

(1962) 09 MP CK 0018

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 32 of 1961

Mannalal Lacchiram and Sons Private Ltd. and Another

APPELLANT

Vs

Gram Panchayat Susari and State

RESPONDENT

Date of Decision : 04-09-1962

Acts Referred:

Constitution of India, 1950 — Article 245

Madhya Bharat Panchayat Act, 1949 — Section 115, 2(20), 2(26), 38

Madhya Bharat Panchayat Rules, 1951 — Rule 213, 214, 314

Citation : AIR 1964 MP 81 : (1964) ILR (MP) 199 : (1965) MPLJ 96

Hon'ble Judges : V.R. Newaskar, J; H.R. Krishnan, J

Bench : Division Bench

Advocate : S.D. Sanghi, for the Appellant; S.L. Dubey, for the Respondent

Final Decision : Dismissed

Judgement

Krishnan, J.

This is an application by the proprietors of an industrial unit consisting of number of factories in an enclosed area covering more than ten acres and assessed to a building tax (bhavan kar) at the minimum rate of 4 annas per hundred square feet of ground area, by the local authority, which is the Gram Panchayat Susari in Tehsil Kukshi of District Dhar. This is the non-applicant No. 1 and for the reasons, that will presently appear, the State of Madhya Pradesh has been made opposite party No. 2. Because the area is several hundred thousand square feet, the bhavan kar assessed is Rs. 1066/- per acre.

The prayer is that this assessment should be declared illegal, because for one thing, the law under which it is being levied is bad for excessive delegation to the Government, and further the legal position is worsened by a second delegation on the part of the Government to the Director of Panchayats, and a further delegation by him at least of part of the power to the local authority itself. Apart from this, on a point of detail, it is asserted that the tax could in any event be levied only in regard to the area actually covered by the buildings or other

structures which is about two fifth of the total, that is to say, about two hundred thousand square feet and not in respect of the entire area enclosed by the fencing of boundary wall. Consequently, it is prayed that there should be a direction to the local authority not to take any steps for the levy of the bhavan kar.

This case poses the important question of the extent to which a legislature can delegate its functions to the executive which may be Government or any other authority, a subject on which there has been quantity of conflicting ideas and extensive literature from the different view-points of the legislature, the executive and of the Courts.

Broadly speaking, the problem raised here can be formulated as four separate questions --

(i) Whether Section 38 (b) of the Madhya Bharat Panchayat Act (58 of 1949) is bad for excessive or complete delegation of the legislative power to the Government without any indication either of the policy or any other provision to canalise the power delegated to the Government.

(ii) Whether the sub-delegation by the Government to the Director or Panchayat under Rule 213 is intra vires and whether in fact the power of delegation conferred on Government by Section 115 of the Act has application to the rule-making powers conferred by the next section.

(iii) Whether the notification published by the Director of Panchayat in exercise of this delegated power leaving some discretion to the local authority concerned is valid.

(iv) Whether the tax should be levied in respect only of the areas built over or it can be levied in respect of the total area enclosed.

The Madhya Bharat Panchayat Vidhan, like other laws relating to panchayats, provides for compulsory and optional duties of the panchayats and empowers them to place themselves in funds by the levy of taxes which again may be compulsory or optional. We are concerned with one of the compulsory taxes mentioned in Section 38. The first and the most important of the compulsory taxes is the tax on land (bhumi kar). Section 38 (i) lays down elaborate and precise formulae for the assessment of the bhumi kar in different areas. Besides being a cast-iron provision in respect of this tax, it also indicates broadly the order in terms of money of this tax levied in practice in the different panchayats. Without referring to the other provisions, this would by itself indicate generally the amount which is likely to be payable by an individual or family of cultivators in the panchayat area as tax to the local authority. The next compulsory tax is the bhavan kar or a tax on buildings mentioned in Sub-section (b). While there is a cast-iron formula for the bhumi kar, no formula is given in the statute itself for the bhavan kar, which may be levied "at such rate as may be prescribed".

There is, however, a proviso the effect of which is that in respect of the land or

the buildings standing on which the bhavan kar is levied, the land tax (bhumi kar) if already assessed and levied, is automatically deducted. In effect, therefore, the assessee to bhavan kar will pay only the bhavan kar properly so called after deduction of the bhumi kar, if any, assessed for the land without reference to the buildings. So far it is clear. But the rate has to be "prescribed" as usual by Government under rules, in the instant case, made u/s 116, item (18). It may conveniently be noted here that "building" means not only the structure on the ground but also place of worship, workshop (karkhana) or hut, the petitioner's property being a karkhana; of this, however, in detail while considering Question (iv).

Section 116 item (18) runs thus--"116. (d) -- Without prejudice to the generality of power specified in Sub-section (a) such rules may provide for--

(18) the levy of cess, fees and taxes the authority by which, where and the manner in which the cess, fees or taxes may be assessed and the authority to which an appeal from an assessment order may be made;"

Among the rules made by Government under the Act, those relating to our present topic are 211 to 220, Rule 214 runs thus :

"(a) It shall be competent for the Director of Panchayats to fix the maximum and minimum rates for the bhavan kar which is leviable u/s 38 (b) and these rates shall be notified in the Government Gazette.

(b) The Gram Panchayat shall itself decide the rate at which the bhavan kar shall be levied within limits fixed under Sub-section (a); but where the gram panchayat does not fix any rate within the limits, then the lowest rate shall prevail."

It may be mentioned that the Director of Panchayats has notified (vide notification SR 22791 of 4-7-1955) the limits as 4 annas to 8 annas per hundred square feet of ground area of the building. As the present panchayat has not exercised its option, the rate in force in this panchayat is the minimum. So far, the position is factual and there is no controversy.

The attack made on the statutory provision is that by enacting "at such rates as may be prescribed"", the legislature has completely abdicated, and left it to the sweetwill and pleasure of Government to do what it likes in this regard. There is an appearance of substance in this criticism, because the particular sub-section does not in itself have any indication as to the policy of the legislature even in regard to the rate and the order in terms of money under which the levy should be made. As it actually turns out, the scale of the levy is extremely modest and quite in keeping with the means of almost all the villagers as would be living in the panchayat areas. But it is urged that there is nothing in the Section to prevent the Government (or its delegate as for that matter) from prescribing a rate that could be unconscionably high and very much beyond what the legislature might have thought proper. The main attack is on the principle that

such carte blanche is repugnant to the supremacy of the legislature; it is urgent for that reason alone the law should be declared null and void.

GROUND (i)--

The problem of the nature and extent of permissible delegation by the legislature of its powers has been a favourite topic with writers on jurisprudence; the most orthodox thinkers of the school of Dyce would only tolerate the minimum delegation, if at all, and that too hedged in with express conditions which it is usual to describe as canalisation. As time passed, it was found that such an attitude by the legislature complicates and often excessively hampers the function of a large number of public bodies including local authorities. Thus, quite a number of modern writers of the school to which C. K. Allen and others belong, while looking with concern on the fading away of the legislature in a modern government still approve of a certain extent of delegation as long as the policy is either expressly mentioned or is indicated with sufficient clarity, so that the delegate who may be either the government itself or a local authority or some such body cannot go against it.

Ever since 1950, this matter has come up before our Courts in several cases. The earliest and full discussion is contained in the Supreme Court decision in special reference No. 1 of 1951 under Article 143, Constitution, of India and Delhi Laws Act (1912) (etc.) AIR 1951 SC 332- A study of the answer recorded by each of the seven Hon'ble Judges shows slight difference in regard to the extent to which delegation was permissible; but the general trend is that --

"The legislature cannot part with its essential legislative function which consists in declaring its policy and making it a binding rule of conduct. Surrendering all, this essential function would amount to abdication of the legislative powers in the eye of law. The policy may be particularized in as few or as many words as is thought proper. But it is enough if an intelligent guidance is given to subordinate authority

While a legislature as part of its legislative function can confer power to make rules and "regulations for carrying the enactment into operation and effect and while it has power to lay down a policy and principles ... the power to delegate legislative functions generally is not warranted under the Constitution of India at any stage.....

The contention that the legislative power carries with it a general power to delegate legislative functions so that the legislature may not define its policy at all ... and that the whole thing may be left either to the executive authority or administration or other body is unsound."

It is of interest to compare this with the opinion of English authorities on the subject which in spite of their concern at the extent of delegation by legislature, still accept it as inevitable in modern parliamentary governments. As long ago as 1877 Lord Thring wrote in his Practical Legislation --

"The adoption of the system of confining the attention of Parliament to material provisions only, and leaving details to be settled departmentally, is probably the only mode in which Parliamentary government can, as respects its legislative functions, be satisfactorily carried on. The province of parliament is to decide material questions affecting the public interest, and the more procedure and subordinate matters can be withdrawn from their cognisance, the greater will be the time afforded for the consideration of the more serious questions involved in legislation,"

Since his time, there has been an increase in the necessity for extensive delegation to government or local authority of the power to make rules and other forms of subordinate legislation for the carrying out of the purpose of the parliamentary legislation. Such delegation has been accepted by the Courts and the jurists; almost always the controversy centers round as to whether the particular piece of subordinate legislation concerns only the detail or goes to modify the original intendment of the legislature.

In our country, the question has come up before the Supreme Court in a number of cases out of which *Rajnarin Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, is typical. The question whether the subject-matter of the subordinate legislation is an essential feature, or only a matter of detail, cannot be answered by any rigid formula. The realisation of this difficulty is itself an important step; but one can always find guidance by looking into the enactment, firstly, the policy and secondly, for any express or implied principle of guidance for the implementation of the policy. No delegate making subordinate legislation can in any manner change the policy; besides, if there is an indication guiding the manner in which the delegate should implement the policy, that guidance should be followed as far as possible in the circumstances of the case.

In later decisions both of the different High Courts and of the Supreme Court the matter has been approached in three different types of cases.

Firstly, we have cases where the delegate makes rules or orders in effect divesting the citizen of his property, either by way of taxation or by way of preventing him from deriving income that he would otherwise have done. In such cases the aggrieved citizen whether the assessee to some tax or a trader whose profits are restricted by fixing a maximum price or Maximum rate of Profit approaches the Law Court with a prayer that the delegation itself should be declared ultra vires as being excessive and without any guidance given by the legislature.

The second type is whether the delegate makes rules generally controlling the services or other bodies of employees or persons dealing with government; and they are challenged on the ground that they either go beyond the scope of the parent legislation or even conflict with it.

The third type of case is where a local authority a municipality or panchayat or the like, or an autonomous statutory body like a market committee, seeks to

control, in accordance with the rules or regulations either made by it or by Government, or made by it with the approval of the government, the activities of the citizens in general or of certain classes. Broadly speaking, in all the three types of cases our Courts have held that as long as the broad policy is covered by the legislation, and some sort of guidance is contained in it, the delegation is not excessive.

For our purpose, the first class of cases is of special interest. Among the earlier cases, we have V.M. Syed Mohamed and Co. and Another Vs. The State of Madras and Another, , and the Supreme Court case V.M. Syed Mohammad and Company Vs. The State of Andhra, , dismissing an appeal from the Madras decision. The High Court held --

"Even according to the principles established in American decisions, the power entrusted to the rule-making authority cannot be held to be unconstitutional delegation."

In fact, that Court seemed to have felt that the American Constitution, and the American tradition in this regard were quite conservative in the matter of delegation of powers by the legislature to the rule making authority. Still, it held that where the rules impose the tax on the purchaser though it was understood to be a tax on the occasion of the sale, there was no excessive delegation. In course of the discussion it quoted an American decision to the following effect.

"The legislature has delegated to the Commission the duty of fixing rates which it does in aid of legislative action or as an auxiliary to the exercise of the legislative functions."

No doubt, it was almost a dogma with the American tradition that the legislative power could not be delegated, either to the other branches of the government or to independent Boards or Commissions; but that dogma has many exceptions, one of them being that the legislation can entrust to outside bodies the power to fix rates, the authorities in America being uniform that such legislation is not invalid as being excessive or unconstitutional delegation. The Supreme Court approved the line taken by the Madras High Court and dismissed the appeal of the assessee.

A similar position arose in regard to the fixing by the Government or its delegates of the maximum price of controlled commodities under the Essential Supplies (Temporary Powers) Act. It was held in Union of India (UOI) and Others and State of Delhi (Now Delhi Administration) and Others Vs. BhanaMal GulzariMal Ltd. and Others,

"The power conferred on the Central Government by Section 3 and on the authority specified by Section 4 of the Essential Supplies (Temporary Powers) Act, 1946, is canalised by the clear enunciation of the legislative policy in Section 3 and Clause II-B, Iron and Steel (Control of Production and Distribution) Order, 1941, considered as a part of the composite scheme evidenced by the

whole of the order, seeks further to canalise the exercise of the said power; and so it is not a case where the validity of the Clause can be successfully challenged on the ground of excessive delegation."

The policy, it is to be noted, is to make available to the citizen the commodities described as "essential supplies" at a fair and reasonable price and wide discretion was given to the Central Government and its delegates, without the legislature making any reference to a specified basic price.

There is a broad analogy between the fixing of a maximum price by the delegate (whether the Central Government or the State Government or the Controller and other sub-delegates) and the fixing of the rate at which a local authority can levy a particular tax. In a very broad sense, both the orders have the effect of depriving the citizen concerned of a sum of money which he would otherwise have as the case may be earned or retained. A number of earlier cases following the same principles in regard to the delegation of powers for the fixing of the maximum price have been discussed in this judgment and do not, therefore, call for any separate mention.

The second type of case is where the Court is invited to hold that the delegation to the rule making authority is so complete as to amount to an abdication. The ruling reported in *D.S. Garewal Vs. The State of Punjab and Another*, is typical and is in effect a corollary of the principles laid down in *In Re Delhi Laws Act* AIR 1951 SC 332 and *Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, . In this case, the law proper was the All India Services Act of 1951 enacted to give effect to Article 312 of the Constitution. Section 4 of this Act delegates to the rule-making authority the powers of framing rules "in future" in regard to the services. This delegation was attacked as being far too wide, but the Court has held that it is valid because the rules to be framed were for carrying out the purpose of the Act.

The third type of case is a very common one where powers are delegated to local authorities and other statutory bodies. Typical among them are the rulings in *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, . The authority in that case was the Municipal Corporation of the City of Poona. There are rulings of the different High Courts also in regard to similar bodies, the one of this Court in the *Bhopal Sugar Industries Ltd., Sehore v. State of Madhya Pradesh*, Misc. Petn. No. 340 of 1961, D/- 30-1-1962 (Madh Pra). The authority concerned was the Sugarcane Development Council acting under the rules framed by the State Government u/s 21 of the Madhya Pradesh Sugarcane (Regulation of Supply and Purchase) Act 1959. There the payment was a commission by the rate at which the commission was to be paid was to be fixed by a rule made by Government. In both these cases the powers given to the rule-making authority though apparently wide, were held to be within the limits of permissible legislation. In the recent case reported in *Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another*, , the whole question has been considered with reference to the powers exercisable by a

statutory body, in this case, the Agricultural Produce Markets Committee acting under the rules made by Government.

Thus, the uniform trend of judicial decisions of our Courts is that where the policy is laid down in the statute, the rule-making authority can be given wide powers by way of delegation for carrying it out. These powers may in appropriate cases include the power of fixing the rates at which the money payment by the citizen to the Government or to a local authority or other statutory body is to be made.

Applying these principles to the instant case, we have the policy as laid down by the legislature, that a tax on buildings as denned in the Act should be compulsorily levied after deducting the land tax, if any, for the land on which the buildings stand. But the implementation of the policy was left completely to the State Government, in particular, the rate and the manner in which the building tax was to be levied. The Government itself, was aware of two alternative formulae; the first, on the assessment of the value of the building and providing that there should be so many annas or rupees on every thousand rupees of such valuation after exempting buildings of less than the prescribed value; and second, on the ground area covered by the building, that is to say, so many annas per hundred square feet of the area. Again, the rate was left to the discretion of the rule-making authority. On the face of it, it would look like wide delegation, theoretically at any rate capable of exercise in a manner likely to be more burdensome on the owners of buildings within the panchayats than the legislature might have thought reasonable. Still, it is a case of implementation and not of changing of the policy itself.

Though it is not quite necessary, still, the scale on which the tax on the land is to be levied is laid down in the statute and gives an indication of a very general nature of the scale on which the income from the tax on house-building might also be levied. In other words, if the income from the tax on land in sub-section (a) for which a cast-iron formula has been laid down in the statute itself is, say, Rs. 5000/- per annum in any panchayat, it was expected that the income from the building taxes will be of about the same order; in other words, a few thousand and in any event of a much higher order, say, that of Rs. 25000/- or 50000/- or the like. This is a practical consideration which the legislature could properly expect the rule making authority that is, the Government or its delegate to bear in mind. Thus, we have a direct announcement of the policy and in addition general indication of the order or level at which the total income from this heading of taxation could be properly expected to stand. With this double check, the delegation to the rule-making authority of prescribing the rate at which the house-tax is to be levied cannot at all be considered excessive or unconstitutional. In fact, it is very well within the limits indicated in the Madras judgment *V.M. Syed Mohamed and Co. and Another Vs. The State of Madras and Another*, on the analogy of the American rulings which are usually more conservative in this regard than the Indian rulings.

GROUND (ii)

The question is, whether the powers given by Section 115 to the State Government cover also the rule-making powers given in Section 116. From time to time attempts have been made by certain authorities to distinguish between the competency of the rule-making authority to delegate the powers given to it in that capacity to subordinate authorities. Statutes are differently worded; in the instant case, Section 116 runs --

"(a) The Government may make rules consistent with the Act for carrying out the purposes and object of this Act and may attach to the breach of any such rule a fine"

Now Section 115 runs--

"The powers conferred on the Government under any Section or sections of the Act may be delegated by the Government to any prescribed authority or authorities or may be withdrawn after delegation and may be re-delegated"

The point to note is that there is no exception to the Section or sections of the Act under which the Government is given these powers. All that this requires is that the delegation by the Government, if any, should itself be embodied in rule made in the manner provided in Section 116. This is exactly what has happened in Rule 312. Here again there is a broad similarity between this and the delegation of powers to the Central Government u/s 3 of the Essential Supplies (Temporary Powers) Act, 1946. That statute has empowered the Central Government, with powers to further delegate them to the State Governments or other authorities. There are certain requirements in regard to the manner and the form in which such delegation had to be made and once these were observed, the delegation by rule or order was not ultra vires. So, as far as this delegation goes, there is no difficulty and it is competent within the framework of the Act.

GROUND (iii) --

In a very limited sense, the Director of Panchayats has given some discretion to the panchayat though the panchayat in our case has not availed of it. He has or in effect, Government has through its delegate fixed the limits under which the panchayat can choose to levy the house-tax. Normally, it should be four annas to a hundred square feet. But it was open to a panchayat by exercise of its discretion in a formal manner to levy it upto eight annas per hundred square feet. This is delegation in a very special sense within the limits and under the supervision of the Government and has absolutely nothing excessive or unconstitutional in it. It is, however, unnecessary to develop this topic any further because in the instant case the house-tax has been levied at the very lowest rate. It is just as if there was no power given to the Panchayat.

GROUND (iv) --

At the rate of four annas or as for that matter eight annas per hundred square feet, the house-tax would be really insignificant. After all the normal ground area of a house including the appurtenances and the enclosure out in the country-side is rarely if ever of the order of a few hundred square feet or at the most a thousand or two thousand square feet. It is by no means uncommon to have within an acre or two, let us say, forty to eighty thousand square feet, something like a hundred houses packed together in a village basti. Thus, in practice, the house-tax payable would be much less than two or three rupees per house. But the petitioner's position is something altogether different from that of the usual owner of the houses in the panchayat area. He has enclosed an area roughly a quarter of a mile long and a quarter mile broad, and built in it (according to him over about two fifth of the area) structures for a number of factories.

In addition, the portion within the enclosure that has not been built over, is used as an appurtenance to one or the other of the factories for storing the cotton, for standing the vehicles and dumping other raw material brought by the suppliers. It is not merely the actual structure that forms the "building" or the "factory"; under the definition, it is the entire enclosure. If any part of the enclosure is excluded and is not used in any of the ways appropriate for the building as defined, then of course, the panchayat can be invited not to take its area in the levy of the building tax. But when it is admitted on facts that the area is enclosed and the whole of it is used as a factory, it cannot be urged that the tax should be calculated on the area of the surface actually under a roof. Since the area is very considerable, it turns out that the building tax even at the extremely low rate of four annas to a hundred square feet comes, out to be about a thousand rupees. This is only natural because we are dealing with about a quarter of a mile square or about ten acres which is the same as 400 or 450 thousand square feet. On this ground also the petitioner can make no grievance.

In the result, the application is dismissed. Hearing costs payable by the petitioner to Government is Rs. 100/- (one hundred).

Newaskar, J.

This is a petition under Article 226 of the Constitution submitted by the petitioners Messrs. Mannalal Lachhiram and Sons. Pr. Ltd., a private Limited Company and Radharaman s/o Narayanji against the Gram Panchayat Susari Tehsil Kukshi and the State of Madhya Pradesh for the issue of writ of mandamus or any other appropriate writ, order or direction for quashing the notice of demand dated 24-9-1960 requiring them to pay "Bhavan Kar" in respect of the buildings situated on land survey No. 316 upon which their ginning factory is situated for the year 1960-61 amounting to Rs. 1066-6-3 which had been levied by the said Panchayat in pursuance of their power u/s 38 (b) of the Madhya Bharat Panchayat Vidhan. The petitioners say that although they have paid the said tax for the years from 1956-57 to 1959-60 amounting to Rs. 4270-4-6 they seek to challenge the vires of this levy for the year in question. They state that u/s 38 (b) of the Madhya Bharat Panchayat Vidhan a Gram Panchayat is authorised

to levy house-tax (Bhavan Kar) within the area of its jurisdiction at a prescribed rate; the term "prescribed" being defined by Section 2 (23) of the Act as meaning "prescribed" by rules framed by the Government.

The Act conferred power upon the Government by Section 116 to frame rules to carry out the purpose of the Act and mentioned various topics by way of illustration with respect to which such rules can be framed. No rules were however framed by the Government regarding rates at which the tax in question could be levied. It however framed Rules under the Panchayat Vidhan and by Rule 213 of the said Rules it delegated its power of prescribing rates to the Director of Rural Uplift by Notification No. 4320/10 R. D. 48/53 dated 20-11-1954 published in the Madhya Bharat Gazette dated 2-12-1954. This rule was later repealed and under a new rule namely Rule No. 214 the Director of Rural Uplift was conferred power to prescribe maximum and minimum rates and empowering the Gram Panchayats in the State to prescribe any rate within those maximum and minimum rates.

The Gram Panchayat in pursuance of this power (assessed?) buildings of the petitioners" ginning factory at the rate which was the minimum rate of Annas -/4/- per hundred square feet. The petitioners raise the following grounds of contention in assailing the vires of the levy --

(i) Section 38 (b) of the Madhya Bharat Panchayat Act is ultra vires the legislative power of the State Legislature as thereby the legislature has conferred naked and unbridled power upon the State Government to prescribe rates and has not prescribed any standard or laid down any safe-guard for the exercise of that power.

(ii) The Government also has sub-delegated this power to the Director of Rural Uplift by permitting him to fix maximum and minimum rates and by empowering the Gram Panchayats to levy tax within those limits. This sub-delegation is also bad and involved excessive delegation on the part of the legislature.

They further attack the actual levy being not in accordance with the Notification No. 2279! dated 4-7-1955 as it instead of levying tax on buildings only within the limits of the land within their charge at Annas 4 to 8 per Chasma or Miyal had done so upon the entire land at Annas -/4/-per hundred square feet.

The respondents in their return assert that the levy and collection in the past was good and was in pursuance of power legally conferred upon the Gram Panchayat and that neither Section 38 (b) of the Madhya Bharat Panchayat Vidhan nor Rule 214 of the Rules under the same nor the actual levy were either ultra vires or beyond the terms of Notification dated 4-7-1955 referred to above.

On the petitioners" contentions the following points arise for consideration --

(1) Whether Section 38 (b) of the Madhya Bharat Panchayat Vidhan is ultra vires the legislative power of the State Legislature as it purports to delegate unbridled power upon the State Government to levy "Bhavan Kar" and further to sub-

delegate that power to any authority under it?

(2) Whether Rule 214 of the Rules framed in pursuance of the Government's rule making power u/s 115 of the Act providing for the fixing of maximum and minimum rates by the Director of Rural Uplift and enabling the Gram Panchayat to levy tax within those limits involves excessive delegation by the legislature of its essential legislative function?

(3) Whether it is competent for the Gram Panchayat acting under Rule 214 to levy tax on open land not covered over by any building in view

of the terms of Notification dated 4-7-1955?

22A. First two questions involve the subject of delegation of legislative function to administrative bodies and the chief point for consideration is whether the legislature can properly be said to have delegated its power of prescribing the rate at which a tax is to be levied without itself prescribing any standard or without fixing either the maximum and the minimum limits within which the power could be exercised.

The question regarding vires of delegated legislation has been a subject of a series of decisions of the Supreme Court and it will be useful to mention some of them to reach our conclusions on the above mentioned two questions.

The whole field of delegated legislation was elaborately discussed by the Supreme Court in AIR 1951 SC 332, in a reference made by the President under Article 143 regarding the vires of Section 7 of the Delhi Laws Act, 1912. Kama, C. J., after reviewing the decisions of the Privy Council, Supreme Courts of Canada and Australia and United States observed at p. 345 (Para 35):-

"While a legislature, as a part of its legislative functions, can confer powers to make rules and regulations for carrying the enactment into operation and effect, and while a legislature has power to lay down the policy and principles providing the rule of conduct and while it may further provide that on certain data or facts being found and ascertained by an executive authority, the operation of the Act can be extended to certain areas or may be brought into force on such determination which is described as conditional legislation, the power to delegate legislative functions generally is not warranted under the Constitution of India at any stage. In cases of emergency like war where a large latitude has to be necessarily left in the matter of enforcing regulations to the executive, the scope of the power to make regulations is very wide, but even in those cases the suggestion that there was delegation of "Legislative functions" has been repudiated. Similarly, varying according to the necessities of the case and the nature of the legislation, the doctrine of conditional legislation or subsidiary legislation or ancillary legislation is equally upheld under all the Constitutions."

While dealing with the statement that the legislature in exercising power of delegation may not efface itself or abdicate the learned Chief Justice observed at page 345:-

"The true test in respect of "abdication" or "effacement" appears to be whether in conferring the power to the delegate, the legislature "in the words used to confer the power", retained its control. Does the decision of the delegate derive sanction from the act of the delegate or has it got the sanction from what the legislature has enacted and decided ?"

24-a. Another Judge Fazl Ali, J., observed after referring to the subject of "delegated legislation" using that expression in popular sense as follows: -

"This form of legislation has become a present-day necessity, and it has come to stay; it is both inevitable and indispensable. The legislature has now to make so many laws that it has no time to devote to all the legislative details, and sometimes the subject on which it has to legislate is of such a technical nature that all it can do is to state the broad principles and leave the details to be worked out by those who are more familiar with the subject. Again, when complex schemes of reform are to be the subject of legislation, it is difficult to bring out a self-contained and complete Act straightway, since it is not possible to foresee all the contingencies and envisage all the local requirements for which provision is to be made. Thus, some degree of flexibility becomes necessary, so as to permit constant adaptation to unknown future conditions without the necessity of having to amend the law again and again, The advantage of such a course is that it enables the delegate authority to consult interests likely to be affected by a particular law, make actual experiments when necessary, and utilise the results of its investigations and experiments in the best way possible- There may also arise emergencies and urgent situations requiring prompt action and the entrustment of large powers to authorities who have to deal with the various situations as they arise."

Mukherjea, J., observed:-

"The decisions referred to above clearly lay down that the legislature cannot part with its essential legislative function which consists in declaring its policy and making it a binding rule of conduct. A surrender of this essential function would amount to abdication of legislative powers in the eye of law. The policy may be particularised in as few or as many words as the legislature thinks proper and it is enough if an intelligent guidance is given to the subordinate authority. The Court can interfere if no policy is discernible at all or the delegation is of such an indefinite character as to amount to abdication, but as the discretion vests with the legislature in determining whether there is necessity for delegation or not, the exercise of such discretion is not to be disturbed by the Court except in clear cases of abuse. These I consider to be the fundamental principles and in respect to the powers of the legislature the constitutional position in India approximates more to the American than to the English pattern. There is a basic difference between the Indian and the British Parliament in this respect. There is no constitutional limitation to restrain the British Parliament from assigning its powers where it will, but the Indian Parliament qua legislative body is fettered by a written constitution and it does not possess the sovereign powers of the British

Parliament. The limits of the powers of delegation in India would therefore have to be ascertained as a matter of construction from the provisions of the Constitution itself and as I have said the right of delegation may be implied in the exercise of legislative power only to the extent that it is necessary to make the exercise of the power effective and complete".

The greatest common measure of agreement amongst the seven Judges who constituted the Bench in the aforesaid case AIR 1951 SC 332 was pointed out by Bose, J., in a later case reported in *Rajnarin Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, . According to the learned Judge the provision in question in *Delhi Laws Act* case namely:-

"The Provincial Government may by notification extend with such restrictions and modifications as it thinks fit any enactment which is in force in any part of British India at the date of such notification"

was held to be good and did not involve excessive delegation of legislative power by a majority of four to three but two of the Judges constituting the majority placed a very restricted meaning to the terms "modifications" and "restrictions" used in the aforesaid provisions. They held that the "modifications" or "restrictions" brought about by the Government ought not to involve essential change in the Act or any alteration in its legislative policy and this was mentioned by Bose, J., as the greatest common measure of agreement in that case.

In another case reported in the same volume namely *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, , vires of Section 3 and Section 4 (3) of the *Essential Supplies (Temporary Powers), Act (1946)*, was in question. Mahajan, C. J., in that case indicated the majority view in the *Delhi Laws Act* case thus:-

"The Legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination or choice of the legislative policy and of formally enacting that policy into a binding rule of conduct."

He held that in that case the legislature in enacting Section 3 of the Act, whereby power was delegated to the Central Government to provide by order for regulating or prohibiting the production, supply and distribution of essential commodities and for trade and commerce therein had not resorted to excessive delegation as the legislative policy was indicated by it in the preamble as well as the body of the Section. That policy or principle was the maintenance or increase in supply of essential commodities and the securing of equitable distribution and availability at fair prices of the same. Their Lordships also negatived the objection regarding the invalidity of Section 4 of the Act which provided for

enabling the Central Government by Notified order to direct that power exercisable by it u/s 3 may be exercised by such officer or authority under Central Government or by any specified State Government or any officer or authority under it. Relying upon *Shannon v. Lower Mainland Dairy Products, Board* 1938 AC 708 : (AIR 1939 PC 36), their Lordships held that the Section 4 indicated the persons to whom the power could be delegated or sub-delegated by the Central Government and that it was not correct to say that the instrumentalities had not been selected by the Legislature itself.

In a later case reported in AIR 1958 SC 909 *Banarsi Das v. State of Madhya Pradesh*, their Lordships held as follows:-

"Now the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like."

Their Lordships referred to and relied upon the decision in *Hampton Jr. and Co. v. United States* (1928) 276 U. S. 394, in which the question was whether the provision in the U. S. Tariff Act, 1922, whereunder the President was empowered to make such increases or decreases in the rates of duty as were found necessary for carrying out the purpose of the Act, was valid or involved excessive delegation. The answer to it was that it was valid and the delegation was not excessive.

A case somewhat approaching the present case is the one reported in *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, . In that case Section 59 of the Bombay District Municipalities Act, 1901, provided that subject to any general or special orders which the State Government might make in that behalf any Municipality after observing the preliminary procedure required u/s 60 and with the sanction of the authority therein mentioned might impose any of the taxes mentioned in the Section for the purposes of the Act. After enumerating various heads of permissible taxes a general and residuary provision was made under Clause XI of Section 60 whereby a Municipality was permitted to impose any other tax to the nature and object of which the approval of the Governor-in Council was obtained prior to selection contemplated u/s 60 (a) (i).

The vires of this imposition was challenged before the Supreme Court. Das, C. J., who delivered the opinion of the Court held that the imposing was valid and that was neither excessive delegation nor total abdication by the legislature about its essential legislative functions. According to him the imposition was permitted by the statute for the purposes of the Act and secondly since imposition was made subject to the approval of the Governor-in-Council. The Council there meant either the executive Council or the legislative council. In either case the delegation was subject to ultimate control of the legislative body. In the third place the taxing was to be for a purpose which would bear a reasonable relation

to the duties cast upon the Municipality. In view of these restrictions and limitations the delegation was held to be not bad.

Next case to be referred to is Union of India (UOI) and Others and State of Delhi (Now Delhi Administration) and Others Vs. BhanaMal GulzariMal Ltd. and Others, . In that case the validity of Clause II-B of the Iron and Steel (Control of Production and Distribution) Order, (1941), was in issue. This was an order issued by the Central Government in exercise of its power conferred upon it under Rule 81 (2) of the Defence of India Rules. It became by legal fiction due to the combined effect of Clause 5 of Ordinance No. XVIII of 1946 and Section 7 of the Essential Supplies (Temporary Powers) Act No. XXIV of 1946 an order u/s 3 of the last mentioned Act. This Act like the prior Ordinance which it repealed provided for delegation of specified powers to the Central Government and further sub-delegation by it to specified officers or authorities subordinate to it, or to Provincial Government or to specified officers or authorities of the Provincial Government. By Clause II-B of the Order the Controller of Iron and Steel was empowered to fix the maximum and minimum prices at which any iron or steel might be sold by a producer, stock-holder or any other person or class of persons. While considering the question whether there was excessive delegation by the legislature or abdication of its essential function in the aforesaid provision it was observed by

Gajendragadkar, J.

"When the Legislature delegated its authority to the Central Government to provide by order for regulating or prohibiting the production, supply and distribution of steel and iron, it had not surrendered its essential legislative function in favour of the Central Government. The preamble to the Act and the material words used in Section 3 (1) itself embody the decision of the Legislature in the matter of the legislative policy, and their effect is to lay down a binding rule of conduct in the light of which the Central Government had to exercise its powers conferred on it by Section 3."

It was further held that sub-delegation u/s 4 was justified because, like the delegate u/s 3 sub-delegate u/s 4 has been given ample guidance to exercise his powers

when he is authorised by the Central Government in that behalf.

In a still later case reported in Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others, , the same learned Judge summarised the legal position on the subject thus :-

"It is now well established by the decisions of this Court that the power of delegation is a constituent element of the legislative power as a whole, and that in modern times when the Legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying

out the policy laid down by their Acts. The extent to which such delegation is permissible is also now well settled. The Legislature cannot delegate its essential legislative function in any case. It must lay down the legislative policy and principle, and must afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf."

The last Supreme Court case to be referred to is the one reported in *Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another*, . In that case Section 29 of the *Bombay Agricultural Produce Markets Act, 1939*, was assailed on the ground that under it there is excessive delegation in favour of the State Government. The Section empowers the State Government to add to, amend or cancel any of the items of the agricultural produce specified in the schedule in accordance with the local conditions prevailing in different parts of the State. The Court held that the said Section did not involve excessive delegation as the legislative policy, according to them was writ large upon the face of the Act. The circumstance that in exercising the power under that provision it has to take into account only the whole-sale trade and not the retail one afforded sufficient guidance to the Government in exercising that power. The legislature had also not stripped itself of its essential legislative functions and had not assigned to the administrative body anything but an accessory or subordinate power which was deemed necessary to carry out the purpose of the Act.

Two more decisions of the High Courts of the country which may be referred to are those reported in *V.M. Syed Mohamed and Co. and Another Vs. The State of Madras and Another*, and *Kunwar Murli Manohar Vs. State of Uttar Pradesh and Others*,

In the first of these cases *Venkatarama Ayyar, J.*, quoted the following observation of *Hughes, C. J.*, in *Panama Refining Co. v. Ryan*, (1935) 293 U. S. 388:-

"The Congress manifestly is not permitted to abdicate, or to transfer to others, the essential legislative functioning with which it is thus vested. Undoubtedly legislation must often be adapted to complex conditions involving a host of details with which the national Legislature cannot deal directly. The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply. Without capacity to give authorizations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a, futility. But the constituent recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of that, cannot be allowed to obscure the limitations of the authority to delegate if our constitutional system is to be

maintained."

The subject regarding the exercise of power of taxation and fixing of rates by bodies outside the legislature was also considered in that case and the Court after making reference to *Powell v. Apollo Candle Co. Ltd.*, (1885) 10 AC 282 and American decision (1913) 230 US 525 *Oregan R. and Nav. Co. v. Campbell*, held that even according to the principles established in America, where greater emphasis is placed upon exclusive-ness of legislature in the matter of legislation, it is not incompetent for the legislature to entrust the work of fixing rates to administrative bodies.

In *Kunwar Murli Manohar Vs. State of Uttar Pradesh and Others*, , in a case in which the legality of power of Government in fixing rates in the case of vacuum pan sugar factories was considered. It was pointed out that the purpose of the Act was the augmentation of the State revenues and the legislature intended that the rates should be so fixed as to best serve the purpose keeping in view the capacity and the well-being of the industry.

These decisions clearly establish that although the legislature such as the Central or the State frown upon competing legislative bodies exercising parallel powers yet in the interest of their own effective and efficient working they have to permit exercise of powers in their nature legislative by subordinate administrative authorities such as the Governments or other officer or authority subordinate to them in accordance with the principles and policy laid down by them. They may entrust such administrative bodies with the work of framing Rules and Regulations to carry out the provisions of the Statutes which they pass. They may also entrust such bodies with the task of working out the details consistent with the object, principles and policy laid down in a statute which can only be done on proper study and examination of facts and circumstances applicable to a particular locality, set of persons or circumstances since for doing all this they may have neither the time nor the facility nor convenience. As a corollary to this they may leave the determination of details as to working of taxation laws to the executive bodies including the work of selecting persons on whom the tax should be levied; the rate at which it is to be charged in respect of different kinds of goods or property etc.

We shall next proceed to consider whether having regard to the aforesaid legal position the imposition of "Bhavankar" (house-tax) in the instant case is lawful or otherwise.

It seems from the preamble of the Madhya Bharat Panchayat Vidhan No. 58 of 1949 that the Act is designed to provide for local self Government in the Rural areas and also for enabling Panchayats to carry out development within the sphere of their activity. With this object in view, a hierarchy of Panchayat is constituted including the Gram Panchayat, the Kendra Panchayat and the Mandal Panchayat. Sphere of activity of each of them is defined. Amongst the duties of the Gram Panchayat are those relating to construction, maintenance, repair and

cleaning of roads and wells, sources of water supply for drinking and other purposes, prevention of the Spread of infectious diseases either amongst men or cattle, construction of buildings and their maintenance for public purpose, management of cattle pound etc. Besides these compulsory duties of the Gram Panchayat there are optional duties as well.

Similar duties of Kendra and Mandal Panchayat are also laid down. For enabling them to carry out these duties they necessarily would require funds. These are secured by imposition of taxes. These taxes include land tax, labour tax and tax on buildings. Tax on land and labour tax are laid down by the Act itself as they do not require any examination of facts and circumstances. As regards tax on buildings it must have been considered by the legislature that it was not proper to treat all buildings in the entire rural areas on the same basis. The location of the village, the financial condition of the persons residing therein, the nature of constructions and various other factors might have been considered as relevant matters which might require examination in fixing the rates. For this reason Section 38 (b) of the Act leaves it to the Government to prescribe, by rules framed by it under its rule-making power u/s 116, the rate of tax on buildings. u/s 115 this power of the Government could be delegated.

It is clear from the foregoing that the legislature has clearly laid down the object of the Act. This is to provide for local-self Government in the Rural areas and to secure development there through the instrumentality of Panchayats. It further has laid down the compulsory and optional duties of the Panchayat and has made provision for funds for that purpose by imposition of tax. The legislature further has prescribed the tax on land-holding and labour-tax. It did not itself lay down the tax on buildings in the rural areas as according to its view a detailed examination of various relevant factors will be necessary before determining the rates. The machinery employed for this determination was the authority possessing power delegated by the Government and working under it who is required to fix maximum and minimum rates, having regard to the requirement of a particular village Panchayat for carrying its duties entrusted to it by the Act, the location and the nature of construction, general financial standard of the locality and the like. The actual fixing between the rates thus determined is left to the democratic body namely Panchayat, the minimum being realisable in any case. Such fixation and levy cannot be said to involve excessive delegation of the power of legislature in view of the legal position culled from decisions and enunciated above.

It cannot consequently be said that Section 38 (b) of the Act or Rule 214 of the Rules are bad in law on the principle of excessive delegation. This determines points I and 2.

On the third point the contention has a reference to details. It is said that Section 38 (b) authorises tax on buildings. The term building is defined u/s 2 (26) meaning house, shop, ware-house, workshop or hut. Each of these, it is said, involves construction. Consequently in imposing tax open land ought to be

excluded.

The contention has no substance. The term building no doubt involves construction and a purely open land may not constitute a building. But where there is construction it is not necessary that every square inch of the land should be covered over with some construction. A house may have open land adjoining it and yet it will be a house inclusive of open land. A ware-house may have a shed and compound for stocking goods such as unginned cotton, grain etc. The ware-house including the shed and the open land will still be a building. The contention of the opponent is that the whole area of the petitioner's ginning factory consists of buildings and compound used for ginning factory and for storing or stocking materials for the factory. If this is correct the imposition of tax is unquestionable. If it is disputed it would be a disputed question of fact and we cannot proceed on such a question only on what the petitioner asserts particularly when all the necessary details as to this are not on record.

I would consequently agree with my brother Krishnan, J. The petition cannot be entertained. It is dismissed with costs. Counsel's fees shall be taxed at Rs. 100/- (one hundred).