

(2003) 04 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No's. 7562, 13340, 14818 to 14831, 15149, 15149, 15150, 20573 to 20577, 21292, to 21296, 25405, 26292, 28025, 28855 to 28919, 45678, 46121 to 46130 and 46240 of 2002 and 2885, 3610 to 3627 and 11212 to 11228 of 2003

Nagarika Seva Trust (R) and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-04-2003

Acts Referred:

Karnataka Stamp Act, 1957 — Section 45 B

Citation : (2003) 4 KarLJ 79

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : S.S. Koti, in W.P. Nos. 7562 and 13340 of 2002 and 11212 to 11215 of 2003, B.H. Mahesh Babu, in W.P. Nos. 14818 to 14831 of 2002, Suresh B. Hudedagaddi, in W.P. Nos. 15149 and 15150 of 2002, Subash B. Adi, in W.P. Nos. 28855 to 28919 of 2002, K. Varaprasad, in W.P. Nos. 20573 to 20577 of 2002, N.S. Sanjay Gowda, in W.P. Nos. 21292 to 21296 of 2002, H.R. Ananthakrishna Murthy and Associates in W.P. Nos. 25405 and 28025 of 2002, V.T. Rayaraddi, in W.P. Nos. 26292 and 46240 of 2002 and 11216 to 11228 of 2003, B.R. Suresh, in W.P. Nos. 45678 of 2002 and 3610 to 3627 of 2003 and C.S. Ramadas, in W.P. Nos. 46121 to 46130 of 2002 and 2885 of 2003, for the Appellant; P.S. Manjunath, for Respondent-2 in W.P. Nos. 7562 of 2002 and 11212 to 11215 of 2003, H.C. Shivaramu, for Respondent-2 in W.P. Nos. 7562 and 13340 of 2002 and 11212 to 11215 of 2003, B.N. Prasad, High Court Government Pleader for Respondents-1 and 3 in W.P. Nos. 7562, 45678, 46121 to 46130 and 46240 of 2002 and 2885, 3610 to 3627 and 11212 to 11215 of 2003, S. Mahesh, for Respondent-3 in W.P. Nos. 14818 to 14831 of 2002, Vigneshwar S. Shastri in Respondent-2 in W.P. Nos. 15149 and 15150 of 2002, K.S. Desai, for Respondent-2 in W.P. Nos. 28855 to 28919 of 2002, L.M. Chidanandayya, for Respondent-2 in W.P. Nos. 46240 of 2002, Jayakumar S. Patil, for Respondent-2 in W.P. Nos. 20573 to 20577 of 2002, S.B. Lakshmi, for Respondent-2 in W.P. Nos. 21292 to 21296 of 2002, K. Rangahavendra Rao, for Respondent-1 in W.P. Nos. 25405 and 28025 of 2002, M.R. Shailendra, for Respondent-2 in W.P. Nos. 26292 of 2002 and 11216 to 11228 of 2003, B.B. Bajentri, for Respondent-2 in W.P. Nos. 45678 and 46121 to 46130 of 2002 and 3610 to 3627 of 2003, B. Anand, Government Advocate for Respondents-1 and 3 in W.P. Nos. 13340, 15149 and 15150 of 2002, for Respondents-1 and 2 in W.P. Nos. 14818 to 14831

of 2002 and for Respondent-1 in W.P. Nos. 28855 to 28919 of 2002 and Prl. A.G. for Respondent-1 and 3 in W.P. Nos. 20573 to 20577 and 26292 of 2002 and 11216 to 11228 of 2003, for Respondent-1 in W.P. Nos. 21292 to 21296 of 2002 and for Respondent-2 in W.P. Nos. 25405 and 28025 of 2002, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Dattu, J.—A tax reform made for levy, assessment and collection of property tax by the State Government by amending certain provisions of Definition Clause and Chapter VI -- "Municipal Taxation" of the Karnataka Municipalities Act, 1964, by the Karnataka Municipalities (Amendment) Act, 2000 (Karnataka Act 28 of 2001), is the subject-matter of this batch of writ petitions.

2. The amended provisions basically provide for tax base, tax rate, coverage and collection. The first two issues involve legal and policy issues and others are machinery and procedural provisions for collection of taxes.

3. The valuation of the property for the assessment of property tax prior to the amendment of the Act was being done on the basis of the annual rent that the property would fetch from year to year and now the legislative entry speaks of Taxable Capital Value". Taxable value is the sum at which the property is appraised for taxation. The expression "capital value" used in the Act is not however the cost of construction of building or its market value as a wealth. It is a working expression, which may roughly be said to be the taxable value of the building. One of the modes commonly employed for assessing the capital value of an asset is to assess its market value if that is determinable. By inserting Clause (27-A) in the amended Act, the Legislature authorises the local bodies to make valuation of buildings or lands or both in accordance with the provisions of the Act and the Karnataka Municipal Corporations (Amendment) Rules, 2002 for the purpose of assessment of property tax. The tax is levied every year on all buildings or lands or both situate within the municipal area, unless exempted under the Act or any other law.

4. The property tax being a presumptive tax, valuation does not increase automatically with rising prices. The location of the property determines the value of the property. There are different rates for residential and non-residential properties. The State Legislature by the present amendment, authorises the local bodies to levy property tax at such rates not being less than 0.3 per cent (three thousandth) and not being more than 0.6 per cent (six thousandth) of taxable capital value of the buildings or lands or both depending on various attributes of the buildings such as location, type of construction of the building, nature of use to which the building is put, plinth area of the building, age of the building and such other criteria as may be prescribed under the rules. The valuation of the land could be factored depending on location, area of the land and nature of use to which it is put and such other criteria as may be prescribed in the rules. For

the purpose of the Act, the "building" is defined to mean "any land appurtenant to such building used as a garden and grounds for the more beneficial enjoyment of such building not exceeding thrice the area occupied by such building".

5. The characteristics of imposition of tax are, firstly, the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the tax-payers consent and the payment is enforced by law. Secondly, taxation is an imposition made for a public purpose without reference to any special benefit to be conferred on the payer of tax, the tax when collected forms part of the public revenues of the State and there is no element of quid pro quo between the tax-payer and the public authority. Thirdly, taxation is a part of the common burden, the quantum of imposition upon the tax-payer depends generally upon his capacity to pay. Lastly, taxation is for a public purpose, even if a particular person receive more benefit from the use of the tax proceeds than others. Tax has two elements, the person, thing or activity on which tax is imposed and the amount of tax.

6. The next section focuses on the method of assessment of property tax. Property assessment is the process of arriving at the net value of a property by a tax assessor or a tax-payer. Under the capital value system, each parcel of land and building will be valued together. The land value will be based on the estimated market value of the land notified by the Government u/s 45B of the Karnataka Stamp Act, 1957. The capital value of the building is the estimated cost of erecting the building minus depreciation at the time of assessment and determined as far as may be based on the method adopted by the Public Works Department. The value of the vacant land will be again based on the estimated market value of the land notified by the State Government u/s 45B of the Karnataka Stamp Act, 1957. It also provides for a rebate at the rate of 50% of the property tax for owner occupied building.

7. The filing of a tax return every year in the prescribed form by a person, who is liable to pay property tax is mandatory. Such return requires to be filed either before the Municipal Commissioners or the Chief Officers or before an authorised officer within the prescribed time. The section also provides for 5% rebate for those who file their return in time and pay the taxes on the basis of the return. If the return submitted is correct and complete, the authorised officer under the Act will assess the property tax in accordance with the provisions of the Act and the rules made thereunder and also would send a copy of the order of assessment to the person liable to pay property tax. If no such return is filed or if the return filed appears to be incorrect, the Commissioner or the Chief Officer or any other person authorised under the Act can assess the property to tax after making necessary enquiries. The Commissioner or the Chief Officer or the authorised person under the Act has the discretion to levy penalty of 50% of the property tax assessed for non-filing of the return and in case of wilful incorrect filing of return, a penalty not exceeding twice the amount of difference between the tax assessed and the property tax paid. The person liable to pay property tax

has an option either to accept the property tax assessed and the levy of penalty or to file his objections, if any, before the officers prescribed under the Act within 30 days from the date of receipt of copy of the assessment order and if such objections are filed, the prescribed officer shall consider the objections and pass such order either confirming or revising the assessment of such tax and the penalty, if any, within a period of sixty days and communicate the same to the person liable to pay property tax. The Act also mandates the Municipal Council to issue guidelines from time to time to facilitate the tax-payer for filing the property tax returns under the capital value system. The unauthorised buildings are liable for twice the property tax.

8. The Municipal Councils are authorised under the Act to revise any tax imposed by it once in every five years and if it intends to enhance the rate of tax, it is expected to follow the procedure prescribed for imposition of taxes. The Act also authorises the State Government to direct the Municipal Councils to revise any tax imposed by it even before the expiry of five years. These are the provisions which have created some heart burning to the property owners and they are of the view that for the property tax that they pay, they are not adequately compensated in terms of civic services by local self-Governments. On the other hand, the local bodies feel that this anger is not proportionate to the tax imposed on them.

9. Prior to the amendment, the rental value of the properties was the basis for imposition of property tax. From the rental value, the annual value or rateable value of the property was derived for the purpose of calculating the property tax payable. The annual value or rateable value was arrived at by three norms, namely, either by actual rent received for land or building where it is actually let, where it is not rented out by an artificial method of validation that is, on the basis of gross annual rent which the property may fetch from year to year, which a hypothetical tenant may be expected to pay, if rented out. If the land or building was not rented out and if these two situations were not available, then a residual clause, by valuation based on capital value of land and building from which annual value is derived, a suitable percentage was factored to arrive at the net value on which the property tax was computed.

10. The mode of determination of "annual rental value" or "annual rateable value" of building was explained by Apex Court in the case of *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*, . In that the Court was pleased to observe that "where municipalities are governed by the rent control legislations, it is not actual rent or rent receivable from the hypothetical tenant, which has to form the base for determining the annual rental value, but the standard rent which has to form the basis for determining the annual rental value or annual rateable value, for the reason, the Rent Control Act makes it illegal for any person to demand or receive rent in excess of the standard rent". The Supreme Court in later decisions while following the interpretation given in *Smt. Padma Debi's* case, *supra*, has observed that if a relevant section contained a "non

obstante clause" the municipality need not take cognizance of the Rent Control Act and could deem the annual rent from buildings or a premises that which might reasonably expected to fetch, if rented it out from year to year. The later decisions distinguished the judicial principles evolved in the case of Smt. Padma Debi, supra, and held that "fair or the standard rent as the ceiling for fixing the "annual rental value" is not applicable, where the Municipal Acts contained the non obstante clause".

11. The turning point for advocating the change in the manner and method of calculating the property tax payable from the "annual rateable value" arose from the decision rendered in the case of Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum, , In the said decision, the Court expressed the impracticality of the proposition that though the landlord may actually receive Rs. 10,000/- per month as rent, the property tax in respect of the building can be levied only on the basis of fair rent/standard rent, according to the relevant Rent Control Act, notwithstanding the fact that no such fair rent/standard rent has actually been fixed. In fact, in this case, the reasonable rent had to be ascertained without reference to the relevant Rent Control Act with respect to a building occupied by the owner herself. The Court after noticing the law declared by the Apex Court in earlier cases, had expressed that time has come to move out from the rental valuation principle to a simple and transparent system.

12. The Legislature has taken many years to bring in any change in the legislation to value the property for the purpose of levy, assessment and collection of property tax. It is only now, it has heeded to the observations made by the Apex Court in the aforesaid decision, by bringing an amendment to the principal Act by replacing the imposition of property tax on the basis of "annual rateable value" by "taxable capital value system". Under the capital value system, each parcel of the land and building will be valued together. The land will be based on the estimated market value of the land notified by the Government u/s 45B of the Karnataka Stamp Act, 1957, and the Rules framed thereunder. The capital value of the building is the estimated cost of erecting the building minus the depreciation at the time of assessment and determined as far as may be based on the method adopted by the Public Works Department. The tax that can be imposed is not less than 0.3 per cent and not more than 0.6 per cent of the capital value assessed for land and building.

13. Re competence of the State Legislature to enact the impugned legislation.-- Some of the learned Counsels appearing for the petitioners would submit that the subject-matter of the Act being a tax on the capital value of the land or buildings or both, it is a tax on the capital value of the assets of the individual and therefore the impost falls within the scope of Entry 86 of List I of Seventh Schedule of the Constitution and not under Entry 49 of List II of the Seventh Schedule and therefore, the State Legislature has no competence to enact the impugned amended legislation and some other learned Counsels would submit

that the tax levied is on the income derived from the immovable property of an individual and therefore, it would fall within the scope of Entry 82 of List I of Seventh Schedule of the Constitution.

14. Under the scheme of the Constitution property tax is leviable by the State Government under Entry 49 -- "Taxes on lands and buildings" of List II of Seventh Schedule of the Constitution. Whereas, tax on the capital value of the assets is leviable by the Central Government under Entry 86 -- "Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies". The tax on income is leviable by the Central Government under Entry 82 -- "Taxes on income other than agricultural income" of List I of Seventh Schedule of the Constitution,

15. Under the Constitution of India, property tax is leviable by the State Government under Entry 49 -- "Taxes on lands and buildings" of List II, within this ambit of tax on land and buildings a wide variety of options regarding property related cases could be imposed by the local self-Government. These include various property related cases including conservancy tax, as well as the general property tax which may include components of tax on land and buildings. The choice of design must fall within this for the statute to be constitutionally valid. The choice of design for the tax base is to choose from a tax based on the annual or rental value of the property a tax based on the capital value of the property, a tax based on vacant land or site and lastly, a combination of above three methods. The annual rental value system derives valuation for levy of tax on the estimated annual net value from the use of the property. In the capital value system, property tax is derived on the assessed value of the land and improvements. The site or land value system includes only site or the land value as the base excluding improvements.

16. Capital value and rental value reflect the valuation of the property though derived differently. The primary distinction is that the annual rental value reflects the income from property in its current use, whereas capital value reflects the property's potential future gains including the income generated by the best use of the property. Whether it is the annual rental value system or the capital value system, the principles of valuation of the property for its computation to tax is common, though the derivation of property value is done differently for each of the system. Under the annual rental value system, the valuation of the property for assessment is based on the estimated or notional rental value of the property and under capital value system, the tax base is the market value of the property owned. The expression "capital value" came up for interpretation before the Apex Court in. D.G. Gose and Co. (Agents) Pvt. Ltd. Vs. State of Kerala and Another, , and in that, Court was pleased to observe:

"The expression "capital value" used in the Act is not however the cost of construction of the building or its market value as a wealth. It is a convenient or a working expression which may roughly be said to be the taxable value of the building, and the State Legislature was quite competent to select that as the

basis for assessing the building tax".

17. The question, which falls for consideration is whether the impugned legislation is outside the legislative competence of the State Legislature? To answer this issue, a reference to the observations made by the Apex Court in the case of *The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc., , D.G. Gouse and Company (Agents) Private Limited's*, case, *supra* and *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others, ,* may be sufficient. In the first case, the validity or otherwise of the Madras Urban Land Tax Act, 1966, was questioned with reference to Entry 86 of List I of Seventh Schedule. In that, Court was pleased to observe:

"But in a normal case a tax on capital value of assets bears no definable relation to lands and buildings which may or may not form a component of the total assets of the assesses. But Entry 49 of List II, contemplates a levy of tax on lands and buildings or both as units. It is not concerned with the division of interest or ownership in the units of lands or buildings, which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee".

18. The Apex Court in the case of *D.G. Gouse and Company (Agents) Private Limited, supra*, has explained the entries in Entry 86 of List I and Entry 49 of List II of Seventh Schedule of the Constitution. In that, the Court has observed that, if a tax is levied on all that one owns or his total assets, it would fall within the purview of Entry 86 of List I and would be outside the legislative competence of State Legislature. However, if a tax is directly imposed on "buildings", it will bear a direct relation to the buildings owned by an assessee. It may be that the building owned by an assessee may be a component of his total assets, but a tax under Entry 86 will not bear any direct or definable relation to his building. A tax on building is therefore a direct tax on the assessee's building as such, and is not a personal tax without reference to any particular property. While summing up on the issue, which fell for consideration, the Court was pleased to observe:

"Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of power under Entry 86, List I tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under Entry 49, List II the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not, in our judgment, make the fields of legislation under the two entries overlapping".

19. In *re Broach Borough Municipality*, *supra*, the Apex Court was pleased to observe:

"The Legislature in Section 73 had not authorised the levy of a tax in this manner but had authorised the levy of a rate. That led to the discussion whether a rule putting the tax on capital value of buildings answered the description of the impost in the Act, namely, "a rate on buildings or lands or both situate within the Municipal borough". It was held by this Court that it did not, because the word "rate" had acquired a special meaning in legislative practice. Faced with this situation the Legislature exercised its undoubted powers of redefining "rate" so as to equate it to a tax on capital value and convert the tax purported to be collected as a "rate" into a tax on lands and buildings. The Legislature in the Validation Act, therefore, provided for the following matters. First, it stated that no tax or rate by whichever name called and laid on the capital value of lands and buildings must be deemed to be invalidly assessed, imposed, collected or recovered simply on the ground that a rate is based on the annual letting value. Next it provided that the tax must be deemed to be validly assessed, imposed, collected or recovered and the imposition must be deemed to be always so authorised. The Legislature by this enactment retrospectively imposed the tax on lands and buildings based on their capital value and as the tax was already imposed, levied and collected on that basis, made the imposition, levy collection and recovery of the tax valid, notwithstanding the declaration by the Court that as "rate", the levy was incompetent. The Legislature not only equated the tax collected to a tax on lands and buildings, which it had the power to levy, but also to a rate giving a new meaning to the expression "rate", and while doing so it put out of action the effect of the decisions of the Courts to the contrary. The exercise of power by the Legislature was valid because the Legislature does possess the power to levy a tax on lands and buildings based on capital value thereof and in validating the levy on that basis, the implication of the use of the word "rate" could be effectively removed and the tax on lands and buildings imposed instead. The tax, therefore, can no longer be questioned on the ground that Section 73 spoke of a rate and the imposition was not a rate as properly understood but a tax on capital value. In this view of the matter it is hardly necessary to invoke the 14th clause of Section 73 which contains a residuary power to impose any other tax not expressly mentioned".

20. The expression "income" came up for interpretation by the Supreme Court in the case of *Bhagwan Dass Jain Vs. Union of India (UOI) and Others*, . In that, the Court was pleased to hold:

"The word "income" in Entry 82 should be interpreted in its widest amplitude. Even in its ordinary economic sense, the expression "income" includes not merely what is received or what comes in by exploiting the use of a property, but also what one saves by using it oneself. That which can be converted into income can be reasonably regarded as giving rise to income. The tax levied under the Act is on the income (though computed in an artificial way) from house property

in the above sense and not on house property. Entry 49 of List II of the Seventh Schedule to the Constitution is not therefore, attracted. The levy in question squarely falls under Entry 82 of List I of the Seventh Schedule to the Constitution".

21. The law declared by the Apex Court in the above decision was explained by the Supreme Court in the case of *India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others*, . In that, the Court was pleased to observe:

"In *Bhagwan Dass Jain*'s case, *supra*, this Court made a distinction between the levy on income from house property which would be an Income Tax and the levy on house property itself which would be referable to Entry 49, List II of Seventh Schedule to the Constitution".

22. To determine under which entry a particular tax falls, what requires to be seen is the essential features of the tax having regard to pith and substance of the legislation. Under Entry 49 of the State list, lands and buildings are units of taxation and under Entry 86 of Union list, the unit of taxation is the capital value of assets. For the purpose of levying tax under Entry 49 of List II, the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. In the amended provisions what has been done by the State Legislature is to authorise the local bodies to adopt "Capital Value" of the lands and buildings for the purpose of levying tax. The adoption of capital value of lands and buildings for determining the tax liability will not be a tax levied on one's total assets. Therefore, it is futile to contend that the State Legislature has no competence to levy property tax based on the capital value of the buildings or lands or both.

23. Adoption of estimated market value computed under Stamp Act for valuation of property tax.--After the abolition of octroi system, the property tax emerged as the principal source of revenue for the local bodies. The basis of the tax is immovable property, which is fixed in location. The basis upon which the tax is assessed uniformly is on the valuation of the property, prior to the amendment it was being done on the basis of the annual rent the property would fetch from year to year and now the Legislature has authorised the local bodies to make the valuation of the property on the basis of expected sale price, normally known as "taxable capital value" or the "market value system". The property tax is levied as a small percentage of the property value.

24. The taxable value is the sum at which the property is appraised for taxation. The expression "capital value" used in the Act is not however the cost of construction of building or its market value as a wealth. It is working expression, which may roughly be said to be the taxable value of the building. Tax has two elements, the person, thing or activity on which tax is imposed and the amount of tax. The components which enter into the concept of a tax is explained by Apex Court in the case of *Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others*, . In that, the Court was pleased to observe:

"The components which enter into the concept of a tax are well-known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed, and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity".

25. Section 102 of the amended Act focuses on the method of assessment of property tax. Under this section, the taxable capital value of the building is assessed together with its land. This section provides for the manner and method of valuation of the buildings or lands or both. The object of property assessment is to place fair value on properties and also value properties efficiently. The main issue to be addressed in valuation is not how value should be denominated, but it is actually derived. An important distinction is to be borne in mind between assessing the property value for the purpose of property tax and assessing property value that an informed and willing buyer pays a willing seller in an open and competitive market. The actual sale or purchase of properties, the parties are seriously guided by the actual prevailing market rates. This level of accuracy of valuation is not required in case of property tax. A relative value would be sufficient rather than an absolute value. The property tax is collected as a percentage of tax base, which is the value of lands and buildings located within the jurisdiction of a municipality.

26. Under the scheme of Amended Act, the property tax is levied every year on all buildings or lands or both situate within the municipal area unless they are exempt under the Act or any other law. The tax is payable either by the owner or occupier of the buildings or the lands or both. The property tax is leviable at such percentage not being less than 0.3 per cent and not more than 0.6 per cent of the capital value of the building or land or both, having regard to various attributes of the immovable property. The building is appraised for taxation together with its land.

There are several methods for deriving a value for lands and buildings. The most straight method is an analysis of sales of comparable property, adjusting the prices to account for any difference in size, location and other features of the property. The second could be to capitalize the value for the land and building using an appropriate of discount, thirdly, it could be by way of cost analysis and in fact there are several other methods for determination of the value of the property. In spite of it, it cannot be said that any one of the methods is fully accurate and acceptable to the tax-payer. At this stage it is useful to refer to one passage from the book "Principles and Practice of Valuation" by learned author J.A. Parks:

"On the other hand the correct determination of market value is beset with many

problems. Properties or real estates differ in terms of location, occupational use, age, quality of construction, the state of repair and neighborhood. All these factors are taken into account when the market determines the value of any given property. It is of course difficult independently to assess what would be the market value of any property. The value mentioned in the property transfer deed cannot be accepted as a matter of routine, particularly when relatively high rates are levied, because such acceptable would lead to under valuation being acted upon. On the other hand, if the discretion to question the value is given to the Registrar or Sub-Registrar, one would be creating avenues for harassment, corruption and collusion. Hence several States have endeavoured to fix guidance values for properties in various localities. For valuation purposes, the value of a property is to be decomposed into two parts, the value of land and building. The valuation of such land and building should follow the market approach, or cost approach or income approach, or a combination of approaches as each case may appropriately demand. All the approaches to value and methods involved have been discussed elaborately in the earlier chapters. It is important to emphasise that the job of valuation should be completely taken away from those who would be involved in collecting the tax".

(emphasis supplied)

27. Fundamentally, there are two approaches to valuation under capital valuation system. The first relies on direct market information about the market value of the property. The second depends on data collected from sample of properties, a practice termed mass appraisal. Almost all countries rely on sales data for the valuation of land. Though this data may not be very accurate, the tax rate could be factored to take care of under-reporting.

28. In the amended legislation, the Legislature authorises the local bodies to take into consideration the estimated market value of the land notified by the State Government u/s 45B of the Karnataka Stamp Act, 1957, to compute the taxable value of the land. Section 45B of the Act was inserted into the Act by Act 6 of 1999 with effect from 1-4-1999 and the said provision is now substituted by Act 8 of 2003. Prior to amendment, the Legislature had authorised the State Government to constitute for each taluka or any part thereof one or more Committees consisting such number of members to estimate the market value of any property or such of the properties in any area in the prescribed manner and at prescribed intervals by issuing a notification. The committee was expected to publish the estimated market value of the property in the municipal area in such manner as may be prescribed. The State Government had framed rules to give effect to provisions of Section 45B of the Act. The rules were known as the Karnataka Stamp (Constitution of Committee for Estimation of Property) Rules, 1992, Rule 3 provided for constitution of the Committee. The Committee to consist of not less than three and not more than five members. The members are officers of the Department of Revenue, Public Works, Survey and Settlement, Officers of City Corporation or City Municipal Council, Town Municipal Council,

Town Panchayat or Gram Panchayat and an expert in the field of valuation of properties. The Sub-Registrar of the taluka was to be the Member Secretary of the Committee. One of the members of the Committee specified by the Government in the notification was to be the Chairman of the Committee. The rules provided certain guidelines for estimating the market value of lands, house sites, buildings and properties other than lands, house sites and buildings. An elaborate procedure had also been prescribed for estimating the market value of the lands and vacant house sites. The estimated market value prepared by the Committee required to be published as envisaged under Rule 7 of the Rules. Section 45B of the Stamp Act substituted by Act 8 of 2003, which has come into force with effect from 1-4-2003. Under the amended provision the State Government is required to issue a notification to constitute Central Valuation Committee under the Chairmanship of Inspector General of Registration and the Commissioner for Stamps for Estimation, Publication, for revision of market value guidelines of property in any area in the State for the purpose of Section 45B of the Stamp Act. The Central Valuation Committee is the final authority for formulation of policy, methodology and administration of market value guidelines in the State. For this purpose the Central Valuation Committee may constitute market valuation Sub-Committees in each sub-district or district. Consisting such members the sub-committees are required to function and follow the procedure prescribed by the Central Valuation Committee. The Central Valuation Committee is authorised under the Act to reconstitute the Sub-Committee for each sub-district or district. In view of this amendment till such time the appropriate rules are framed, whether the Municipal Councils could assess property tax for the assessment years after 1-4-2003 need not be considered by me, for deciding the constitutional validity or otherwise of the impugned legislation. At this stage it may be useful to notice the observations made by learned author Justice G.P. Singh in this book "Principles of Statutory Interpretation" that Courts have drawn a distinction between a mere reference or citation of one statute into another and incorporation. In the former case a modification, repeal or re-enactment of the statute that is referred will also have effect for the statute in which it is referred, but in the latter case any change in the incorporated statute by way of amendment or repeal has no repercussion on the incorporating statute. It is a question of construction whether a particular former statute is merely referred to or cited in a later statute or is wholly or partially incorporated therein.

29. The learned Counsels for the petitioners would vehemently contend that the estimated market value of land on which the building is erected and a vacant land/site, estimated under the provisions of the Karnataka Stamp Act, cannot be the basis for the purpose of calculating the market value of land for the purpose of assessment of property tax under the provisions of Municipalities Act, for the reason, the purpose and object of both the enactments are totally different. It is difficult to accept the submission of learned Counsels. Firstly, in my view this is a case of legislation by reference. The Legislature by adopting this method of legislation only states that the market value estimated by a Committee

constituted under the Stamp Act can be used for the estimation of market value of the land or vacant site. Secondly, for the purpose of arriving at taxable value of the land, the first prerequisite is to estimate the market value of the land and not its market value as its wealth. A Committee consisting of experts in the field of valuation of property, including a member of a local body, after following the procedure prescribed estimates the market value of the property. While doing so, the Committee does not take into consideration the value of the land, which a willing buyer and seller would agree to purchase in a open market. The market value of the land that is fixed by the Committee has nothing to do with the consideration amount that the seller and purchaser would agree for purchase of immovable property. The estimate of the value of the land made by the Committee is only a reflection of the prevailing market value of the land or building. The estimate so made is adopted by the Legislature for determining the market value of the land for the purpose of assessment of property tax. Thirdly, when there are different methods for estimating the market value of the property, the State Legislature is quite competent to select the market value of the land fixed by an expert committee under the provisions of Karnataka Stamp Act, 1957, as the basis for fixing the market value of the land for the purpose of assessment of property tax. Reference in this connection may be made to the decision of the Apex Court in the case of *KHANDIGE SHAM BHAT AND ANOTHER Vs. AGRICULTURAL Income Tax OFFICER, KASARAGOD, AND ANOTHER.*, , wherein the Court has observed:

"Where there, is more than one method of assessing tax and the Legislature selects one out of them, the Court will not be justified to strike down the law on the ground that the legislature should have adopted another method which, in the opinion of the Court, is more reasonable, unless it is convinced that the method adopted is capricious, fanciful, arbitrary or clearly unjust".

30. To ascertain the market value of lands/vacant sites in different zones within the municipal area for the purpose of levy of property tax is difficult and at the same time, it cannot be left to the whims and fancies of the tax assessor or the tax-payer. If it is done, it may lead to manipulation and arbitrary exercise of power by the assessor or the tax-payer. There is no other method, which is easily available and less cumbersome. An Expert Committee constituted under a different enactment, has already estimated the market value of the land and the Legislature decides to link the estimated value so prepared for the purpose of assessment of property tax under the provisions of Karnataka Municipalities Act. Further, it cannot be said that the estimated market value of the land prepared by the Expert Committee should be made applicable only for the purpose of stamp duty, when the Legislature by reference adopts the estimated value so prepared for the purpose of assessment of market value of the land to compute property tax payable under the Karnataka Municipalities Act. Therefore, the contention canvassed that the market value fixed for the purpose of the Stamp Act cannot be made as the basis for computing the property tax under the Municipalities Act.

31. The levy of tax unreasonable and confiscatory.-The learned Counsels for the petitioners also argued that the imposition of tax on capital value of the lands or buildings and fixing the rate of tax at the minimum of 0.3 per cent and a maximum of 0.6 per cent is wholly unreasonable and confiscatory. Therefore, the impugned legislation requires to be struck down. This argument is an argument in despair and has no merit whatsoever. The law on the issue is now well-settled. Reference can be made to the observations of Apex Court in the case of Assistant Commissioner of Urban Land Tax, *supra*. In that, the Apex Court was pleased to observe:

"As a general rule it may be said that so long as a tax retains its character as a tax and is not confiscatory, or extortionate the reasonableness of the tax cannot be questioned. It is not possible to put the test of reasonableness into the straight-jacket of a narrow formula. The objects to be taxed, the quantum of tax to be levied, the conditions subject to which it is levied and the social and economic policies which a tax is designed to subserve are all matters of political character and these matters have been entrusted to the Legislature and not to the Courts. In applying the test of reasonableness it is also essential to notice that the power of taxation is generally regarded as an essential attribute of sovereignty and constitutional provisions relating to the power of taxation are regarded not as grant of power but as limitation upon the power which would otherwise be practically without limit.

The levy of tax under the Act at 0.4 per cent of the market value of the urban land is by no means confiscatory in effect. Merely because the property tax under the Municipalities Act and the tax on urban land under the 1966 Act, both enacted under Entry 49 exhaust an unreasonably high proportion of income, it cannot be said that the charging section under the 1966 Act is unreasonable. The basis of the two taxes being different it is not permissible to club together the two taxes and complain of the cumulative burden. If the tax is on the market value of the urban land it does not admit of a complaint that it takes away an unreasonably high proportion of the income. A tax on land values and a tax on letting value, though both are taxes under Entry 49 of List II, cannot be clubbed together in order to test the reasonableness of one or the other for the purposes of Article 19(1)".

32. In a very recent decision the Apex Court in the case of State of Bihar and Others Vs. Sachchidanand Kishore Prasad Sinha and Others, , after referring to earlier view expressed in the case of The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another, , wherein it was stated that:

"This indicates a wide range of selection and freedom in appraisal not only in the objects of taxation and the manner of taxation but also in the determination of the rate or rates applicable. . . The burden of discrimination is always heavy and heavier still when a taxing statute is under attack. . . The burden is on a person complaining of discrimination. The burden is proving not possible "inequality" but hostile "unequal" treatment. This is more so when uniform taxes are levied".

The Court after making reference to the observations made by the Apex Court in the case of R.K. Garg v. Union of India and Ors., AIR 1981 SC 2138 and in the case of State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and Others, was pleased to note:

"The earlier system of taxation left too much discretion in their hands. Now, the only thing that has to be ascertained is the carpet area of the house, the rest is determined by the rules and the notifications. There is no question of revision of annual rental value periodically on the ground that the rental value has gone up. A new system, with all good intentions is being tried out -- a system designed in the interest of the body of house owners -- tax-payers as well as the Corporation. May be, this is the trial and error method spoken of in R.K. Garg's case, supra. Unless found to be offending the constitutional or statutory provisions, it must be allowed to be worked out. One should start with the presumption that the Corporation knows what is the better method of classification. It has chosen to divide it with reference to roads. It is difficult for the Court to substitute its opinion for that of the Corporation nor can any one guarantee that if the Municipal Corporation area is divided on the basis of zones it will be a perfect classification and would eliminate all the complaints and grievances off differential treatment. It is because of the inherent complex nature of taxation that a greater latitude and a larger elbow room is conceded to the Legislature -- or its delegate, as the case may be -- in such matters".

33. The legislative competence of the State Legislature to enact the impugned legislation, adoption of Section 45B of the Karnataka Stamp Act for the purpose of computing the taxable value for land/vacant sites and the amended legislation is confiscatory, arbitrary etc., were the only issues canvassed by learned Counsels for the petitioners. For the reasons stated by me in the previous paragraphs, the submissions made cannot be accepted to invalidate the charging and machinery provisions of the amended legislation though the submissions made looked attractive at the first blush.

34. Transparency is a desirable attribute of local property tax. If tax-payers understand how they are taxed, they will be more likely to comply with the system. The new property tax system does introduce some transparency which was lacking in the annual rateable value system. The new value concept is easier one to understand. The property tax base is the market value of the property owned. The tax-payer is provided with a tax manual which the tax-payer can read and calculate the footage value from a table provided. A tax-payer can actually work out the tax liability based on the schedule of values, tax rates and depending on the location, usage and physical characteristics of the property.

35. Insofar as the schemes framed by the Municipalities and Corporations are concerned, in some of the cases, petitioners are before this Court at the stage where municipalities have merely invited objections to the proposed scheme from the general public and in some of the cases the scheme is attacked on the ground that the levy on some of the items mentioned in the schedule is

excessive and yet in some other cases, it is stated that the Municipal Councils or the Corporations have not taken into consideration the objections filed by the residents for the proposed scheme etc. These submissions, in my view, has no hearing on the constitutional validity of the charging section or the machinery provisions. It is however open to the petitioners to challenge the particular valuation in any particular case by way of an appeal or revision as provided under the statute or to move this Court for appropriate reliefs. Property tax is the prime source of revenue to the Municipalities. Innovative method introduced by the State Government for helping the local bodies to earn more revenue requires to be encouraged and those legislation requires to be liberally interpreted to achieve its objectives.

36. Accordingly, the following:

ORDER

I. Writ petitions are rejected. However, liberty is reserved to the petitioners to challenge the particular valuation in any particular case by way of an appeal or revision as provided under the statute or to move this Court for appropriate reliefs.

II. In the facts and circumstances of the case no order as to costs. Ordered accordingly.