
(1992) 05 GUJ CK 0001
In the Gujarat High Court

Gorva Vibhag Co-Operative Housing Societies Association and
Another

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 05-05-1992

Acts Referred:

Bombay Stamp Act, 1958 — Article 20(a), 20(b), 14, 32, 32A
Constitution of India, 1950 — Article 226, 227, 254

Citation : (1992) 1 GLR 654

Hon'ble Judges : R.A. Mehta, J;M.B. Shah, J;K.R Vyas, J

Bench : Full Bench

Judgement

M.B. Shah, J.—In this group of petitions, the validity of Section 76 of the Bombay Stamp Act, 1958, which is enacted after obtaining the President's assent on June 1958, and Sections 32A and 32B read with Article 20(a) and (b) of Schedule I to the Act as amended by the Gujarat Act 21 of 1982, is challenged on various grounds. By amendment of Article 20(a) and (b), it is provided that the Stamp Duty on conveyance is to be charged on the basis of the consideration for such conveyance or, as the case may be, the market value of the property which is the subject-matter of such conveyance whichever is greater.

2. The learned Advocate for the petitioners raised the following contentions at the time of hearing of these matters:

I. Section 76 of the Bombay Stamp Act read with Schedule II insofar as it repeals the Central Act (Indian Stamp Act, 1899) is beyond the legislative competence of the State Legislature.

II (a) It is beyond the legislative competence of the State Legislature to amend Sections 32, 32A and 32B and Article 20(a) and (b) of the First Schedule to the Bombay Stamp Act, 1958.

(b) Notwithstanding the amendment in the aforesaid Section and Article 20(a) and (b), the provisions of the Indian Stamp Act would prevail because different

heads for which stamp duty can be recovered are provided in Schedule I to the Indian Stamp Act and the Parliament is competent to prescribe for it in view of Entry 44 of Concurrent List III of Seventh Schedule.

III (a) Method of valuation of property is unreasonable, arbitrary and irrational.

(b) Section 2(na) which defines the market value is on the face of it illegal and arbitrary because it prescribes that, for determining the market value, date of execution of such instrument is to be taken into consideration and not the other relevant date which would have material bearing on the execution of the instrument for transferring the property.

First, we will deal with the contention of the learned Advocates for the petitioners that Section 76 of the Bombay Stamp Act, 1958, read with Schedule II insofar as it repeals the Central Act (Indian Stamp Act) is beyond the legislative competence of the State Legislature. It is the contention of learned Advocate Mr. Desai that the State Legislature has no jurisdiction or authority to repeal any Central Statute. For this purpose, he placed reliance upon Article 254 of the Constitution of India and the decision of the Supreme Court in the case of *Zaverbhai Amaldas Vs. The State of Bombay*, .

3. Before appreciating the contention of learned Advocate Mr. Desai, it would be necessary to refer to Preamble, Sections 74 and 76 of the Bombay Stamp Act, 1958, which are as under:

Preamble

Whereas it is expedient to consolidate and amend the law relating to stamps and raws of stamp duties other than those in respect of documents specified in Entry 91 List I in the Seventh Schedule to the Constitution of India in the State of Bombay; R is hereby enacted in the Ninth year of the Republic of India as follows.

Section 74. For the avoidance of doubt, it is hereby declared that nothing in this Act shall apply 10 rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

Section 76. Repeal of enactments:

(1) The enactments specified in Column 3 of Schedule II thereto annexed shall be repealed in the manner and to the extent specified in Column 4 thereof:

Provided that the repeal hereby made shall not affect

(i) any right, title obligation, or liability already acquired, accrued or incurred or anything done or suffered,

(ii) any legal proceeding or remedy in respect of any such right, title obligation or liability,

under the provisions of the enactments hereby repealed and any such proceeding

may be instituted, continued and disposed of and any such remedy may be enforced as if this Act had not been passed.

(2) Any appointment, notification, notice, order, rule or form made or issued under any of the enactments hereby repealed shall be deemed to have been made or issued under the provisions of this Act, insofar as such appointment, notification, notice, order, rule or form is not inconsistent with the provisions of this Act and shall continue in force, unless and until it is superseded by an appointment, notification, notice, order, rule or form made or issued under this Act.

(3) All stamps in denominations of annas four or multiples thereof shall be deemed to be stamps of the value of twenty-five naye paise, or, as the case may be, multiples thereof and valid accordingly.

Schedule II reads as under:

SCHEDULE II Enactments Repealed (See Section 76) _____

____ Year No. Enactments Extent of Repeal (1) (2) (3) (4) _____

____ 1899 II The Indian Stamp Act, 1899, The whole except insofar as it in its application to the Pre- relates to documents specified Reorganisation State of in entry 91 of List I in the Bombay excluding the Seventh Schedule to the transferred territories and to Constitution of India. the Vidarbha and the Kutch Area of the State of Bombay. 1899 II The Indian Stamp Act, 1899 The whole except insofar as it as applied to the Saurashtra relates to documents specified Area of the State of Bombay in entry 91 of List I in the Seventh Schedule to the Constitution of India. 1331 IV The Hyderabad Stamp Act, Fasli The whole except insofar as it 1331 F. relates to documents specified in entry 91 of List 1 in the Seventh Schedule to the Constitution of India. 1932 II The Bombay Finance Parts IV and V containing Sees. Act, 1932 15, 16, 17, 18 and 19 1943 XIV The Bombay Increase of Stamp The whole Duties Act, 1943. _____

____ 4. Considering Schedule II of the Act, it is clear that it repeals the Indian Stamp Act, 1899 except insofar as it relates to documents specified in Entry 91 of List I in the Seventh Schedule to the Constitution of India, the Hyderabad Stamp Act, 1331 F., the Bombay Finance Act, 1932 and the Bombay Increase of Stamp Duties Act, 1943. That means, the afore-referred Stamp Acts which were in force in the then State of Bombay are repealed except insofar as they relate to documents specified in Entry 91 of List I. Further, it is repeatedly made clear in the Preamble, Sections 74 and 76 of the Bombay Stamp Act, 1958, that the Bombay Stamp Act, 1958 deals with only the stamp duties in respect of the documents other than those specified in Entry 91 of Union List I in the Seventh Schedule to the Constitution of India. It is in accordance with the legislative power under Entry 63 of State List II of the Seventh Schedule. It empowers the State Legislature to prescribe rates of stamp duties in respect of

the documents other than those specified in Entry 91 of List I. Further in the Concurrent List, Entry 44 provides for stamp duties other than duties or fees collected by means of judicial stamps, but not including the rates of stamp duty. The relevant three entries, that is, Entry 91 of List I, Entry 63 of List II and Entry 44 of List III in the Seventh Schedule to the Constitution of India, are as under:

List I-Union List:

91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

List II-State List:

63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

List III-Concurrent List:

44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

Considering the aforesaid three entries together, it is apparent that the State Legislature is competent to enact a law which provides rates of stamp duty in respect of documents other than those specified in Entry 91 of List I, that is, for the documents other than bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts. It would be within the exclusive jurisdiction of the State Legislature to prescribe the rates of stamp duties for all other instruments except for few instruments specified in Entry 91 List I.

5. Further, Article 372 of the Constitution of India empowers the competent Legislature to repeal, amend or alter the pre-constitutional law. The relevant part of Article 372 reads as under:

372(1). Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority.

(2) xxx xxx xxx (3) xxx xxx xxx Explanation 1: The expression "law in force" in this article shall include a law passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

The Indian Stamp Act was in force before the commencement of the Constitution. That Act would continue in force till it is altered, repealed or amended by a competent Legislature or other competent authority. Therefore, in

view of Entry 63 of List II read with Article 372 the State Legislature was competent to repeal, amend or alter the Indian Stamp Act, 1899 insofar as it does not relate to the prescription of rates of duty for the documents which are covered by Entry 91 of List I of Seventh Schedule. That being so, it was fully within the competence of the State Legislature to enact the Bombay Stamp Act, 1958 and Section 76 thereof cannot be said to be illegal, ultra vires or void. It is not disputed that the Bombay Stamp Act does not deal with any documents which are covered by Entry 91 of List I. The Preamble, Section 74 and Section 76 of the Bombay Stamp Act, 1958 as quoted above make it abundantly clear that the Bombay Stamp Act prescribes rates of stamp duties on instruments other than those specified in Entry 91 of List I for which the Parliament is competent to make appropriate law. Therefore, the submission of the learned Advocates for the petitioners that the State Legislature has no jurisdiction to repeal the Central legislation is devoid of any merit in view of specific provision in Article 372 which empowers the competent Legislature to repeal or amend or alter pre-constitutional law in force.

6. Further, even if there was no express repeal as provided in Section 76, yet the result would have been the same because of implied repeal. The question of implied repeal by reason of Article 372 of the Constitution was considered by the Supreme Court in the case of *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, . In that case the validity of the Orissa Mining Areas Development Fund Act, 1952 (27 of 1952) was challenged on various grounds including that it was repugnant to the Central Act 53 of 1948. With regard to the Central Act the Court observed that it is difficult to hold that declaration by Parliament specified by Entry 54 was made after the Constitution came in force and that Clause 16 of the Adaptation of Laws Order would not mean that Parliament has made such declaration. It was further held that the field covered by Act 53 of 1948 is substantially the same as the field covered by the impugned Act but the declaration made by Section 2 of the said Act does not constitutionally amount to the requisite declaration made by Parliament and so the limitation imposed by Entry 52 does not come into operation in the present case. The Court, therefore, held that in view of Article 372 of the Constitution and Entry 23 read with Entry 66, Orissa legislation was legal and Orissa Legislature was competent to repeal, alter or amend the existing law which is the Central Act 53 of 1948. The relevant discussion is as under:

Therefore, we reach this position that the field covered by Act LIII of 1948 is substantially the same as the field covered by the impugned Act but the declaration made by Section 2 of the said Act does not constitutionally amount to the requisite declaration by Parliament, and so the limitation imposed by Entry 54 does not come into operation in the present case. Act LIII of 1948 continues in operation under Article 372, with this modification that so far as the State of Orissa is concerned it is the impugned Act that governs and not the Central Act. Article 372(1) in fact provides for the continuance of the existing law until it is altered, repealed or amended by a competent Legislature or other competent

authority. In the absence of the requisite parliamentary declaration the legislative competence of the Orissa Legislature under Entry 23 read with Entry 66 is not impaired, and so the said Legislature is competent either to repeal, after or amend the existing law which is the Central Act LIII of 1948 in effect, alter the impugned Act was passed, so far as Orissa is concerned the Central Act must be deemed to be repealed. This position is fully consistent with the provisions of Article 372.

(Emphasis supplied)

7. Relative scope of Entry 91 of List I, Entry 63 of List II and Entry 44 of List III of Seventh Schedule was considered by the Supreme Court in the case of *The Bar Council of Uttar Pradesh Vs. The State of U.P. and Another*, . The question which was considered by the Supreme Court was whether the provisions made by the U.P. State legislation for imposition of duty on the certificate of enrolment to be issued by the State Bar Council are invalid and unconstitutional in view of provisions of Advocates Act, 1961 and effect of repugnancy between the Stamp Amendment Acts and the provisions of the Advocates Act. With regard to the scope of Entries, the Court observed that if it is purely a taxation measure then it would fall within Entry 44 of the Concurrent List in which event both the Parliament and the State Legislature would be competent to enact legislation for the levy of the duty although it is only under Entry 63 of List II that rates can be prescribed by the State Legislature. In other words, the charging provisions can be enacted by both the Parliament and the State Legislatures subject to the provisions of Article 254 of the Constitution. It is well settled that the scheme of the Entries in the various lists is that taxation is not intended to be comprised in the main subject in which it might on an extended construction be regarded as included but is treated as a distinct matter for the purpose of legislative competence. The Court further held as under:

It is difficult to escape the conclusion that the levy of stamp duty by means of the Stamp Amendment Acts in the State of Uttar Pradesh was not covered by any of the Entries in List 1 and therefore it could not be said that the State was incompetent to levy the duty and prescribe the rate under Entry 44 of List III and Entry 63 of List II in the Seventh Schedule to the Constitution. Any argument on the basis of legislative incompetence, has, therefore, to be repelled.

A contention sought to be raised on behalf of the appellants based on the question of repugnancy can hardly be of any avail. Once it is held that the power to tax was within the competence of the State legislature no question of repugnancy under Article 254 of the Constitution could arise. The question of repugnancy can only arise in matters where both the Parliament and the State legislature have legislative competence to pass laws. In other words when the legislative power is located in the Concurrent List the question of repugnancy arises, See *Prem Nath Kaul Vs. The State of Jammu and Kashmir*, . Moreover in the present case the provisions of Clause (2) of Article 254 of the Constitution have been complied with inasmuch as the assent of the President has been taken

while enacting the impugned Amending Act.

Considering the ratio of the aforesaid decision it can be stated that in view of Entry 44 of the Concurrent List, charging provisions can be enacted and heads or categories of documents or subjects for stamp duties can be prescribed by both the Parliament and the State Legislature. However, by the Parliament rates of stamp duties can be prescribed only for the subjects which are mentioned in Entry 91, and for the rest of the subjects rates could be prescribed by only State legislation. Once it is held that the power to prescribe rates of stamp duties is within the competence of the State Legislature, no question of repugnancy under Article 254 of the Constitution arises. Moreover, the provisions of Clause (2) of Article 254 of the Constitution have been complied with inasmuch as the assent of the President has been taken while enacting the Bombay Stamp Act, 1958 and including Section 76 read with Schedule II repealing the Indian Stamp Act so far as the then State of Bombay is concerned except so far as it relates to the documents specified in Entry 91 of List I.

8. Further, the learned Advocate General rightly submitted that even if there was no specific repeal as provided u/s 76 of the Bombay Stamp Act, yet, in view of Article 254(2) of the Constitution, the result would be the same. He submitted that once the State Legislature is competent to enact a law, then in view of Article 254(2) in the territory of the Bombay State the provisions of the Indian Stamp Act insofar as they relate to the instruments which are not covered by Entry 91 would prevail. He further submitted that there would be no question of any repugnancy between the two statutes because the State has enacted the law only with regard to subject which is exclusively within the jurisdiction of the State as per Entry 63 of List II. He, therefore, in the alternative, submitted that even if there is any repugnancy, by virtue of the provisions of Article 254(2) since the assent of the President has been given to the Bombay Stamp Act, it was to prevail over the Central Act insofar as the State of Bombay was concerned. For this purpose, he relied upon the various decisions of the Supreme Court.

9. For our purposes it would be sufficient to refer to the decision of the Supreme Court in the case of *M. Karunanidhi Vs. Union of India and Another*, wherein it has been observed as under:

It would be seen that so far as Clause (1) of Article 254 is concerned it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State and Parliament occupy the field contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act, In fact, the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State

Legislatures. First, regarding the matters contained in List I, i.e., the Union List to the Seventh Schedule, Parliament alone is empowered to legislate and the State Legislatures have no authority to make any law in respect of the Entries contained in List I. Secondly, so far as the Concurrent List is concerned, both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254(1) discussed above-Thirdly so far as the matters in List II, i.e., the State List are concerned, the State Legislatures alone are competent to legislate on them and only under certain conditions Parliament can do so. It is therefore obvious that in such matters repugnancy may result from the following circumstances:

1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.
2. Where, however, a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with Clause (2) of Article 254.
3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.
4. Where however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254.

So far as the present State Act is concerned, we are called upon to consider the various shades of the constitutionality validity of the same under Article 254(2) of the Constitution.

(Emphasis supplied)

Applying the aforesaid tests laid down by the Supreme Court, it can be stated that:

- (i) so far as the rates of stamp duties as provided by Entry 63 of List II are

concerned, the State Legislature alone is competent to enact a legislation on them. If there is any provision in the Indian Stamp Act repugnant to the provisions made in the Bombay Stamp Act, to that extent the Indian Stamp Act, 1899 would not be applicable within the territory of the Bombay State;

(ii) the Bombay Stamp Act has been enacted after obtaining the President's assent. Assuming for the time being that subjects covered by the Indian Stamp Act and the Bombay Stamp Act fall within the Concurrent List, then also Indian Stamp Act will not prevail in the State so far as it is repugnant to the Bombay Stamp Act. To the extent of repugnancy Indian Stamp Act would be void in the State and this result is obtained even without referring to the provisions of Article 372 of the Constitution.

The learned Advocate Mr. Desai however relied upon the decision of the Supreme Court in the case of *Zaverbhai Amaldas Vs. The State of Bombay*, to substantiate his contention that the State Legislature is incompetent to repeal the Central Act. For this purpose, he placed heavy reliance on paragraph 7 of the aforesaid judgment which reads as under:

(7) This is, in substance, a reproduction of Section 107(2) of the Government of India Act, the concluding portion thereof being incorporated in a proviso with further additions. Discussing the nature of the power of the Dominion Legislature, Canada, in relation to that of the Provincial Legislature, in a situation similar to that u/s 107(2) of the Government of India Act, it was observed by Lord Watson, in *Attorney-General for Ontario v. Attorney-General for the Dominion*" 1896 AC 348 (A), that though a law enacted by the Parliament of Canada and within its competence would override Provincial Legislation covering the same field, the Dominion Parliament had no authority conferred upon it under the Constitution to enact a statute repealing directly any Provincial Statute. That would appear to have been the position u/s 107(2) of the Government of India Act with reference to the subjects mentioned in the Concurrent List.

Now, by the proviso to Article 254(2) the Constitution has enlarged the powers of Parliament, and under that proviso, Parliament can do what the Central Legislature could not u/s 107(2) of the Government of India Act, and enact a law adding to, amending, varying or repealing a law of the State, when it relates to a matter mentioned in the Concurrent List. The position then is that under the Constitution Parliament can acting under the proviso to Article 254(2), repeal a State law. But where it does not expressly do so, even then, the State law will be void under that provision if it conflicts with a "latter law with respect to the same matter" that may be enacted by Parliament.

In our view, considering the aforesaid decision, it is clear that it does not deal with Article 372 of the Constitution of India. The observation in the aforesaid judgment that Parliament is empowered under proviso to Article 254(2) to repeal a State law would not mean that the State Legislature is incompetent to enact an

appropriate legislation on a subject covered by List II or List III of the Seventh Schedule. As such Article 254(2) deals with a situation where a law is made by the State Legislature with respect to one of the matters enumerated in the Concurrent List. It specifically provides that even with regard to law made by the State Legislature with respect to one of the matters enumerated in the Concurrent List, any provision repugnant to the provision of earlier law made by Parliament of any existing law with respect to that matter, law so made by the State Legislature shall prevail in that State if it is enacted after receiving the assent of President. The decision in the case of *Zaverbhai (supra)* is considered in numerous subsequent decisions and in no case it is held that the State Legislature is incompetent to exercise its powers under Art. 372 or under Article 254(2) of the Constitution of India. *Zaverbhai's* case is considered in the case of *Dharangadhra Chemical Works Vs. Dharangadhra Municipality and Another*, . In that case, the Court observed that it cannot be disputed that the subject-matter dealt with by the Ordinance and the Government Rules framed thereunder was levy and collection of octroi duty and the subject-matter dealt with by the Bombay Act and the Municipal Rules and Bye-Laws framed thereunder is also levy and collection of octroi duty; in other words both the pieces of legislation, validly enacted and intended to operate within the Municipal limits, deal with the same subject-matter. The Court thereafter considered the decision in the case of *Zaverbhai (supra)* and observed as under:

In *Zaverbhai Amaldas Vs. The State of Bombay*, this Court has approved the above principle in the context of two pieces of legislation, namely, The Essential Supplies (Temporary Powers) Act, 1946 as amended by Act LII of 1950 (a Central Act) and Bombay Act No. XXXVI of 1947 the provisions whereof in the context of enhanced punishment were repugnant to each other. The Court held that the question of punishment for contravention of orders under the Essential Supplies (Temporary powers) Act both under the Bombay Act and the Central Act constituted a single subject-matter and in view of Article 254(1) of the Constitution Act LII of 1950 (Central enactment) must prevail. The Court quoted with approval Lord Goddard's observations in *Smith v Benabo* (1937) 1 KB 518 namely, "It is a well settled Rule of construction that if a later statute again describes an offence created by a previous one, and imposes a different punishment, or varies the procedure, the earlier statute is repealed by the later statute". After quoting these observations, the Court went on to say:

It is true, as already pointed out, that on a question under Article 254(1) whether an Act of Parliament prevails against a law of the State, no question of repeal arises; but the principles on which the rules of implied repeal rests, namely, that if the subject-matter of the latter legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the latter enactment, will be equally applicable to a question under Article 254(2) whether the further legislation by Parliament is in respect of the same matter as that of the State law. We must accordingly hold that Section 2 of Bombay Act No. XXXVI of 1947 cannot prevail as against Section 7 of the

Essential Supplies (Temporary Powers) Act No. XXIV of 1946 as amended by Act No. LII of 1950.

The aforesaid principle of implied repeal has been approved and applied in a couple of other decisions of this Court, particularly in *T. Barai Vs. Henry Ah Hoe and Another*, .

In this view of the matter, the contention of learned Advocate Mr. Desai that the State Legislature is not empowered to repeal a law enacted by the Parliament is totally misconceived.

10. From the aforesaid discussion, it can be held that, after enactment of Bombay Stamp Act, 1958 for which the assent of the President is obtained, the Indian Stamp Act insofar as it deals with the subject-matter for which provision prescribing rates of stamp duties for the instruments mentioned in the Bombay Stamp Act is made, would not be applicable within territories of the State of Bombay and after bifurcation within the State of Gujarat. Indian Stamp Act would be applicable only with regard to those subjects which are covered by Entry 91 and for the said subjects undisputedly no provision is made in the Bombay Stamp Act. The Bombay Stamp Act, 1958 deals with the subject-matter which is within the competence of the State Legislature and prevails under Entry 63 of the State List so far as rates of stamp duties are concerned and under Entry 44 of the Concurrent List insofar as subjects and other aspects of the stamp duties are concerned because of the express and implied repeal of the Indian Stamp Act with the assent of the President. Hence, Section 76 is neither illegal nor ultra vires the provisions of the Constitution.

11. For appreciating the remaining contentions that amendment in the Bombay Stamp Act which provides for levy of stamp duty on the market value of the property which is conveyed and the method prescribed for its determination is illegal, arbitrary and irrational, it is necessary to refer to Sections 2(na), 32A, 32B and Article 20(a), (b) of the First Schedule of the Bombay Stamp Act and Rules 3, 4, 5, 6 and 8 of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984. Sections 2(na), 32A and 32B are as under:

2(na) "market value" in relation to any property which is the subject-matter of an instrument, means the price which such property would have fetched if sold in open market on the date of execution of such instrument.

32A. (1) If any officer registering under the Registration Act, 1908 an instrument of conveyance, exchange, gift, partition, partnership or settlement or power of attorney or any person referred to in Section 33, before whom such instrument is produced or comes in the performance of his functions, has reason to believe that the consideration set forth therein does not approximate to the market value of the property which is the subject-matter of such instrument, or, as the case may be, the market value of the property which is the subject-matter of such instrument, has not been truly set forth therein, he may after registering the instrument or, as the case may be, performing his functions in respect of such

instrument, refer the instrument to the Collector of such district in which either the whole or any part of the property is situated for determining of the true market value of such property and the proper duty payable on the instrument under this section.

(2) On receipt of the instrument under Sub-section (3) of Section 31 or Sub-section (1) of this section, the Collector of the district shall, after giving the parties concerned a reasonable opportunity of being heard, and in accordance with the rules made by the State Government in this behalf, determine the true market value of the property which is the subject-matter of the instrument and the proper duty payable thereon.

(3) Upon such determination, the Collector of the district shall require the party liable to pay the duty, to make payment of such amount as is required to make up the difference between the amount of duty determined under this sub-section and the amount of duty already paid by him and shall also require such party to pay a penalty which shall not be less than such difference and not more than twice the amount of such difference, and on such payment, return the instrument to the officer referred in Sub-section (5) of Section 31 or, as the case may be, Sub-section (1) of this section:

Provided that, no such party shall be required to pay any amount to make up the difference or to pay any penalty under this sub-section if the difference between the amount of the consideration or, as the case may be, the market value as set forth in the instrument and the market value as determined by the Collector of the district does not exceed ten per cent of the market value determined by the Collector of the district. (4) The Collector of the district, may suo motu or on receipt of information from any source, within two years from the date of registration of any instrument referred to in Sub-section (1), not being the instrument upon which an endorsement has been made u/s 32 or the instrument in respect of which the proper duty has been determined by him under Sub-section (3) or an instrument executed before the date of the commencement of the Bombay Stamp (Gujarat Amendment) Act, 1982 call for and examine the instrument for the purpose of satisfying himself as to the correctness of the consideration or of the market value of the property which is the subject-matter of such instrument and the duty payable thereon, and if on such examination, he has reason to believe that the consideration does not approximate to the market value of such property or, as the case may be, market value of such property has not been truly and fully set forth in the instrument, he shall proceed as provided in Sub-sections (2) and (3).

32B(1) Any person aggrieved by an order of the Collector determining the market value u/s 31 or, as the case may be, u/s 32A, may, after depositing with the Collector seventy-five per cent of the amount of duty or, as the case may be, the amount of the difference of duty payable by him by application presented within a period of sixty days from the date of such order and accompanied by a fee of one hundred rupees, require the Collector to draw up a statement of the

case and refer it to the Chief Controlling Revenue Authority and the Collector shall, within sixty days of the receipt of such application, draw up a statement of the case and refer it to the Authority:

Provided that where in any particular case the Authority is of the opinion that the deposit of the amount by the applicant will cause undue hardship to him, the Authority may, in its discretion, either unconditionally or subject to such conditions as it may think fit to impose, dispense with a part of the amount deposited go however that the part of the amount so dispensed with shall not exceed fifty per cent of the amount deposited or required to be deposited.

(2) Such Authority shall consider the case and send a copy of its decision to the Collector who shall proceed to assess and charge the duty (if any) in conformity with such decision.

(3) The decision given by the Authority under Sub-section (2) shall be final.

12. Article 20(a) of the First Schedule to the Bombay Stamp Act provides inter alia that for conveyance not being a transfer charged or exempted under Article 56, proper stamp duty would be eight rupees for every Rs. 100 or part thereof of the amount of consideration for such conveyance or as the case may be the market value of the property which is the subject-matter of such conveyance whichever is greater. Article 20(b) provides inter alia concession to the premises of a co-operative society and it provides that proper stamp duty for conveyance so far as it relates to premises of a co-operative society registered or deemed to have been registered under the Gujarat Co-operative Societies Act, 1961, by such society in favour of its member, proper stamp duty would be four rupees for every Rs. 100 or part thereof of the amount of consideration for such conveyance, or, as the case may be, the market value of the property which is the subject-matter of such conveyance whichever is greater.

13. The aforesaid Sections 32A and 32B are added and amendment is made in Article 20(a) and (b) of the Schedule I by the Gujarat Act No. 21 of 1982. As per the Statement of Objects and Reasons, it is based on the recommendation of the Gujarat Taxation Inquiry Commission to the effect that "the basis of stamp duty in regard to conveyance and certain other instruments should be the market value of the properties involved in the instrument and that Schedule I to the Bombay Stamp Act, 1958 be simplified-by reducing the number of articles subject to duty reducing the multifarious varieties of rates of stamp duty and indicating the rate of duty in percentage instead of the amount of duty to be paid for different values".

14. In the affidavit-in-reply, it has been pointed out that the amendment in the Bombay Stamp Act is made after due deliberation and after taking into consideration various observations made by different Committees. It is stated that Santhanam Committee constituted by the Government of India for prevention of corruption had inter alia made the following observations and recommendations:

32. To buy and sell properties at prices much greater than those recorded in the conveyance deeds has become a common method of cheating the Central Government of Income Tax and other Taxes and the State Government of the stamp duty and a convenient method of transferring black money. If in some manner, the Central and the State Governments, or some special Corporations set up for the purpose can be empowered to step in and acquire such properties at the stated value, or even at a small premium when it is considered that the properties have been deliberately under-valued, it will strike a blow against black money.

15. It is further pointed out that the Direct Tax Enquiry Committee constituted by the Government of India in its final report observed that, even though there is a provision u/s 40 for judging sufficiency of stamps and levying penalty where necessary, the Collector has no power to embark upon an inquiry regarding market value of the property and to recover payment of further stamp duty according to the valuation arrived at by him. Section 64 also provides that penalty can be imposed in case of fraud, but it has become difficult to establish fraud with the result that provision of Section 64 of the Indian Stamp Act has also become a dead letter. The Committee has recommended that the Indian Stamp Act may be suitably amended in this behalf on the lines of the Madras enactment. The relevant observations are as under:

2.207 We think it will go a long way to achieve this objective if adequate machinery is provided under the Stamp Act for Valuation of Properties which are the subject of transfer. The Indian Stamp Act, 1899, no doubt provided for levy of penalty for the insufficiency of stamps. However, the stamp duty payable on an instrument has to be determined with reference to the terms of the document and the Court is not entitled to take into consideration evidence de hors the instrument itself. Even where a deed relating to a property is impounded by an authority u/s 33 of the Indian Stamp Act, and proceedings are thus started by the Collector u/s 40 of this Act for judging the sufficiency of the stamps and levying penalty where necessary, the Collector has no power to embark upon an enquiry regarding the market value of the property and to require payment of further stamp duty according to the valuation arrived at by him. It is true that a penalty can be imposed u/s 64 in case of fraud but, in the very nature of things, it is easier to allege fraud than to establish it, with result that the provisions of Section 64 have almost become a dead letter.

2.208 It is worthwhile to refer in this connection to the institution of Valuation Office in the United Kingdom. The Valuation Office originally came into being for Revenue purposes, but over the year it has acquired such a reputation for efficiency and independence from both the Government authority and the tax payer, that it has become now the official organisation for ascertaining the value of land and interests in land for all Government purposes generally. We at first examined the desirability of having a similar set up in India but came to the conclusion that it would not be practical to have such an omnibus institution at

the Centre for various reasons.

2.209 We find that in 1967 the then Madras State Government had introduced certain measures to curb the evil of understatement of purchase consideration. By an amendment to the Indian Stamp Act, 1899, the Registrating Officers within Madras State were empowered to refer cases of suspected understatement of market value in the deeds requiring registration to the District Collector for determining the market value of the property mentioned therein. We are of the opinion that it would be advantageous to have similar machinery in other States also. We recommend that the Indian Stamp Act may be suitably amended in this behalf on the lines of the Madras enactment.

16. It is further stated thereafter the Gujarat Taxation Inquiry Commission was constituted by the State Government in the 1978 to review all State taxes under the Chairmanship of Dr. R.J. Chelliah. That Commission submitted its report in the year 1980. The Commission suggested for levy of stamp duty on the basis of market value of the property involved in the instrument of conveyance and at the same time Statewise valuation organisation be set up for making a continuous valuation of non-agricultural properties particularly in urban areas. The valuation department would work out "minimum values" for properties of different kinds in different localities in all the cities and towns. These "minimum values" would in effect be conservatively estimated market values and would become the norms that would be given to registering officers. The Commission further expressed its view that insofar as the minimum values are carefully estimated, most of the parties who come for registering transactions involving properties would prefer to pay duty on the basis of the norms rather than to challenge them and resort to appeal. The Commission also recommended reduction of stamp duty.

17. The State Government thereafter constituted Stamp Duty Review Committee in 1981 to examine and to report to the Government in regard to the major recommendations of the Commission pertaining to stamp duties. On the basis of the recommendation, the State Government created a Valuation Organisation Department in 1982 headed by the Superintending Engineer at State level and three Division Offices at Ahmedabad, Vadudara and Rajkot headed by the Executive Engineer, assisted by the Deputy Executive Engineer, Assistant Engineer drawn from the Building & Communication Department.

18. In the affidavit-in-reply it is further pointed out that the Valuation Organisation Committee has started working in the month of October 1982. For the valuation of real properties it has resorted to established prevailing methods, that is.

(i) Comparative method;

(ii) Valuation based on cost known as land and building method;

(iii) Belting method; and

(iv) Abstractive method also known as residual theory or rental method or

income capitalisation method.

For our purpose, further details which are given in the affidavit-in-reply how the Valuation Organisation Department determines the value of the property in different zones are not required to be narrated here.

19. Now, we would deal with the second contention of learned Advocate Mr. Desai that it is beyond legislative competence of the State Legislature to enact Sections 32A and 32B and Article 20(a) and (b) of the First Schedule to the Bombay Stamp Act so as to enable the Collector to ascertain the market value of the property conveyed and transferred by such deed of conveyance. He submitted that only the consideration mentioned in the instrument is to be taken into account for levy of stamp duty under the Stamp Act. For this purpose, he relied upon the decision of the Full Bench of this Court in the case of Collector of Mehsana Vs. Bharat Vijay Mills Ltd. and Another, .

20. In our view, the aforesaid judgment does not substantiate the contention that the State Legislature cannot amend the Stamp Act and incorporate the provision which was not there at the relevant time. After analysing all the Sections, the Court has specifically observed that several provisions indicate that the Act does not provide any power for the Collector to institute an inquiry for the purpose of arriving at the actual or the market value of the properties in question except from the document itself or adjudicate thereafter the true duty payable by the parties on such documents. The relevant observations are as under:

This analysis of the various provisions of the Act would appear to show that the Collector can charge and levy stamp duty in the case of a deed of conveyance relating to immovable property upon the amount or the value or the consideration as set forth in the document submitted for registration. There does not appear to be any provision in the Stamp Act which empowers the Collector to hold an enquiry or direct a Panchnama to be made either by him or by way of his subordinate for the purpose of ascertaining the actual or the market value of the properties conveyed and transferred by such a deed of conveyance de hors the deed of conveyance itself. It is possible that there might be cases where the parties to a document to avoid payment of proper duty and with the intention to defraud the Government of revenue, might commit breach of the provisions of Section 28 for such a case the Government appears to be amply protected under the very provisions of Section 28 which imposes a duty upon the parties to such a document to set out the consideration, meaning thereby the true consideration and all other facts and circumstances affecting the chargeability of the instrument with duty or the amount of the duty with which it is chargeable. Another safeguard that appears to have been provided for is to be found in Section 34 whereunder the Legislature has provided that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument

is duly stamped. Besides these safeguards, Section 42 read with Section 62 lays down liability of a penal character for such persons as commit the breach of the provisions of Section 28 if such breach is committed with the intention to defraud the Government of its revenue. The several provisions which we have cited above thus clearly indicate that the Act does not provide any power for the Collector to institute an enquiry for the purpose of arriving at the actual or the market value of the properties in question except from the document itself or adjudicate thereafter the true duty payable by the parties on such document.

21. At this stage it should be noted that similar observations are made in the case of *Himalaya House Co. Ltd., Bombay Vs. The Chief Controlling Revenue Authority*, . The Court observed that Section 27 of the Indian Stamp Act (Section 28 of the Bombay Stamp Act) prescribes that "The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable shall be fully and truly set forth therein". Thereafter the Court held as under:

It is true that in view of this provision, the parties to a document are required to set forth in the document fully and truly the consideration (if any) and all other facts and circumstances affecting the chargeability of that document with the duty or the amount of the duty with which it is chargeable. But a failure to comply with the requirements of that section is merely punishable u/s 64 of the Stamp Act. No provision in the Stamp Act empowers the Revenue to make an independent inquiry of the value of the property conveyed for determining the duty chargeable.

(Emphasis supplied)

The Court further observed that the Legislature may have had good reasons for not empowering, the Revenue to make an independent inquiry as regards the valuation of the right sought to be assigned.

22. The aforesaid judgments in the cases of *Bharat Vijay Mills* and *Himalaya House Co.* lay down that as per the provisions of the Stamp Act where parties to a document avoid payment of proper duty with intent to defraud the Government of revenue and commit breach of provisions which provide for parties to mention the true consideration and other facts and circumstances affecting the chargeability of the instrument with the amount of duty, they are liable to be punished. However, as there was no provision in the Stamp Act to institute enquiry for the purpose of arriving at the actual market value of the property for which instrument is executed, the Collector was not empowered to institute such enquiry. This would not mean that if specific provisions is enacted to that effect, no enquiry can be made for determining the market value or that Section which empowers the Collector to enquire and to determine the market value of the property conveyed, is illegal or beyond the legislative competence. In the case of *Trideshwar Dayat v. Maheshwar Dayal* AIR 1991 SC 485, the Supreme Court rejected similar contention by only observing that:

The case comes from Uttar Pradesh where express provisions have been made by the insertion of Section 47-A, authorising the Collector to examine the correctness of the valuation.

23. The learned Advocate Mr. Desai further contended that the consideration mentioned in the instrument only is to be taken into consideration. The submission is also without any substance. Section 3 of the Stamp Act provides for levy of stamp duty on the amount indicated in the Schedule as proper duty on the instrument mentioned in the Schedule. No doubt, chargeable event is execution of instrument. But it is nowhere provided that the consideration mentioned in the instrument is to be taken as basis for valuation of proper stamp duty. The basis for computation of stamp duty can be different and it is to be determined by the Legislature. It may be on the basis of the consideration mentioned in the instrument or it may be on the market value of the property transferred or it may be fixed amount. The aforesaid stringent provisions of recovering proper stamp duty on the basis of market value are enacted so as to avoid loophole in the Stamp Act and are conceived in the interest of revenue so as to see that instruments are duly stamped. As narrated above, these Sections are enacted after considering the various suggestions made by the different Committees to prevent the evasion of the stamp duty. Even before the addition of Sections 32A and 32B, Section 28 of the Stamp Act specifically provides that the consideration and all other facts and circumstances affecting the chargeability of any instrument with the proper stamp duty shall be fully and truly set forth therein. In the normal circumstances, the consideration for transfer of property would be the market value. If this consideration and/or other facts are not fully and truly set forth in the instrument with intent to defraud the Government, then it is a penal offence u/s 62 of the Stamp Act. Therefore, it cannot be said that concept of the market value introduced under Article 20(a) and (b) of the First Schedule is in any way beyond the competence of the State Legislature. On the face of it, it would be unreasonable to accept the contention that purchase consideration mentioned in the instrument howsoever it may be deliberately understated should be the basis for levy of stamp duty.

24. The validity of the similar provisions was considered by the Madras High Court in the case of *The State of Tamil Nadu Vs. T.N. Chandrasekharan*, . The relevant discussion is as under:

2. We agree with him that stamp duty is a duty on an instrument as defined in the Stamp Act, and that this concept as to the character of the duty, is in accordance with the British and Indian legislative practice, and the scope of Entry 44 in List III of the Seventh Schedule to the Constitution, to wit "Stamp duty other than the duties or fees collected by means of judicial stamps, but not including rates of stamp duty". But we cannot agree with him that the substitution made by the Amending Act has altered the character of the duty. While stamp duty is a charge on the instrument which by itself is the taxable event, the measure of charge may be fixed or ad valorem. Chargeable event

which is an instrument, as defined in the Act and described in the first column of the First Schedule to the Act, is not to be confused or mixed up, or identified with the measure of duty, which is indicated in the second column of the Schedule. Section 3 of the principal Act, which is the charging section makes this clear, that is, what attracts liability to duty is the instrument of the particular description, the charge is on the instrument, not on the consideration or amount indicated in the document which is but a measure of, or the basis for computation of the extent of liability to stamp duty. The section says that every instrument mentioned in the schedule, subject to exemptions or exceptions, shall be chargeable with duty of the amount indicated in that Schedule as the proper duty thereof. Liability to duty is on the instrument, and its quantum depends on its description as well as the measure indicated in the First Schedule to the Act. To illustrate, an acknowledgment attracts stamp duty as an instrument, and for an instrument of that character or description, the proper stamp duty is fixed as 15 p. Conveyance in Entry 23 of the Schedule attracts duty as an instrument of conveyance, but the proper stamp duty is measured on the amount of value of the consideration for such conveyance as set forth therein, which works out on a slab basis. Section 27 of the principal Act requires facts affecting duty to be set forth in the instrument. If the value of the property is understood. Section 64 makes it an offence punishable with fine. But on that account an instrument will not become void, nor is it rendered inadmissible in evidence. The Amending Act, in order to check evasion, requires, by the substitution complained against, market value to be mentioned in the instrument of conveyance, gift, or partition as the basis for measure of the extent of liability, or quantum of stamp duty with which such instrument is chargeable, and provides for determination of the true market value where it is suspected to be understated, and right of appeal to Court by an aggrieved party. We are clearly of opinion that the amendment to that effect has not shifted the chargeable event from an instrument to market value, and the duty after the Amending Act is still on the instrument, and not on the market value any more than consideration mentioned therein. We hold that the Amending Act is within the competence of the State Legislature.

25. The aforesaid decision of the Madras High Court is followed by the Madhya Pradesh High Court in the case of Smt. Ramkishori Gupta Vs. The State of Madhya Pradesh and Others, . In that decision also, deciding the validity of similar Sections 27 and 47A as amended by M.P. Act 8 of 1975, the Court held that after amendment of Entry in Schedule I to the Stamp Act, the basis for determining the stamp duty is market value of the property which is the subject matter of conveyance. The Court negated the contention that it was not open to the State Legislature to introduce market value of the property as basis for determination of stamp duty payable by holding that on the basis of observations made in the case of Himalaya House Co. Ltd., Bombay Vs. The Chief Controlling Revenue Authority, , the M.P. Act was amended. The Court further held as under:

On a conspectus of these authorities it is, therefore, apparent that in the exercise of powers conferred on it by Entry 63 of List II and Entry 44 of List III, it was

open to the State Legislature not only to make an amendment in the Act in regard to the rates of stamp duty but also in regard to the mode of computation of stamp duty. In other words, it was open to the State legislature to lay down that the basis for computing stamp duty shall not be the amount or value of the consideration for the conveyance as set forth therein but it shall be the market value of the property which is the subject-matter of conveyance.

The Court also dealt with the submission that on account of certain circumstances the property had sometime to be sold for a consideration which did not represent the market value and, therefore, the concept of market value should not be taken into consideration. The Court negated the said contention by holding that broad guidelines for determining the market value laid down in the List prepared by the State Government are to be taken into consideration but are not to be treated as conclusive. The Court finally held that Sections 27 and 47A as amended by the M.P. Act No. 8 of 1975 were within the legislative competence of the State of Madhya Pradesh and are not ultra vires.

26. In view of the aforesaid discussion, it is difficult to accept the contention of the learned Advocate for the petitioners that it is beyond the legislative competence of the State Legislature to provide that market value of the property conveyed is to be taken into consideration for determining the proper stamp duty. As such, there are various other provisions which provide that consideration and all other facts and circumstances affecting the chargeability of any instrument with duty or amount of duty with which it is chargeable are required to be fully and truly set forth therein. Omission to comply with the aforesaid requirement is punishable u/s 62 of the Bombay Stamp Act. Therefore, it cannot be said that concept of market value introduced for determining the proper stamp duty is beyond the scope of the State Legislature.

27. The learned Advocate for the petitioners further contended that, as per Entry 44 of List III of the Seventh Schedule, Parliament is competent to prescribe different heads under which stamp duty can be recovered and under the Indian Stamp Act different heads are provided including basis for determination of stamp duty. Therefore, the State Legislature is incompetent to provide different basis for valuation for determining the rate of proper stamp duty. He relied upon the observation of this Court in the case of *The Anant Mills Co. Ltd. and Others Vs. State of Gujarat and Others*, , to the effect that the measure of tax is a product of two components, namely, basis of valuation and rate of tax. He therefore, submitted that, for basis of valuation, Parliament has provided that the consideration mentioned in the instrument is to be taken into consideration. In our view this submission is also devoid of any substance because once the State Legislature has repealed the provisions of the Central Act, question of repugnancy does not arise. Once it is held that it was within the competence of the State Legislature to enact the Bombay Stamp Act which is repugnant to the provisions made in the Indian Stamp Act so far as it does not relate to the subject-matter provided in Entry 91 of List I, no question of repugnancy under

Article 254 of the Constitution would arise. Therefore, the provision made under the State Legislation determining the basis for valuation, that is, market value, would prevail.

28. Further, in the case of *Anant Mills (supra)*, the Division Bench of this Court dealt with the contention that the Ahmedabad Municipal Corporation Taxation Rules were illegal, arbitrary, and violative of Article 14. While dealing with this contention, the Court held that the provisions in the Corporation Act in regard to property tax were their source of legislative power to Entry 49 of List II. Entry 49 of List II contemplates levy of tax on lands or buildings or both as units. The Court thereafter held as under:

tax under this Entry is "directly imposed on lands and buildings and bears a definite relation to it". Vide *Sudhir Chandra Nawn Vs. Wealth-tax Officer, Calcutta and Others*, : *The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc.*, . That being so, it is for the legislature to select which units of lands and/or buildings it would bring to tax. The legislature may also select its measure of tax. The measure of tax is a product of two components, namely, basis of valuation and rate of tax. The legislature has choice in regard to both components. "If the legislature may fix such rate as it thinks fit provided, of course, tax does not become confiscatory or extortionate. The legislature may also adopt as the basis of valuation, the annual rental value or the capital value or any other method of valuation which the legislature may in its wisdom and ingenuity devise. These are matters for the legislature to decide. Besides, the legislature need not necessarily provide a uniform measure of tax for all units of lands and buildings it decides to tax. It can make a rational classification of units of lands and buildings and provide different measures of tax for different classes of units by prescribing different basis of valuation and/or different rate of tax. So long as there is a rational basis for the classification, the prescription of different basis of valuation or different rates of tax would not be violative of Article 14, even if it results in one class of property units being subjected to a higher burden of tax than the other.

Learned Advocate Mr. Desai submitted that as the Court has held that the measure of tax is a product of two components, namely, basis of valuation and rate of tax, therefore, as per Entry 63 of List II rate of stamp duty only can be prescribed by State legislation while its basis of valuation could be prescribed by Parliament on the basis of Entry 44 of List III. In our view, to impose stamp duty at a fixed percentage of a market value of the property which is sought to be transferred by the instrument is entirely within the ambit of Entry 66 of List II. In pursuance of the Entry 66, rates as well as its basis are required to be prescribed. Not only this, the observation of this Court that the measure of tax is a product of two components, namely, basis of valuation and rate of tax, would not mean that when there is jurisdiction to prescribe rate of tax, the Legislature can provide only rate and not basis. It is total misreading of the observation of this Court. The aforesaid observation on the contrary in terms indicates that the

Legislature may fix such rate as it thinks fit; it may adopt the basis of evaluation either annual rental value or capital value or any other method of evaluation in its wisdom; the Legislature need not necessarily provide a uniform measure of tax for all units of lands and buildings; it can make rational classification and provide different measures of tax for different classes of units by prescribing different basis of valuation and/or different rates of tax. So rates of stamp duty would mean basis of evaluation and to prescribe rate. The expression "rate" is used in the sense of a standard or measure.

29. That expression "rate" came to be considered by the Supreme Court in the case of Sundaram and Company (P.) Ltd., Madurai Vs. Commissioner of Income Tax, Madras, . The Court observed that: by the use of the expression "rate" in the context in which it occurs, undoubtedly a relation between the taxable income and the tax charged is intended, but the relation need not be of the nature of proportion or fraction. The expression "rate" is often used in the sense of a standard or measure. Provided the tax is computable by the application of a prescribed standard or measure, though not directly related to taxable income, it may be called tax computed at a certain rate. Therefore, rate itself would indicate that it is in relation to a standard or measure. Without there being any standard or measure, there is no question of fixing rates of duty or tax. In this view of the matter, there is no "substance in the second contention of the learned Advocate for the petitioners.

30. Lastly, it is contended, that the method of valuation of property is arbitrary and irrational and that the market value as defined u/s 2(na) of the Act is on the face of it unreasonable because in most of the cases the instruments are executed on the basis of agreement to sell. Therefore, it is pointed out that the relevant date for determining the market value can never be the date of execution of the instrument. It is also contended that the Act does not make any distinction whether the conveyance is executed on the basis of the orders passed by the different statutory authorities such as under the Urban Land (Ceiling and Regulation) Act, or by the Charity Commissioner under the Bomboy Public Trust Act or on the basis of a decree passed by a Civil Court or under the provision of the Tenancy Act or the document is executed in favour of a tenant protected under the Act or the property transferred is conveyed subject to the rights of tenants.

31. In our view, the contention that the method of valuation of property is unreasonable, arbitrary and invalid, is raised without referring to the detailed statutory provisions prescribed under the Act and the Rules. On the face of it, in our view, the said procedure is scientific, reasonable and cannot be termed as irrational by any standard. Sections 32A and 32B along with the Rules provide for exhaustive detailed procedures for determining the market value of the property. They also provide for giving adequate reasonable opportunity of hearing to the concerned person at every stage. The said procedures can be divided into the following parts;

1. (a) When the instrument is presented for registration, if the concerned officer has reason to believe that the consideration set forth therein does not approximate to the market value of the property which is the subject-matter of such instrument, he may after registering the instrument refer the instrument to the Collector for determining true market value of the property and the proper duty payable on the instrument [Section 32(I)];

The expression "reason to believe" contemplates belief and existence of reasons for that belief, Belief must be held in good faith. It cannot be merely a pretence. The expression does not mean a purely subjective satisfaction of the registering officer or of the Collector.

(b) Before referring such instrument to the Collector for determination of proper market value and stamp duty, under the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 (hereinafter referred to as "the Rules") the registering officer is required to give intimation of his belief to the concerned person that market value stated in the instrument does not approximate to the market value of the property. For this purpose, he must have reason to believe that the consideration set forth in the instrument does not approximate to the market value of the property. This would be based upon the information furnished in the instrument by the person producing document for registration and any other information available with him [Rule 3(2)];

Information which would be available with the registering officer would be on the basis of information supplied by the Valuation Department. The Valuation Department is required to work out "minimum values" in respect of different kinds and different localities in all cities and towns. These "minimum values" would in fact be constructively estimated market values and would become the norms that would be given to the registering officers (as per the affidavit-in-reply). Normally, the concerned person would pay stamp duty without any hesitation on the minimum market value unless there are genuine circumstances to point out that the consideration mentioned in the instrument is truly set forth;

(c) After receipt of intimation, the person presenting document for registration offers to the registering officer the amount required to make up the proper duty chargeable on the instrument, the registering officer is required to accept the same and to proceed to register the document as provided in Section 40 of the Stamp Act [Rule 3(3)];

(d) If the person concerned does not offer the amount required to make up the proper duty on the instrument, the registering officer is required to make reference to the Collector under Sub-section (1) of Section 32A [Rule 3(3)];

Secondly for determining the true market value the Collector is also required to follow the following exhaustive procedure prescribed under the Rules.

(a) He is required to issue notice in form D to the concerned person who is liable to pay stamp duty in respect of such instrument and ask him to submit within 30

days from the date of service of notice his representation in writing along with evidence in support of such representation [Rule 4(1)];

(b) If no representation is received, the Collector is required to serve notice upon the concerned person to make a statement before the Collector which he is required to record [Rule 4(2)];

(c) After considering the representation or statement, if any, and after examining the information on record or information, if any, called by him, he is required to make a provisional order in writing determining the true market value of the property in accordance with the principles laid down in Rule 8 and proper duty payable thereon [Rule 4(4)];

(d) That provisional order is required to be communicated to the concerned person along with a notice informing him that against that provisional order he can make a representation [Rule 5];

(e) After considering the representation, if any, against the provisional order, the Collector is required to pass the final order determining the true market value and the proper stamp duty payable on the instrument [Rule 6];

(f) After determination of the market value, the Collector is required to direct the party liable to pay duty to make payment of difference of stamp duty and penalty which shall not be less than such duty and not more than twice the amount of such duty. Further, no party would be required to pay any amount to make up difference or to pay any penalty if difference between the amount of consideration or the market value set forth in the instrument and the market value determined by the Collector does not exceed 10% of the market value determined by the Collector.

(g) Against the order passed by the Collector, the aggrieved person is entitled to file an application to the Collector for referring it to the Chief Controlling Revenue Authority for determination of proper duty [Section 32B(1)];

32. Considering the aforesaid elaborate procedures prescribed and the opportunities which are required to be given to the concerned person, the contention of the learned Advocate for the petitioners that the procedure prescribed for determining the market value is irrational and illegal requires to be rejected without any further discussion.

33. Apart from the aforesaid elaborate procedures of giving opportunity of hearing to the concerned person even for determining the market value, detailed criteria are laid down in Rule 8 of the Rules. Rule 8 is as under:

8. Principles to be taken into consideration for determination of market value

The Collector of the District shall while determining the market value of a property which is the subject-matter of an instrument take into consideration primarily the capitalized value of the property, i.e, the amount of money whose annual interest at the highest prevailing interest at any given time is its net

annual income, and also the following factors, namely:

(a) in the case of agricultural land,-

(i) classification of land under the provisions of the Bombay Land Revenue Code, 1879;

(ii) the rate of the land revenue;

(iii) the nature of crops raised on the land;

(iv) average yield from the land, its nearness to road and market, its distance from the village site road to land, facilities available for irrigation and also for transport of produce of such land;

(v) value of adjacent land or land in vicinity;

(vi) any factors mentioned in the instrument which is relevant for the purpose of determination of the true market value;

(vii) any other factor which the Collector of the District thinks to have a bearing on the value of the land;

(b) in the case of non-agricultural land,

(i) the general value of non-agricultural land in the vicinity;

(ii) facilities such as road, railway station, bus route, shops, market and the like available in the vicinity of the land;

(iii) amenities like public offices, hospitals and educational institutions available in the vicinity of the land;

(iv) development activities including development of industries in the vicinity of the land;

(v) any factor mentioned in the instrument which is relevant for the purpose of determination of true market value",

(vi) any other factor which the Collector of the District thinks to have a bearing on the valuation of the non-agricultural land",

(c) in the case of buildings,

(i) the area of construction;

(ii) the floor space index;

(iii) type and structure;

(iv) year of construction;

(v) kind of material used;

(vi) locality in which constructed;

- (vii) rate of depreciation;
 - (viii) any factor mentioned in the instrument which is relevant for the purpose of determination of true market value;
 - (ix) any other factor which the Collector of the District thinks to have a bearing on the valuation of the building
- (d) in the case of any other property,
- (i) the nature and condition of the property;
 - (ii) purpose for which the property is being put to use;
 - (iii) any factor mentioned in the instrument which is relevant for the purpose of determination of the property.

The aforesaid principles of determining the market value can be said to be most reasonable and scientific by any standard. Further it is specially provided that any factor mentioned in the instrument which is relevant for the purpose of determination of true market value is required to be taken into consideration by the Collector. Therefore, the contention of the learned Advocate for the petitioners that as Section 2(na) of the Act provides for determination of market value of the property on the date of execution of instrument, it is arbitrary and irrational, requires to be rejected because for determining the market value the Collector is required to take into consideration the factors such as agreement to sell executed on a particular date (if it is a genuine one), the orders passed by the statutory authorities determining the price of the land or property, or such other relevant factors including the factor that the property is let out and the tenant occupying the lands or building is protected either under the Bombay Tenancy and Agricultural Lands Act or under the Bombay Rent Act. Not only this, it is also provided that the Collector is required to take into consideration any other factor which he considers to have a bearing on the valuation of the land or building. Therefore, in Section 2(na) it is rightly provided that market value in relation to any property which is subject-matter of an instrument means the price which such property would have fetched if sold in open market on the date of execution of such instrument. If a property transferred is mortgaged with possession, then in the said set of circumstances the market value of the said property is to be determined after taking into consideration the fact that it is mortgaged with possession and for getting possession of the property the purchaser is required to redeem the property and also in some cases there may be litigation. Therefore, this factor would have to be taken into consideration before determining its market value. Similarly, if there are sitting tenants over a land or a building, then such property would not fetch the same market value as the one over which there are no sitting tenants. Similarly, if agreement to sell is executed, which is a genuine one, then the Collector is bound to take into consideration the facts mentioned in the agreement to sell. But in the agreement to sell itself if consideration is understated or that the agreement to sell is not a

genuine one, then he can discard it. All these and such other factors which have bearing on the market value are required to be considered by the Collector in each and every case while determining the market price of the property conveyed. Therefore, the Legislature has wisely used the phrase "price which such property would have fetched if sold in open market on the date of execution of such instrument". If the property is encumbered or charged or there are tenants over it, then it would not fetch the same market price as the property which is free from any such encumbrances. Hence, it cannot be said that Section 2(na) is in any manner illegal, arbitrary or irrational.

34. Apart from the aforesaid Rule 8, at the time of hearing the learned Advocate General has produced on record Government Resolutions dated 19th May, 1990 and 30th September, 1991. Resolution dated 30th September, 1991 inter alia provided that:

(i) With regard to sheds/plots directly allotted by the Gujarat Industrial Development Corporation, the price shown by the Gujarat Industrial Development Corporation is to be taken into consideration;

(ii) The provision of Section 32A is not to be made applicable to the sale deed executed by any statutory Board or Government Administration or property sold by public auction by local bodies like Panchayat, Municipality, Municipal Corporation or the sale deed executed after obtaining sanction from the Charity Commissioner or on the basis of scheme framed u/s 21 of the Urban Land "Ceiling & Regulation) Act.

Not only this, but thereafter also rules are amended by Notification dated 13th March, 1992. The relevant part is as under:

2. In the Bombay Stamp (Determination of Market Value Of Property) Rules, 1984, in Rule 3, after Sub-rule (2;, the following proviso shall be inserted, namely-Provided that nothing in this Sub-rule shall apply to.

(a) conveyance deed executed by small and marginal farmer of his own agricultural land;

Explanation: The expression "small farmer" and "marginal farmer" shall have the meaning assigned to them in Section 2 of the Gujarat Rural Debtors Relief Act, 1976.

(b) document executed by any statutory Board or Government Company;

(c) conveyance deed to be executed by local bodies such as Panchayat, Municipality. Municipal Corporation where sale by auction of any property is carried out as per prescribed rules and resolution;

(d) conveyance deed of the trust property wherein sanction of the Charity Commissioner has been obtained.

35. It should be noted that guidelines or amended rules would not be applicable

in the cases where the Statutory Board or the Government Authority purchase the property. To that extent, in our view, there is lacuna in the guidelines or the rules framed by the State (Government). Still, however, in view of the aforesaid provisions and discussion, it would be difficult to accept the contention that concept of market value is vague and it gives unguided power to the concerned officer which could be used as means of oppression by the officers entrusted with duty of collecting stamp duty. It is apparent that the State Legislature has taken the necessary care to see that the powers are not misused and are circumscribed by laying down exhaustive guidelines. Therefore, in some cases, if powers are misused, that would hardly be a ground to hold that the statutory provisions are illegal or arbitrary. Assuming that in some cases powers are misused, it can be challenged before the Chief Controlling Revenue Officer as per Section 32B and/or by filing a petition under Articles 226 and 227 of the Constitution of India before this Court.

36. It was also contended that, as no time-limit is prescribed for initiating the action by the registering officer, it gives arbitrary powers to the registering officer to initiate proceedings after lapse of unreasonable time and to harass the concerned person by misusing the provisions contained u/s 32A. In our view, this contention requires to be rejected because it is a settled law that the powers under the statutory provisions are to be exercised within the reasonable period. The reasonable period varies in the facts and circumstances of each case and various provisions of the Act. It should be noted that u/s 32A(4) the Legislature has prescribed maximum period of two years from the date of registration of any instrument for initiating suo motu proceedings by the Collector for examining the instrument for the purpose of satisfying himself as to the correctness of the consideration or the market value of the property which is subject-matter of the conveyance and the duty payable thereon. Therefore, in no set of circumstances the registering officer can exercise his power of referring the instrument to the Collector beyond the reasonable period (under Section 32A). Not only this, the learned Advocate General has stated that the Superintendent of Stamps and Inspector General of Registration, Gujarat State, has issued a Circular dated 7th December, 1991 to the effect that the registering officer should issue a notice within one month from the date of presentation of the document for registration for payment of the amount of difference in stamp duty within one month from the date of receipt of the notice. If the difference in stamp duty is not paid he should immediately refer the case to the concerned Deputy Collector (Stamp Duty--Valuation Department). The learned Advocate General further stated that the Deputy Secretary, Revenue Department, has informed that in Rules 3(2), 4(2) and (3) appropriate time-limit ranging from one month to three months would be prescribed. Considering the aforesaid statements made by the learned Advocate General and the amended provisions of the Act, in our view, even prior to issuance of "Circular 7th December, 1991 by the Superintendent of Stamps and Inspector General of Registration, Gujarat State, three months period can be considered to be the reasonable period for issuance of notice by the registering

officer u/s 32A(1) read with Rule 3 Clause (2) of the "Bombay Stamp (Determination of Market Value of Property) Rules, 1984. If the power is exercised beyond that period, then the order can be set aside unless the facts justifying delay are pointed out.

37. In the result, from the aforesaid discussion, following conclusions emerge:

I. (a) Sections 32A, 32B, 76 and Article 20(a) and (b) are neither illegal nor ultra vires any of the provisions of the Constitution of India In view of Entry 63 List II- State List and Entry 44 List III-Concurrent List, the State Legislature is competent to enact a law which provides for rates of stamp duty in respect of documents other than those specified in Entry 91 of List I-Union List;

(b) Article 372 of the Constitution empowers the State Legislature to alter or repeal or amend any law in force in the territories of India immediately before commencement of the Constitution for the subjects for which it is competent to legislate;

(c) even if there is no express provision repealing the existing law, the same result would be achieved in view of Article 254 (2) as the Bombay Stamp Act, 1958, was enacted after receiving the assent of the President.

II. (a) Sections 32A, 32B and Article 20(a) and (b) are enacted in pursuance of the suggestions made by various committees including the Gujarat Taxation Inquiry Commission constituted by the State Government in 1978 to review the State taxes. The Commission has suggested for levy of stamp duty on the basis of market value of the property involved in the instrument of conveyance and for having Statewise valuation organisation to be set up for making a continuous valuation of agricultural and non-agricultural properties. The Valuation Department is required to workout "minimum values" for properties of different kinds in different localities in all the cities and towns. These "minimum values" would in effect be conservatively estimated market values and would become the norms that would be given to registering officers. It is stated that for valuation of the real properties the Valuation Organisation Department has resorted to established prevailing methods of valuing the real properties including,

(i) comparative method,

(ii) valuation based on cost known as land and building method,

(iii) belting method, and

(iv) abstractive method also known as residual theory or rental method or income capitalisation method.

The Valuation Organisation Department determines the value of the property in different zones and that valuation also would be subject to revision after lapse of certain time. It cannot be said that this exercise by the State Government is in any way illegal or arbitrary.

(b) The aforesaid stringent provisions of recovering proper stamp duty on the basis of market value are enacted so as to avoid loopholes in the Stamp Act and to prevent understatement of consideration in the instrument for avoiding payment of proper stamp duty. There is specific provision that the consideration and all other facts and circumstances affecting chargeability of any instrument with duty are required to be fully and truly set forth in the instrument and yet there was no provision empowering the authority to make an independent inquiry of the value of the property conveyed for determining the proper stamp duty.

(c) The procedure prescribed u/s 32A read with Rules 3 to 8 of the Rules provides for giving adequate reasonable opportunity of hearing to the concerned person at different stages. The consideration before the registering officer is mainly based upon the "minimum market value" determined for different properties in different localities as per the guidelines issued by the Valuation Organisation Department. Normally, the concerned person would pay difference of duty (if any) without any hesitation on the minimum market value (unless there are genuine circumstances to point out that the consideration mentioned in the instrument is truly set forth).

(d) If the person concerned does not offer the amount required to make up the proper duty on the instrument, the registering officer is required to make reference to the Collector under Sub-section (1) of Section 32A read with Rule 3(3). The Collector is also required to follow exhaustive procedure prescribed under the Rules before determining the market value. It provides for giving ample opportunity to the concerned person to establish his case, that is, of making representation in writing with evidence in support of such representation within 30 days from the date of receipt of notice [Rule 4(1)] or of making statement [Rule 4(2)]. The Collector is required to consider the representation or the statement and examine the information on record. He is required to make provisional order in writing determining the true market value of the instrument in accordance with the principles laid down in Rule 8 for determination of the market value. Thereafter, he is required to make the provisional order and communicate to the concerned person by a notice informing him that against that order he can make representation. The Collector is further required to consider the representation, if any, against the provisional order and to pass the final order.

III (i) Section 3 of the Bombay Stamp Act, 1958, provides for levy of stamp duty on the instrument. The chargeable event is the execution of the instrument. The basis for computation of stamp duty can be different and it is to be determined by the Legislature. It can be levied on the basis of the consideration mentioned in the instrument or on the market value of the property transferred or fixed amount can be prescribed. This is provided in Schedule I to the Bombay Stamp Act, 1958.

(ii) The principles laid down in Rule 8 for determination of market value are exhaustive, reasonable and scientific by any standard. Apart from other factors,

it authorizes him to take into consideration.

(a) any factor mentioned in the instrument which is relevant for the purpose of determination of true market value, and

(b) any other factor which the Collector considers to have bearing on valuation of the property.

(iii) This would empower the Collector to take into consideration all the relevant factors for determination of market value including the factor that the property is sold after obtaining permission from the Competent Authority under the provisions of any other enactment or that the market value is determined by the statutory authority or that the property is sold subject to rights of tenant, who is protected under the provisions of any statutory law or that there is encroachment or encumbrance on the land or the property.

(iv) Power u/s 32A is to be exercised within a reasonable period.

38. Hence, these petitions are rejected. Rule discharged with no order as to costs. Interim relief in each petition stands vacated.

After the aforesaid judgment is pronounced today, the learned Advocate for the petitioners submits that the interim relief granted by this Court be continued for some time so as to enable the petitioners to approach the Supreme Court against the order passed by this Court. It is submitted by the learned Advocate General for the respondents that because of the stay order, more than 4,00,000 documents are pending with the registering officer without any decision and the concerned parties are deprived of registered documents and are facing immense hardship. In our view, considering the contentions raised in the petitions, no substantial question of law is involved in the matters. Elaborate exhaustive procedures are prescribed under the Act and the Rules for deciding the market value of the property for which instrument is executed. The registering authority is facing hardship due to accumulation of large number of documents because of the stay order for the last more than 8 years. No prejudice is likely to be caused to the petitioners by not continuing the interim relief. As such, the petitioners' rights are not in any way affected. Hence, this prayer for continuing the interim relief is rejected.