operation of the provisions of Regulation of 1831, in respect to the sale of lands of minors and other disqualified landholders."

31. Regulation I of 1803 was a regulation for defining the duties of the Board of Revenue, and for determining the extent of the powers vested in the Board of Revenue. The preamble to that Regulation stated:

"Whereas it has hitherto been usual for the Board of Revenue to exercise judicial authority in the determination of certain case of a civil nature appealed from the decision of the Collectors, who were entrusted with the administration of the revenues and the~ distribution of justice in their respective districts; and whereas Courts of Judicature have been established for the purpose of administering justice in all cases, civil and criminal, it is expedient that the judicial authority heretofore exercised by the Board of Revenue should be formally abrogated in those districts where Zilla Courts have been established; and whereas it is important to the security of the persons and property of those for the protection of whom the said Courts have been established, that the powers and authorities entrusted to the said "Board of Revenue in respect of the executive administration of the revenues, should be defined and published; wherefore the following Regulations have been passed by the Governor in Council."

32. Regulation II of 1803 was a Regulation for describing and determining the conduct to be observed by Collectors in certain cases. The preamble to that Registration stated:-

"Whereas under the system of internal government established for the administration of the public revenue, and for the security of persons and property, individuals should have the means of ascertaining and knowing the regulations passed for their benefit; and whereas the said system further requires that the power and authority heretofore vested in the immediate Collectors of the revenue should be curtailed; wherefore the following Regulation has been passed for the purpose of defining the authority committed to Collectors, and for describing the modes of procedure required in the discharge of their duty."

Section 2 of this Regulation stated:

"The collection of the public revenue derived from land-tax from the excise on spiritous liquors or for other articles of taxation shall be entrusted to Collectors."

33. Regulation X of 1831 was a regulation to prohibit the sale of estates belonging to minors not under the charges of the Court of Wards, and to extend the provisions of Section 20, Regulation v of 1804, to property of every description not subject to the jurisdiction of that Court. The preamble to this Regulation stated:

"Whereas doubts have been entertained as to the liability of the estate of a minor not taken under the management of the Court of Wards, to be sold for arrears of revenue; and whereas it is considered expedient, for the due protection of the property of minors and other incapacitated persons, that the provisions of Section 23, Regulation V, 1804, should be extended to property of every description not subject to the jurisdiction of that Court, the following rules have been enacted."

34. Thus, it will be seen that the Act had not completely replaced Regulations I and II of 1803 and Regulation X of 1831, as is apparent from Sections 62 and 63 of the Act. Consequently, it is clear that the Act confined itself to the recovery of land revenue proper.

35. There is only one other enactment to which reference must be made, namely, the Revenue " Recovery Act (Central) Act (I of 1890). The preamble to this Act stated:

"Whereas it is expedient to make better provision for recovering certain public demands; It is hereby enacted as follows:"

This Act extended to the whole of India except the State of Jammu & Kashmir and made provisions for recovery of the public demands by enforcement of process in other districts than those in which they became payable.

36. The concept. of "land revenue" as adumbrated in these enactments was available at the time when Entry 39 of List II of the Seventh Schedule to the Government of India Act, 1935 and Entry 45 of List 11 of the Seventh Schedule to the Constitution of India were inserted in this Constitution Act and in the Constitution.

37. The origin and concept of land revenue came to be considered in two decisions, one, of this Court and, the other, of the High Court of Andhra Pradesh.

38. In S. Gopalan Vs. State of Madras, levy and collection of land revenue was challenged on the ground that the same was illegal and unconstitutional by reason of Article 265 of the Constitution of India. The said Article. provides that no tax shall be levied or collected except by authority of law. This Court traced the origin, of the land revenue and the procedure followed in this State for its assessment and collection. The Court pointed out (at p. 540 of AIR) :

"It is well-known that the system of permanent settlement of Lord Cornwallis was introduced only in a few places in the old Madras Presidency and that the Board of Directors of the East India Company prohibited its extension to the rest of the presidency. Thereafter collection of revenue was by way of village settlement or by granting lease of the whole villages to a middleman that is to a rentor or headman, or to a joint body of inhabitants. That system of collection of land revenue was not found satisfactory and the ryotwari system of Sir Thomas Munroe was adopted between 1812 and 1818. It was conceived as a system of land revenue administration without the middleman, the being treated as proprietors of their holdings and liable to pay assessment direct to the Government. The assessment, however, was not fixed either in regard to the land or in regard to the period. Arable lands were classified according to the nature of the soil and assessment was fixed according to the quality and extent of the land. Each field or holding was valued separately and the holder was free to pay the revenue and keep the field or free himself by giving it up as he pleased. (Baden Powell's Land Systems in British India, Volume III, page 5). Settlements of revenue are made for such periods as the Government fixed for each district and they are notified in the District Gazette " by the Collector Ordinarily they are being made once in thirty years. The, Standing Orders of the Board of Revenue contain the basis, rates and methods of assessment. Standing Order 1, Rule 3 states that the assessment fixed represents the commuted value of the Government's share of the surface cultivation. The State Government will fix the period of settlement and during the currency of the period no revision of assessment is possible."

The Bench proceeded to state (at p. 539 of AIR) :

"There are therefore two aspects of the matter: (1) it is an inherent feature of the ryotwari system that the Government has a share, and as stated in Board's Standing Order I, Rule 4, the assessment represents the commuted value of the Government's share of the cultivation and, (2) the assessment is by virtue of the prerogative right -of the Government which under the law obtaining in this country it always possessed. Such being the legal basis for the assessment, the procedure adopted for the levy is what is contained in the Board's Standing Orders."

39. After extracting certain observations from the decision of the Privy Council in Prasad Rao v. Secretary of State in Council, (1917) ILR 40 Mad 886:44 Ind App 166: AIR 1917 PC 42 the Bench proceeded to state:

"There has been statutory recognition of the "incidents of the tenure, of the right of the Government to levy and collect the assessment. Regulation XXIII of 1802 provided for the establishment in each district of an office f " or keeping the records in the native, language relating to public revenue and for preserving the same. The preamble to that Regulation emphasised the necessity to preserve records relating to assessment of revenue and of public demands. The Revenue Recovery Act 11 of 1864 which purported to consolidate the laws for the recovery

of arrears of revenue in India put the collection of revenue on a statutory basis. u/s I of the Act the landholder is defined as including all holders of land under ryotwari settlement or in any way subject to the payment of revenue direct to State Government. Section 3 of the Act enacts:

"Every landholder shall pay to the Collector, or other Officer empowered by him to receive it, the revenue due upon his land on or before the day on which it falls due, according to the kist bardi or other engagement, and where no particular day is fixed, then within the time when the payment falls due according to legal (sic) usage; provided that except where property is held under a Sanadi-Milkiyat-I-is-timmar or other similar instrument it shall be lawful for the Board of Revenue, by notification published in " the District Gazette, to alter and fix, from time to time, the amount of several kists or instalments, and the dates on which they shall respectively become payable".

This provision is a charging section as it imposes a liability on the landholder to pay the assessment. Consistent with the nature and incidents of the tenure the section recognised the right of the Board of Revenue to alter and fix from time to time the kists. The Act contains elaborate provisions for the collection of arrears of revenue. Section 58 like the provisions of Statute 21. Geo. M, Chapter 70 (referred to in Ilbert's Government of India, page 268) is a reminder of the origin of the land revenue assessment as a prerogative right and precludes the Civil Court from taking cognizance of any dispute as to the rate of land revenue".

The Bench further stated (at p. 543 of AIR) :

"It can therefore be said that the levy of assessment on lands has been made by sanction of the Legislature and statutorily affirmed by the Appropriation Acts. Thus, though in origin the assessment was on the basis of a prerogative right it was recognised as lawful by custom and statutes, the assessment procedure was codified, as it were, in the Board's Standing Orders, and there was, therefore, a valid legal sanction prior to the Constitution for the levy, assessment and recovery of land revenue."

40. Once the Bench came to the conclusion that Section 3 of the Act was a charging section, that would constitute a complete answer to the argument based upon Article 265 of the Constitution of India because under Article 372(1) of the Constitution, notwithstanding the repeal by the Constitution of the enactments referred to in Article 395 but subject to the other provisions of the Constitution, all the law in force in the territory of India immediately before the commencement of the Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority. However, the Bench went a step- further and observed.

"Explanation (I), Article 372(1) of the Constitution makes it clear that the law in force referred to in the Article is common Law as well as a statute law. Therefore unless there is some provision in the Constitution which makes ryotwari assessment illegal, the law that previously existed in regard to it will continue to

be valid even after the Constitution. The only other relevant Article is 265 which provides "No tax shall be levied or collected except by authority of law." If the phrase "authority of law" is taken to mean statute law Article 372 will not continue the old system of the levy of land revenue which though legal was not authorised by any statute. If on the other hand the words "authority of law" include Common Law as well, the system of land revenue assessment obtaining in this State would continue to be a valid law. In the Constitution the word "law, has been used simply or in phrases such as "according to law", "by authority of law", "by any law", "in accordance with law", "in accordance with the provisions of any law,, by or under law", "under the law", "under any law, etc. In the absence of any express definition the context determines whether "law, connotes only statute law or something wider".

It will be noticed that once the Court came to the conclusion that Section 3 of the Act was a charging section, imposing a liability on the landholder to Pay the assessment, its other conclusion that if the phrase authority of law" was taken to mean statute law Article 372 would not continue the old stem of the levy of the land revenue which though legal was not authorised by any statute, would not be consistent. Though this decision did not consider the scope of Entry 45 of List 11 of the Seventh Schedule to the constitution, still it considered the concept of the land revenue and its assessment and collection.

41. The second decision is that of the High Court of Andhra Pradesh in Nalla Reddy v. State of Andhra Pradesh, (1967) 1 A MM (HC) 399. in that Case the constitutional validity of the Andhra Pradesh Land Revenue (Additional Assessment and Cess Revision) Act XXII of 1962 and the Andhra Pradesh Land Revenue (Additional Assessment and Cess Revision) (Amendment) Act XXIII of 1962 come up for consideration. The contention put forward in that case was that the levy of land revenue was not sanctioned by law and consequently was opposed to Article 265 of the Constitution and under the system prevailing in the then Madras Presidency land revenue was assessed and collected only under the Board's Standing Orders, which would not constitute statutory law and therefore would not be in conformity with Article 265 of the Constitution and would not be saved by Article 372 of the Constitution. Incidentally the Bench had occasion to consider the scope of Entry 40 of List 11 of the Seventh Schedule to the Constitution. In that case also the Bench elaborately considered the origin of the land revenue in the then Madras Presidency. The Bench after tracing the assessment, levy and collection of the land revenue in the then Madras Presidency and after referring to the provisions contained in the Act considered the decision of this Court in S. Gopalan Vs. State of Madras, referred to already and disagreed with the conclusion of this Court that Section 3 of the Act was a charging section. The Bench of the Andhra Pradesh High Court also pointed out the inconsistency in the two conclusions of this Court to which we have already drawn attention.

42. One of the contentions which the Bench of Andhra Pradesh High Court had to

consider was the invalidity of the Act on the ground that the same was not covered by Entry 45 of List 11 of the Seventh Schedule to the Constitution. Dealing with that contention, the Bench observed:

"Mr. Kuppuswamy contends that when the States have been given power to legislate in respect of Entry 45 of List H of the Seventh Schedule under the head "Land Revenue" it must be understood in the sense in which the term has obtained currency prior to the Constitution, which is that it is a tax on a share of the produce of land or its money value. If the effect of the legislation for additional assessment is that it is not in relation to the produce of land or its money value, then it is not a law under Entry 45 of List 11 and therefore must be struck down as being ultra vires the powers of the State Legislature. It is true that Land Revenue is a tax, and has been assigned a meaning over a period of centuries as a share in the produce of land which the King or Government is entitled to receive. Mr. Raghuvir says that land revenue is a tax but a rent under Land Revenue Act. Whatever may be the relevance of this argument as a justification for impugning the Act, having regard to "Section 12 of the Act that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any law, custom or usage having the force of law, the additional assessment which is inclusive of the original assessment if it can be sustained in law, is a tax. Land Revenue, we think, as a share in the produce of land was the meaning given by the framers of our Constitution, who were men of erudite learning and well-versed with legal terms."

In support of the above conclusion, the Bench of the Andhra Pradesh High Court referred to two decisions - one of their own High Court in *Jubilee Engineering Co. v. S. T. Officer*, AIR 1956 Hyd 79 : (1956) 7 STC 423 and the other of the Supreme Court in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, ,

43. In *Jubilee Engineering Co. v. S. T. Officer*, AIR 1956 Hyd 79 : (1956) 7 STC 423 the High Court of Andhra Pradesh has held (at Pp. 84, 85 of AIR) :

"Where certain expressions have had a certain meaning given to them by series of authoritative judicial pronouncements as to virtually make them terms of art or in the currency of legal language attach to them a special meaning when used in a legal instrument, then it would be difficult to assume, unless the context or other circumstances indicate otherwise that the draftsman did not use them in the sense in which those expressions have been understood in legal parlance. But as we have already observed, if the words or expressions have acquired legal currency and have been given a definite meaning in legal parlance, it is safe to presume that the draftsmen or the framers could not but have intended to use them in the same sense. It is not easy to break away from the legal conceptions or the meaning of certain legal phrases which are well known under the law existing at the time when the Constitution was promulgated."

44. In the decision of the Supreme Court in *The State of Madras Vs. Gannon*

Dunkerley and Co., (Madras) Ltd., the Supreme Court observed (at p. 569):

"We think that the true legislative intent is that the expression "sale of goods, in Entry 48 should bear the precise and definite meaning it has, in law, and that that meaning should not be left to fluctuate with the definition of "sale" in laws relating to sale of goods which might be in force for the time being."

After referring to an⁶ relying upon the above two decisions the Bench of the Andhra Pradesh High Court proceeded to state :

"If the expression "land revenue, in Entry 45 of the State List is given that meaning it only empowers the State to charge a share in computed money value of the produce of land. The entire entry deals with the characteristic of this tax when it includes in the power, the assessment and collection of land revenue, maintenance of land records, survey for revenue purposes and records of rights, etc. all of which are consistent with the power to levy, assess and collect that land revenue."

45. The significance of the above two decisions, namely, S. Gopalan Vs. State of Madras, of this Court and Nalla Raja Reddy v. State of Andhra Pradesh, (1967) 1 AWR 399 of the High Court of Andhra Pradesh that they have gone elaborately into the concept of land revenue and the High Court of Andhra Pradesh in particular had considered the scope of that expression occurring in Entry 45 of List II of the Seventh Schedule to the Constitution and come to the definite conclusion that the expression "land revenue" meant or constituted a share in computed money value of the produce of land.

46. If it is so, the conclusion is inescapable that Entry 45 of List II of the Seventh Schedule to the Constitution of India deals only with land revenue payable to the State and it has nothing whatever to do with any amount payable by any person to any¹ body else. Therefore prima facie the State Legislature, under the said "Entry will have no power to enact a law for the purpose of collecting the dues owed by a person to a Corporation like the Corporations with which we are concerned and from this point of view, Section 52-A of the Act, as introduced by the Tamil Nadu Act 12 of 1972, will be outside the legislative competence of the State.

47. The learned Advocate-General relied on a decision of the Supreme Court in The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others, and contended that a State Legislature has power to create a fiction and such fiction must be given full effect. In other words, according to the learned Advocate General, it is open to a State Legislature, by a fiction, to provide that something which is not land revenue should be deemed to be land revenue for the purpose of the Act and full effect must be given to such fiction. The facts of the case dealt with in the decision of the Supreme Court referred to above are: In the State of Bombay, (Erection) Ordinance, 1948 was applicable to certain areas specified in the schedule. The district of Ratnagiri was not one of the areas therein specified. Sub-section (4) of Section 1 of the Ordinance empowered the Provincial Government

by notification in the official gazette to extend to any other area specified in such notification its provisions. It further empowered the Provisions Government to direct that it shall apply only in respect of buildings intended to be used for such purpose as may be specified in the notification. On 15-1-1948 the Government of Bombay issued the following notification:

"In exercise of the powers conferred by sub-section (4) of Section 1 of the Bombay Building (Control on Erection) Ordinance, 1948 (Ordinance No. 1 of 1948), the Government of Bombay is pleased to direct that the said Ordinance shall also extend to all areas in the province of Bombay other than the areas specified in the schedule to the said Act and that it shall apply to said areas only in respect of buildings intended to be used for the purpose of cinemas, theatres and other places of amusement or entertainment."

The consequence of the said notification was that in the district of Ratnagiri, no cinema building could be commenced without the permission of the Controller after that date. The said Ordinance I of 1948 was repealed by Act 31 of 1948 called the Bombay Building (Control on Erection) Act, 1948. It was made applicable to areas specified in the schedule. Sub-section (3) of Section I of the Act authorized the Provincial Government by notification in the official gazette to direct that it shall also extend to any other areas specified therein. It further authorized the Provincial Government to direct that it shall apply only in respect of buildings intended to be used for such purposes as may be specified in the notification. By Section 15 (1) of the Act, it was provided that:

"The Bombay Building (Control on Erection) Ordinance, 1948 is hereby repealed and it is hereby declared that the provisions of Sections 7 and 25 of the Bombay General Clauses Act, 1904, shall apply to the repeal as if that Ordinance were an enactment."

The respondents before the Supreme Court started constructing a cinema at Ratnagiri on 15-8-1948 after the commencement of Act 31 of 1948, without obtaining the permission of the Controller of Buildings as required by the Act under the impression that the Act had application only to areas specified in the schedule and the district of Ratnagiri not having been specified in the schedule, the provisions of the said Act had no application to that area. The respondents were prosecuted for committing an offence u/s 9 (2) read with Section 4 of the said Act and they were acquitted and that acquittal was taken up before the Supreme Court.

48. Dealing with the scope of Section 15 (1) of the said Act, the Supreme Court observed (at p. 246 of AIR):

"It appears to us that the attention of the learned Judges was not pointedly drawn to the concluding words of Section 15 (1) of the Act. It specifically provided therein that the provisions of Sections 7 and 25, Bombay General clauses Act shall apply to the repeal as if the ordinance were an enactment. The Ordinance by use of these words was given the status of an enactment and

therefore the word "Ordinance, occurring in the notification has to be read accordingly and as extending the Act to those areas, and unless that is done, full effect cannot be given to the concluding words used in Section 15 (1) of the Act. The concluding words of Section 15 (1) of the Act achieve the purpose that was achieved in the Cotton Cloth and Yarn (Control) Order by the "proviso". By reason of the deeming provisions of Section 15, the language used in the notification extending the ordinance to those areas as a necessary consequence has the effect of extending the operation of the Act to those areas.

When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion."

49. We are of the opinion that the above decision has no application to the present case. That was a case where the Bombay Legislature was competent to enact the Act and the Bombay Governor was competent to promulgate the Ordinance and consequently both the said Act and the Ordinance being within the legislative competence of the State Legislature, it was certainly open to the State Legislature to create a fiction that the Ordinance would be treated as an enactment for the purpose of Sections 7 and 25 of the Bombay General Clauses Act and therefore full effect should be given to such fiction. But that is not the position here. We are clearly of the opinion that it is not open to the Legislature by creating a fiction to prove that something which is not land revenue should be considered to be land "revenue for the purpose of the Act. When an expression like "land revenue, has acquired a definite and well understood meaning before the promulgation of the Constitution and it is in that meaning the said expression has been used in the Constitution, it is not open to the State Legislature by a fiction to treat something which is not land revenue as land revenue and make a law with respect to the same.

50. This conclusion of ours derives support from the decision of the Supreme Court in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, relied on by the High Court of Andhra Pradesh in the judgment to which we have already drawn attention. The Supreme Court in that case was considering the competency of the State Legislature to impose sales tax in respect of works contract. The Supreme Court elaborately considered the meaning to be attributed to the word "sale" occurring in Entry 48 of List II of the Seventh Schedule to the Government of India Act, 1935 reading "tax on the sale of goods." After observing that the contention of the appellant (before the Supreme Court) is well founded that as the words "sale of goods, in Entry 48 occur in a Constitution Act and confer legislative powers on the State Legislature in respect of a topic relating to taxation, they must be interpreted not in a restricted but broad sense, the Court proceeded to state (at p. 566):

"We must accordingly hold that the expression "sale of goods" in Entry 48 cannot

be construed in its popular sense, and that it must be interpreted in its legal sense. What its connotation in that sense is, must now be ascertained. For a correct determination thereof, it is necessary to digress somewhat into the evolution of the law relating to sale of goods."

In the course of considering such evolution, the Supreme Court observed (at p. 567):

"Coming to the Indian Law on the subject Section 77 of the Contract Act defined "sale" as the exchange of property for a price involving transfer of ownership of the thing sold from the seller to the buyer". It was suggested that under this section it was sufficient to constitute a sale that there was a transfer of ownership in the thing for a price and that a bargain between the parties was not an essential element. But the scheme of the Contract Act is that it enacts in Sections I to 75 provisions applicable in general to all contracts, and then deals separately with particular kinds of contract such as sale, guarantee, instalment, agency and partnership, and the scheme necessarily posits that all these transactions are based on agreements. We then come to the Indian Sale of Goods Act, 1930 (111 of 1930), which repealed Chapter VII of the Contract Act, relating to sale of goods, and Section 4 thereof is practically in the same terms as Section I of the English Act. Thus, according to the law both of England and of India, in order to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring title to goods which of course presupposes capacity to contract, that it must be supported by money consideration, and that as a result of the transaction property must actually pass in the goods. Unless all these elements are present, there can be no sale. Thus, if merely title to the goods passes but not as a result of any contract between the parties, express or implied, there is no sale. So also if the consideration for the transfer was not money but other valuable consideration, it may then be exchange on barter but not a sale. And if under the contract of sale title to the goods has not passed, then there is an agreement to sell and not a completed sale."

The Supreme Court further stated (at pp. 569, 70 of AIR):

"We think that the true legislative intent is that the expression "sale of goods" in Entry 48 should bear the precise and definite meaning it has in law, and that meaning should not be left to fluctuate with the definition of sale in laws relating to sale of goods which might be in force for the time being The scheme of the drafting is that there is in the beginning of the Entry words of general import, and they are followed by words having reference to particular aspects thereof. The operation of the general words, however, is not cut down by reason of the fact that there are sub-heads dealing with specific aspects."

After pointing out that Entry 48 introduced a topic of legislation with respect to which there was no legislative practice and after stating what the legislative practice in Australia was the Supreme Court observed (at p. 571 of AIR):

"But under the Government of India Act, the Provincial Legislature is competent to enact laws in respect of the matters enumerated in Lists I and II, and though the entries therein are to be construed liberally and in their widest amplitude, the law must, nevertheless be one with respect to those matters. A power to enact a law with respect to tax on sale of goods under Entry 48 must, to be intra vires be one relating in fact, to sale of goods, and accordingly, the Provincial Legislature cannot, in the purported exercise of its power to tax sales, tax transactions which are not sales by merely enacting that they shall be deemed to be sales."

51. We are of the opinion that the above observations of the Supreme Court are very pertinent to the present case and in fact conclusive, because under Entry 45, the State Legislature has got power to enact laws relating to land revenue and in the purported exercise of its power, it has no power to enact a law with respect to something which is not land revenue by deeming it to be land revenue.

52. It only remains to notice two decisions relied on by the learned Advocate-General in support of his contention that the impugned section is intra vires the powers of the Tamil Nadu Legislature. One of the decisions relied on is that of the Supreme Court in *Lachhman Das on Behalf of Firm Tilak Ram Ram Bux Vs. State of Punjab and Others*, . The facts of that case are :-

"The Bank of Patiala was established in 1917 by the then Maharaja of Patiala. On May 5, 1948, the Rulers of eight States, including the State of Patiala, entered into a covenant merging all the said States into one United State called the Patiala and East Punjab States Union briefly called Pepsu. On August 20, 1948, the said State of Pepsu, was established with the Maharaja of Patiala as the Rajpramukh. In exercise of the power conferred on him under the said covenant, the said Rajpramukh issued an Ordinance applying all the laws obtaining in the State of Patiala, including the Patiala Recovery of State Dues Act 1902 BK. to the entire State of Pepsu. After the promulgation of the Constitution of India on January 26, 1950, Pepsu became part of the Indian Union as a Part B State, and under the provisions of the Constitution, the said Act continued to have force throughout the said State. Subsequently, under the States Reorganisation Act, Pepsu became part of the State of Punjab and the said Act continued to have force in that part of Punjab which was Pepsu before. After the Constitution came into force, the petitioners and the appellants before the Supreme Court respectively borrowed monies from the said Bank on the security of their properties. The Bank authorities ascertained the amounts due to the Bank from the said parties and were seeking to realise the same from the properties of the said debtors in the manner provided by the provisions of the Patiala Recovery of State Dues Act 1902 BK. It is the validity of that Act that was challenged before the Supreme Court."

53. We may point out that in that case the legislative competency to enact that Act did not come up for consideration because the Act was promulgated by the Maharaja of Patiala before the Constitution came into force. The said Act was challenged only on three grounds, as is apparent from paragraph 6 of the

judgment, namely:-

"(i) The proceedings taken under the Act for determining the amounts payable by the appellants and for recovering the same are illegal as the Act had ceased to be in force on the material dates.

(ii) The Act and the Rules made thereunder became void on the coming into force of the Constitution as they are repugnant to Articles 14 and 19(1) M and (g) and the proceedings taken under those provisions are therefore illegal.

(iii) The certificate issued u/s 7 is riot in accordance with the Rules framed under the Act and in consequence the proceedings taken thereunder are illegal."

The second contention was elaborated before Supreme Court in the following manner as found in paragraph 20 of its judgment.

"We shall next consider the contention of the appellants that the Act and the Rules framed thereunder are repugnant to Article 14 and Article 19(1)(f) and (g) and that they have therefore become void under Article 13 of the Constitution. Dealing first with the contention that they contravene Article 14, two grounds have been urged in support of it, (I) that there is discrimination between the Patiala State Bank on the one hand and the other Banks on the other and, (ii) that after the merger of the Pepsu Union in the State of Punjab under the States Reorganisation Act, 1956, there is discrimination between the law as administered in the territories of the erstwhile Pepsu Union on the one hand and In the other parts of the State of Puniab on the other."

While dealing with this ground of attack and that too, with regard to the first ground referable to Article 14, the Supreme Court observed (at pp. 232-33 of AIR):-

"Thus a Bank established by a State has got distinctive features which differentiate it from the other Banks and for purpose of Article 14 it forms a category in itself. The law is now well settled that while Article 14 prohibits discriminatory legislation directed against one individual or class of indiv it does not forbid reasonable classification, and that for this purpose even one person or group of persons can be a class

On the principles stated above we are of the opinion that the Patiala State Bank is a class by itself and it will be within the power of the State to enact a law with respect to it. We are also of the opinion that the differentia between the Patiala State Bank and the other Banks has a rational bearing on the object of the legislation. If the funds of the Patiala State Bank are State funds, a law which assimilates the procedure for the determination and recovery of amounts due to the Bank from its customers to that prescribed for the determination and recovery of arrears of revenue must be held to have a just and reasonable relation to the purpose of the legislation. A law which provides for State funds being advanced to customers through State Bank can also provide for its being recovered in the same manner as revenue."

(Italics (hereinto underlining) are ours). For the above conclusion, the Supreme Court relied on its decision in *Manna Lal and Another Vs. Collector of Jhalawar and Others*, ,

54. The learned Advocate-General relied on the statement which we have italicised (underlined). We are of the opinion that that statement has no relevancy to the point under consideration because in that case the funds of the Patiala State Bank were the State funds and therefore the Supreme Court held that the law had power to assimilate the procedure for the determination and recovery of amounts due to the from its customers to that prescribed for the determination and recovery of arrears of revenue, because both belonged to the State. Consequently that decision is not of any assistance to support the constitutional validity of the impugned section.

55. The next decision relied on by the teamed Advocate-General is again that of the Supreme Court in *Director of Industries, U.P. and Others Vs. Deep Chand Agarwal*, . The judgment in that case opens up by stating that the appeal involved the question whether Section 3 of the Public Moneys (Recovery of Dues) Act, 1965 (U. P. Act No. XXV of 1965) offended Article 14 of the Constitution. That decision did not consider the question of legislative competence. Section 3 of V. P. Act XXV of 1965, which the Supreme Court was considering, read as follows (at p. 803):-

"3. Recovery of certain dues as arrears of land revenue

(1) Where any person is party:-

(a) to any agreement relating to a loan, advance or grant given to him by the State Government or the Corporation by way of financial assistance, or

(b) to any agreement relating to a guarantee given by the State Government or the Corporation in respect of a loan raised by an industrial concern, or

(c) to any agreement providing that any money payable thereunder to the State Government shall be recoverable as arrears of land revenue, and such person

(i) makes any default in repayment of the loan or advance or any instalment thereof, or

(ii) having become liable under the conditions of the grant to refund the grant or any portion thereof, makes Any default in repayment of such grant or portion or instalment thereof, or

(iii) otherwise fails to comply with the terms of the agreement,-

then, in the case of the State Government, such officer as may be authorised in this behalf by the State Government by notification in the Official Gazette and in the case of the Corporation; the Managing Director thereof, may, without prejudice to any other mode . of recovery under any other law for the time being in force, send a certificate to the Collector, mentioning the sum due from such

person and requesting that such sum together with costs of the proceedings be recovered as if it was an arrear of land revenue.

(2) The Collector on receiving the certificate shall proceed to recover the amount stated therein as an arrear of land revenue."

The Supreme Court observed (at p. 804)

"The Act is passed with the object Providing a speedier remedy to the State Government to realise the loans advanced by it or by the Uttar Pradesh Financial Corporation. The State Government while advancing loans "does not Act as an ordinary banker with a view to earning interest. Ordinarily it advances loans in order to assist the people financially in establishing an industry in the State or for the development of agriculture, animal husbandry and for such other "purposes which would advance the economic well-being of the people. The amounts so advanced are repayable in easy instalments with interest which would ordinarily be lower than the rate of interest payable on loans advanced by banking institutions which are run on commercial lines. The loans are advanced from Out, Of the funds of the State in which all the people of the State are vitally interested. moneys by the State Government have got to be recovered expeditiously so that fresh advances may be made to others who have not yet received financial assistance from the State Government if the State Government should resort, to a remedy by way of a suit on the mortgage deeds or bonds executed in its favour, the realisation of the amounts due to the Government is bound to be delayed resulting in non-availability of sufficient funds in the hands of the State Government for advancing fresh loans. It is with the object of avoiding the usual delay involved in the disposal of suits in civil courts and providing for an expeditious remedy, the Act has been enacted. In the instant case, the mortgage deed provided that the amount due thereunder could be realised as if it were an arrear of land revenue. It cannot, therefore, be said that there no reasonable basis for the classification made by the statute and that the classification does not have a reasonable relation to the object of the statute."

56. As we have pointed out already, the above decision did not deal with legislative competency of the State Legislature. Secondly, the entire judgment proceeded on the basis that it was the funds of the State which were advanced to the various borrowers. That is not the case before us. As we have stated already, the Corporations concerned in these writ petitions are companies registered under the Companies Act, 1956 and they are merely government companies. The requirement prescribed by the impugned section is that the shares of the said corporations should have been contributed, underwritten or guaranteed by the State Government and there is absolutely nothing to show that it is the funds of the State Govt. that were advanced to the petitioners herein. On the other hand. the Memorandum and Articles of Association of one of the Corporations namely, the Tamil Nadu heatre Corporation Ltd., were produced before the Court and from the same it is clear that the said Corporation is entitled to borrow from others for the purpose of itself advancing money. In view

of this distinction also, the said decision of the Supreme Court will have no bearing the question before us.

57. The learned Advocate-General also relied on a judgment of Rarnaprasada J . as he then was, Hajee M. N. AS. Mohamed Ibrahim v Regional Deputy Director of Indukries nd CornmerceTrichy-1 (W F. No. 3121 of 1971, judgment dated 19-7-1073) holding that the answer to the attack on the validity of Section 52 of the Act, as antiended in 1439 was contained in Entry 45 of List II of the Seventh sheduled to the Constitution read with Entry 43 in tix. Concurrent List of that Schedule. He also contended that a refereneced to the said decision was in P. A. Allyar Safieb v. Independent Deputy Tahsildar Pallipatti, Chingleput, (1975) 88 Mad LW 383 rendered" by one of us point was not argued in details and the Court itself had not gone into the question in detail and given reasons for its conclusion .

58. For these reasons we hold that section 52-A of the Act as introduced by the Tamil Nadiu Act 12 of 1972 is ultra vires the powers of the Tamil Nadiu Legislature.

59. In view of the above conclusion of ours, we are not expressing any opinion on the argument advanced on behalf of the petitioners herein that the said section is violative of Article 14 of the Constitution.

60. Under these circumstances, we allowed these writ petitions and in each one of these writ petitions there will be declaration that section 52-A of the Act is ultra vires the powers of the State Legislature. There will be no order as to costs in any of these petitions.

61. Petitions allowed.