

(1978) 06 KL CK 0005

In the High Court Of Kerala

Case No : Original Petns. No's. 3909 etc. of 1974, 1147 etc. of 1975, 4899 etc. of 1976 and 1333 of 1977 H

P. Sundari Bai,

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 12-06-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1), 19(5), 301
Kerala Building Tax Act, 1975 — Section 2, 5, 6

Citation : AIR 1979 Ker 68

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.; V. Khalid, J; V. Balakrishna Eradi, J; K.K. Narendran, J; G. Balagangadharan Nair, J

Bench : Full Bench

Advocate : V. Rama Shenoi, R. Raya Shenoi, K.V. Kuriakose, T. Philip, M. Shanmughan Pillai, Anil B. Divan, M. Shanmughan Pillai, K.V.R. Shenoi, P.K. Kurian, K.A. Nayar, P. Balagangadhara Menon, Mathews P. Mathew, K. Sukumaran, K.K. Usha, S. Easwara Iyer, N.N.D. Pillai, P.C. Abraham, P.C. Chacko, P. Krishnamoorthy, V.S. Moothath, N.R.K. Nair, K.J. Joseph, T.K.M. Unnithan, M.P. Abraham, P.N. Sankara Narayana Pillai, P.A. Francis, P.K.R. Menon, T.G. Rajendran, M.P. Abraham, M. Ramanatha Pillai, K.N. Narayanan Nair, K. John Mathew, S.K. Brahmanandan, G.S. Prabhu, George Varghese Kannanthan, P.C. Joseph, C.S. Thomas, T.L. Ananthasivan, P.K. Jose, P.K. Shamsuddin, K.A. Abdul Salam, A.A. Abdul Hasan, Govind Bharathan, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Gopalan Nambiyar C.J.

1. The Kerala Building Tax Act, 1975 (Act 7 of 1975) has been assailed in these writ petitions as violative of Articles 14 and 19 of the Constitution and also of Article 301. The Act has a history. The first Building Tax Act 1961 imposed a tax on a uniform basis depending on the floorage or the plinth area of the building. The levy was struck down as unconstitutional by a learned Judge of this Court in Kunhali Haji v. State 1965 KLT 390 The decision was confirmed on appeal by a

Division Bench -- vide The State of Kerala and Others Vs. Haji K. Haji K. Kunhippokker Kutty Naha and Others, and again on further appeal by the Supreme Court --Vide The State of Kerala Vs. Haji K. Haji K. Kutty Naha and Others etc., Almost similar legislation in Mysore was struck down in Bhuvaneshwariah v. State of Mysore AIR 1965 Mys 170 and in Bombay, in The Lokamanyu Mills Barsi Limited Vs. Barsi Municipal Council, Barsi and Another, . The impugned Act was preceded by Ordinance 10 of 1974, replaced by Act 16 of 1974.

2. The Act has been passed under entry 49 of List II -- Taxes on Lands and Buildings. The heading of the Act is ; "An Act to provide for the levy of a tax on Buildings," It comes directly within the scope of the entry. Indeed, the legislative competence was hardly disputed. In substance the Act levies a tax on the construction of buildings completed on or after the 1st April, 1973, the "capital value" of which exceeds 20,000/- rupees, The tax is on a graded scale provided in the Schedule. Section 2 is the definition Section. Section 3 is the exemption Section. Factories and workshops are among the exemptions. The definitions of "annual value" and "capital value" under Sections 2 (a) and 2 (f) may be noted.

"2. Definitions-- In this Act unless the context otherwise requires,--

(a) "annual value" of a building means the gross annual rent at which the building may at the time of completion be expected to let from month to month or from year to year;

XXXXX

(f) "capital value" of a building means the value arrived at by multiplying the annual value of a building by sixteen." Section 5 is the charging Section. Clause (1) of the said Section charges the tax at the rates specified in the schedule in respect of every building, the construction of which was completed on or after the 1st April, 1973, and the capital value of which exceeds Rs. 20000/-. Section 6 enacts that for determining the capital value, the annual value of a building shall be the annual value fixed for that building in the assessment books of the local authority within whose area the building is situate. By definition in Section 2 (g), local authority means a Municipal Corporation or a Municipal Council or a Township Committee or a Panchayat or a Cantonment Board. Under Clause (2) of Section 6 the assessing authority is empowered to revise the annual value if in its opinion, the same is too low. (There is no corresponding power of reduction where the annual value is felt to be too high). Clause (4) of Section 6 specifies the considerations and circumstances to which regard shall be paid in determining the annual value, namely, the location of the building, the nature and quality of the structure of the building, the capability of the building for profitable use, amenities provided in the building etc. Section 7 provides for the return by the owner in respect of the completion of every building. Section 8 provides for filing of the return after the due date and for amendment of the return. Section 9 provides for assessment, by accepting the return if it is found

to be correct and complete; or by notice to the assesses to attend in person on a specified date together with records in support of the return and completing the assessment in the light of the enquiry. Section 10 provides for a notice of demand. Section 11 provides for appeals. An assessee objecting to the assessment of building tax assessed u/s 9 or denying his liability, may appeal to the appellate authority. No appeal lies unless the building tax has been paid. Under Clause (8) of Section 11, the order of the appellate authority shall be final and shall not be liable to be questioned in any court. u/s 12 a provision is made for reference to the District Court on any question of law if the appellate authority is satisfied either suo motu or on application by the party to an appeal that the decision on the appeal involves a question of law. u/s 13, the District Collector is given a power to revise the order of the appellate authority. Section 14 gives the Government the power of revision, against the order passed by the District Collector u/s 13. Section 15 provides for rectification of mistakes by the appellate authority or the revisional authority; Section 16 provides for revision of building tax if the annual letting value is revised by the local authority; Section 27 provides for bar of suits in a civil court to set aside or modify any assessment. We may extract the Schedule to the Act which provides for a graded rate of tax. The schedule is as follows :--

" THE SCHEDULE

(See Section 5)

RATE OF BUILDING TAX

Capital value

Rate of Tax

1. Where the capital value of a building is Rs. 20,000 or less

Nil

2. Where the capital value of a building exceeds Rupees 20,000/-

(a) on the first Rs. 5,000 of such excess

1 per cent

(b) on the next Rs. 25,000 of such excess ...

2 per cent

(c) on the next Rs. 50,000 of such excess ...

5 per cent

(d) on the next Rs. 50,000 of such excess ...

8 per cent

(e) on the next Rs. 50,000 of such excess ...

10 per cent

(f) on the balance

15 per cent."

Such, in substance, are the provisions of this Act,

Such, in substance, are the provisions of this Act.

3. The attack against the above provisions has been on the following grounds. The computation of capital value at a multiple of sixteen times the annual value has been attacked as arbitrary and excessive. It was pointed out that the Bank rate, at the relevant time, was 10%; and based on the theory of reasonable return for investments, the multiple of sixteen was very much on the high side. Next, it was stated that all types of buildings, both residential and non-residential, had been subjected to the same basis of assessment irrespective of the fact that in big commercial towns in particular, like Cochin or Calicut, non residential buildings have an infinitely greater value than the residential ones. Exemption in favour of go-downs and factories alone was stressed. A further objection was raised on the different modes of procedure sanctioned by the relevant statutes in regard to the ascertainment of annual value to which the capital value has been geared by definition. The procedural difference was pointed out with respect to the provisions of the Kerala Municipal Corporations Act governing the three Corporations of Trivandrum, Cochin and Calicut; the Kerala Municipalities Act governing the Municipalities; and the Kerala Panchayats Act governing areas under the administration of the different Panchayats. Under the Kerala Municipal Corporations Act, the relevant provisions are to be found in Part II Schedule II, Rules 13, 14 and 25 of the Act. In the Municipalities Act, the relevant provisions are Section 150, and Schedule II Rules 8 and 9 and Section 100 Schedule II Rules 10, 13, 14, 24 (b) and Rule 29. In the Panchayats Act, the relevant provisions are Section 144 (2) of the Act and Rules 10 and 11 of the Taxation and Appeal Rules (see also Section 68, and Rules 3 and 4 of the Building Tax Rules, 1963). These provisions have been explained in para. 6 of O. P. No. 1333 of 1977 (to select only one instance). Attention was also called to Section 102 of the Municipal Corporations Act. Based on the above provisions, the inequities pointed out were that while the impugned Act itself purports to levy a tax on buildings -- and not on lands -- the base of the tax chosen being annual letting value, and the procedure for assessing the same having been sanctioned by the provisions of the different statutes noticed supra, the value of the site of the building also enters into the calculation. Further, the procedural inequality disclosed by the three statutes was stressed. Under the Municipal Corporations Act, the annual value to be fixed by the Commissioner is subject to an appeal to a Standing Committee of the Corporation and a further appeal to the District Court having jurisdiction over the city, with a further prospect of review by the High Court on a reference on certain limited grounds. In the case of Municipalities and Panchayats on the other hand, the annual values are final-ly

fixed by the executive authority who functions also as the revisional authority; and further, from the decision of the revisional authority the right of appeal is provided to the Panchayat or the Municipal Council. The decision of the Municipal Council is final; and the decision of the Panchayat is subject to a further appeal, to the Deputy Director of Panchayats. Neither under the Panchayats Act nor under the Municipalities Act is there any right of appeal to a civil court in respect of the annual values fixed by the Panchayat or Municipal Council; nor any provision for review by a judicial tribunal. The three different procedural provisions under the three different statutes in respect of the determination of the same concept of annual letting value to which the tax has been geared, has been attacked as discriminatory. An attack was also raised on the fixing of the date for the commencement of the Act, namely, the 1st April, 1973, as arbitrary.

4. Apart from the above grounds of challenge, much time and effort were spent to demonstrate the oppressive burden and the crushing effect of the tax. To illustrate the same with respect to the facts of two connected cases alone -- O. P. Nos. 4252 and 4256 of 1974, the position disclosed is this: The petitioners in these cases are sisters and joint owners of Sy. No. 873/3 of an extent of 4000 sq. ft. in M. G. Road, Ernakulam, The buildings thereon have been let out as godowns for Rs. 2,500/- per mensem. The cost of construction was Rupees 55,160/- as sought to be proved by Ext. P1 valuation certificate by an approved valuer. Ext. P2 is the Property Tax Assessment showing the annual value as Rs. 35,678/-. The "capital value" under the present Act is computed at Rupees 4,80,000 on the basis of the monthly rent and the building tax, at Rs. 69,050/-. The obvious emphasis is that the tax exceeds the cost of construction. This has been the burden of the song in most of the writ petitions. We do not think it necessary to detail the facts in the other petitions. But Shri Divan, counsel who appeared for the petitioners in some of these writ petitions had handed over to us a tabular typed statement showing the cost of construction, the rent, the annual value and the tax to demonstrate the oppressive nature of the impact of the tax on the owners of the buildings.

5. We may at the outset deal with the complaint based on the excessive nature of the impost in its incidence and operation. In American Law the oft-quoted dictum of Chief Justice Marshall that "a power to tax includes the power to destroy" has been flaunted to silence, the critics complaining of the strangling effect of a measure of taxation. It is a debatable proposition whether our country has gone the whole hog of Chief Justice Marshall's dictum. A Full Bench of this Court noticed in *Manattillath Krishnan Thangal and Others Vs. The State of Kerala and Others*, the decision of the Supreme Court in *Hari Krishna Bhargav Vs. union of india (UOI) and Another*, where it was observed (at p. 623) :

"A taxing statute may accordingly be open to challenge on the ground that it is expropriatory, or that the statute prescribes no procedure or machinery for assessing tax, but it is not open to challenge merely on the ground that the tax is harsh or excessive."

It also recalled the observations of the Supreme Court in *Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another*, , as follows (at p. 1571) :

"Article 31 (2) would be inapplicable to a taxing statute because the taxing statute does not purport to acquire or requisition any property. It may be that the imposition of the tax levied by the statute is excessive and may ultimately lead to the loss of assessee's property, but even so, it cannot be said that by virtue of the Act, the property has been acquired or requisitioned. Article 31(2A) clearly brings out the limits of the application of Article 31(2). Similarly, Article 31(5)(b)(i) specifically provides that nothing in Clause (2) shall affect the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty. Thus, it is clear that the provisions of Article 31(2) cannot be invoked in impeaching the validity of a taxing statute and so, we come back to the position that a taxing law which does not offend against any of the fundamental rights guaranteed by Part III would justify the imposition of a tax and would meet the requirements of Article 31(1). Therefore, in our opinion the challenge to the validity of the Act on the ground that it contravenes Article 31(2) is not well founded."

In addition to these, we might notice the observations of Mathew J. in *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, paras. 37 and 38 :

"37. In *The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another*, at p. 231 this Court said :

"..... In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint, if not judicial deference to legislative judgment. The legislature, after all, has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events -- self-limitation can be seen to be the path of judicial wisdom and institutional prestige and stability (See Joseph Tussman and Jacobs ten Breck, "The Equal Protection of the laws", 37 California Law Rev. 341.)"

38. This approach is consistent with the latest reported decision of the Supreme Court of the U. S. A. in *San Antonio School District v. Rodriguez*, (1973) 411 US 1 where the majority speaking through justice Stewart said :

"Thus we stand on familiar ground when we continue to acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. Yet, we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favour of some other form of taxation. No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too

rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause."

Marshall, J. in his dissenting judgment (with which Douglas, J. concurred), summed up his conclusion as follows :

"In summary, it seems to me inescapably clear that this Court has consistently adjusted the care with which it will review state discrimination in light of the constitutional significance of the interests affected and the invidiousness of the particular classification. In the context of economic interests, we find that discriminatory state action is almost always sustained, for such interests are generally far removed from constitutional guarantees. Moreover, "the extremes to which the Court has gone in dreaming up rational bases for state regulation in that area may in many instances be ascribed to a healthy revulsion from the Courts''s earlier excesses in using the Constitution to protect interests that have more than enough power to protect themselves in the legislative hall: *Dandridge v. Williams*, (1970) 397 US 471 at p. 520."

The learned Advocate-General turned to Article 39(b) and (c) of the Constitution to temper the rigour and severity of the provisions of the Act and reminded us that the impugned Act has been passed in accordance with the directive principles of State policy, to prevent concentration of wealth and to secure an [equitable distribution of resources. As we shall show, the underlying basis of the tax is on sound and well-accepted principle of taxation. We are not satisfied that the tax can be objected to on the ground that it is excessive or oppressive or that it amounts a harsh and crushing burden on the camel''s back.

6. Turning to the attack on the multiple of capitalisation at sixteen times the annual value, we do not think that the multiple chosen could be said to be unreasonable or high or arbitrary. Valuation by capitalisation of the income is a well-known method; and in land acquisition cases for instance, very often a higher multiple of capitalisation has been adopted. Indeed, this court in a recent Full Bench judgment in *Poyyeri Rarukutty and Others Vs. Special Tahsildar and Land Acquisition Officer, Kozhikode and Others*, had revived the position regarding the multiple of capitalisation to be adopted for valuation for purposes of land acquisition, and fixed the same at 16 times the income. Isaac, J. who delivered the judgment of the Bench noticed the position accepted by some of the High Courts (including the Kerala High Court) for arriving at the market value by capitalising the income at even 33 1/3 times on the principle of the valuation of gilt-edged securities. Referring to this mode of valuation, the learned Judge pointed out that it was unsafe. Referring to the method of capitalisation of annual income, it was observed that it was only one of the methods of valuation. Observed the learned Judge (at pp. 258, 259 of AIR)

"Whether it is a suitable method in a given case, and if so, at what multiple of the annual income the market value can be fixed would depend on a variety of circumstances. To put it briefly, the object is to ascertain what a willing vendor

might reasonably expect to obtain from a willing purchaser, and the method that should be adopted to arrive at that amount should be the one most appropriate on the facts and circumstances of the case."

7. The annual letting value of the land has been recognised as a safe measure of the income realisable from properties. In *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*, the question arose whether the Corporation of Calcutta was justified in assessing the assessee at an annual valuation on the basis of the standard rent. The High Court had dismissed the corporation's appeal holding that the fixation of annual valuation on the basis of the standard rent was correct. On further appeal, it was pointed out by the Supreme Court that the value of the property to the owner is the standard in making the assessment under the Calcutta Municipalities Act. It was pointed out that a contract for rent at a higher rate than the standard rent is not only not enforceable but also that the landlord would be committing an offence if he collected rent above the rate of standard rent. Under these circumstances it was ruled that a landlord cannot reasonably be expected to lay a plea for a rent higher than the standard rent. Dealing with the argument that Section 127(a) of the Act which was construed does not contemplate the actual rent received by a landlord but only the hypothetical rent which it can reasonably be expected to fetch if the building was let, the Supreme Court observed: (Para 7)

"Hypothetical rent may be described as a rent which a landlord may reasonably be expected to get in the open market. But an open market cannot include a "black market", a term euphemistically used to commercial transactions entered into between parties in defiance of law. In that situation, statutory limitation of rent circumscribes the scope of the bargain in the market. In no circumstances the hypothetical rent can exceed that limit."

The Court then examined the English decision of the House of Lords in *Assessment Committee of the Metropolitan Borough of Poplar v. Roberts* 1922 2 AC 93 and observed (Para. 8):

"These passages bring out in bold relief the distinction between the English and the Indian Law which has already been pointed out by the Judicial Committee in 74 Ind App 1 : AIR 1947 PC 50 That is why, while in England the value of occupation by a tenant is the criterion for fixing the standard rent under the rating law, under the Act the letting value of a building to the landlord is the standard in fixing the rental value. If this distinction is borne in mind much of the cloud cast in this case is dispelled. It would be instructive to quote the weighty observations of Atkin L. J. as he then was, which were approved by Lord Carson in his dissenting judgment; and they are:

"If no higher rent than the standard rent and statutory increases is enforceable, as a matter of common sense that seems to be the limit of the rent a tenant can be reasonably expected to give"

"How then is the annual rent to be ascertained? It is obvious that the definition

presupposes that the premises are deemed to be vacant and are deemed to be capable of being let".

Accepting the said observations, Lord Carson proceeded to observe at p. 125.

"I cannot persuade myself that it is possible to ask the assessment authority to enter into such super speculative and hypothetical regions, and I am of opinion that the only rent we have to consider is a rent de jure recoverable and not a voluntary promise which cannot be enforced."

With great respect to the other learned Lords, we are inclined to agree with the observations of Atkin L. J., as approved by Lord Carson. That apart, the majority view can easily be distinguished on the peculiar principle of rating obtaining in England which is fundamentally different from that accepted under the Act. There is another difference between the English Law and the Indian Law. Under the English Act of 1920, payment of rent in excess of the statutory rent was not barred and the landlord might receive the same, but under the Rent Control Act receipt of a higher rent than the standard rent is penalised; that is, while in England a contract to pay a higher rent may not be enforceable in a court of law, it is not unlawful, but in India it is both unenforceable and unlawful. This difference is of vital importance in judging the reasonableness of a landlord's expectations to get a particular rent."

Concluding the discussion, the Court ruled : (Para 11)

"In the result, we hold, on a fair reading of the express provisions of Section 127 (a) of the Act in the light of the decisions considered, that the rental value cannot be fixed higher than the standard rent under the Rent Control Act"

In *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, there is an exhaustive survey and examination of the principles of rating with special reference to the provisions of the Bombay Municipal Boroughs Act, 1925. It was pointed out that the word "rate" had come to our country for purpose of local taxation from England where it had acquired a special meaning and content. Surveying the English Law of Taxation, it was observed that the word "rate" was used with respect to a tax which was levied on the net annual value or ratable value of lands and buildings and not on their capital value. In para 10 of the judgment, the court observed :

"(10) The methods in use for the purpose of arriving at ratable value were generally three. Where the land or building was actually let, the valuation was based on the rent at which it was let. Where, however, the land or building was not let, two methods were evolved for the purpose of finding out the ratable value. The first was to assume a hypothetical tenancy (such as where the same person is the owner and occupier) and find out the rent at which the premises would be let. The second was based on the capital value of the premises. But the tax was not levied on the capital value itself; the capital value was determined on the structural value of the building to be assessed by what was known to be

contractor's method or contractor's test in addition to the mar-bet value of the land. Sometimes the words "effective capital value" were also used since in some cases the actual capital cost of the building plus the market value of land might for some reason or the other be ineffective i.e. it might not be rent producing. Having arrived at the effective capital value it was necessary to apply percentages thereto in order to arrive at the annual value. In England, the usual percentage in the case where the property was used for commercial purposes, was 5 per centum for the building and 4 per centum for the land. It was after this annual value was arrived at that the rate was imposed on this annual value: (see Complete Valuation Practice by Mustok Eve and Anstey, 5th Edn., pp. 253-258)."

Reference was made to Halsbury's Laws of England, Third Edition Vol. 32, paragraphs 9 and 10, which had summed up the present position. At the end of the examination, the Court observed :

"Therefore, it cannot be doubted that in England from where in this country we have borrowed the word "rate", that word had acquired a special meaning namely that it was a tax on the annual value of lands and buildings found in one of the three modes we have already indicated." (para 14)

The Legislative history and practice in India up to 1925 was next examined. It was remarked that all the Indian statutes till 1911 dealing with Municipal Taxation, imposed a tax on the annual value of lands or buildings, without always using the word rate. Between 1912 and 1925, the same state of affairs continued, although the word "rate" was not used in any of these Acts, but the tax was still imposed on the annual value of the lands and buildings. In para. 32 of the judgment, the Supreme Court observed :

"It has however been urged that by virtue of the Explanation to Section 75, it is open to the municipality in the case of lands to use two bases of valuation, namely, either capital or annual letting value. That is undoubtedly so. But it does not mean that because the municipality is empowered to use capital as one basis of valuation it has been empowered when fixing a rate to fix it as so much percentage of the capital value. That Explanation carries in our opinion only the meaning which is in accordance with the practice in England and also in this country and it seems to us that it is that meaning which should be given when the basis of valuation is capital."

.....

.....

Therefore we are of opinion taking into account the fact that the word "rate" has been used in the first clause to Section 78 (1), the Explanation when it says that in the case of lands basis of valuation may be capital, only means that that method of valuation which was in vogue in England and which we have described as the third method of valuation may be used to arrive at the annual value from

the capital value and the rate may then be determined as a tax on the annual value."

In the above case Section 73 (1) of the Bombay Municipal Boroughs Act, 1925, imposed a "rate" on buildings and lands within the Municipal Borough. The argument of the petitioners was that rate had assumed a well-known content as tax not on capital value but on annual value. Rule 350-A read with Rule 42 which permitted tax to be at a certain percentage of the capital value was struck down as beyond the terms of the Act and the Sections.

8. In *The Municipal Corporation of Greater Bombay Vs. Polychem Ltd.*, the method of valuation of the lands on which a building is constructed, again came up for consideration before the Supreme Court. After noticing the decisions in *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*, and *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, and the three modes of calculation of the "rate", it was observed AIR 1785 SC 974

"Each mode had necessarily to be directed to finding out the annual rental value of land as that was what was taxed and not either the capital or the potential value of land."

Reference was made to *Motichand Hirachand and Others Vs. Bombay Municipal Corporation*, and to the *The Century Spg. and Mfg. Co. Ltd. Vs. District Municipality of Ulhasnagar*, and the *The Bombay Municipal Corporation Vs. The Life Insurance Corporation of India Bombay*, and the *Gun-tur The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc.*, . It was stated AIR 1974 SC 1788,

"28. Where the landlord is in actual occupation the land does not cease to have rateable value. In such a case, rateable value would be determined by asking the question: What would or could he be reasonably expected to pay from year to year if he was not the owner but wanted to take it on rent? The standard of reasonable expectation from a hypothetical tenant, applied by contemplating a hypothetical bidding or higgling in a market, however, difficult and unsatisfactory as a method of valuation, has to be resorted to in a case beset with such difficulties as the one before us. In no case, however, could the rental value of land being built upon be less than that of the same land when it was vacant.

9. In the light of the above decisions, and the principles discussed and stated in them, we are definitely of the opinion that valuation on the basis of the annual letting value is a well-known and well-accepted principle of valuation. The decisions have recognised that the annual letting value represents a fair measure of the income from the land. Capitalisation at 16 times of this fair measure of income cannot, in the circumstances, be said to be unreasonable.

10. In *Delhi Municipality v. M. N. Soi* AIR 1977 SC 302 the court stated:

"11. Thus, whatever may be our views on the reasonableness of tying down assessment, for the purposes of rating, to the concept of a rent which has been

held to be fair rent in the past but does not bear a real relationship to the prevailing conditions of the market for accommodation if it was uncontrolled, we find it impossible to get over the ratio decidendi of this Court in *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*, which we are bound to follow. This was that, if a rent which is higher than that which can be legally demanded by the landlord and actually paid by a tenant, despite the fact that such violation of the restriction on rent chargeable by law is visited by penal consequences, the Municipal authorities cannot take advantage of this defiance of the law by the landlord. Rating cannot operate as a mode of sharing the benefits of illegal rack-renting indulged in by rapacious landlords for whose activities the law prescribes condign punishment."

The learned Advocate-General cited the well-known treatise of Ryde on "Rating" at pp. 481 to 483, to show that valuation on the basis of the cost construction has been expressly rejected, that rent actually paid is not the measure of the annual letting value; and that only annual rents where available and where they cannot be impeached should be the best guide to the annual letting value. We were referred to Halsbury's Laws of England Vol. 32, paras. 107 and 109, American Jurisprudence Vol. 72 para. 761, and to Corpus Juris Vol. 84 pp. 780 and 782. In view of the discussion in the Supreme Court decisions noticed, we are not making copious extracts from these treatises.

11. In the midst of this plethora of Supreme Court decisions and acknowledged treatises, we place only somewhat low in the scale, a Full Bench decision of this Court in *Kunhammad Keyi v. Premalatha* 1962 KLT 366 7 which has stressed that property tax is a ready and reasonably accurate means of finding out what rent the building can be reasonably expected to fetch.

12. We shall then deal with the procedural inequalities complained of. The charge that both residential and non-residential buildings have been dealt with by the same yardstick of sixteen times multiple of the annual letting value, appears to us to be baseless and fallacious. Whilst the multiple in both the cases remains constant, the basic factor, namely, the annual letting value, is a variable one; and we have little doubt that the annual letting value of a non-residential building in an important commercial town or city is bound to reflect the fair measure of the income derivable from it. We see no room for complaint on this score.

13. Next, as to the procedural discrepancies or differences as between the provisions of the three statutes referred to. The complaint is that in the Panchayat Act and the Municipalities Act, there is no provision for review by an independent judicial tribunal, which, to a limited extent at least, is available in the case of the Municipal Corporations Act. Attention was also called to the difference in the cycle of appeals and revisions provided in the various statutes. These differences in the provisions appear to us to be inconsequential and do not affect the core of the measure of taxation. The assesseees in all the cases have been provided with one round of attack against the assessment. It is now well-

recognised that the absence of judicial supervision and control cannot by itself import a violation of Article 14 of the Constitution; see for instance, *Manavikrama Zamorin Raja of Kozhikode Vs. Commissioner, H.R. and C. Endowments*, See also *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, paragraph 39); *The Ahmedabad Municipal Corporation and Others Vs. Ramanlal Govindram and Others*, para. 26); *Fatehchand Himmatlal and Others Vs. State of Maharashtra*, paras. 50 and 51). That the Act allows an appeal only after the tax is paid, is again, a provision that has passed the pale of challenge: see for instance *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, . Objection was raised to the date of commencement of the Act as 1-4-1973 on the ground of the retrospective nature of the provision, and the arbitrariness of the date. Re-trospectivity of operation is no ground for invalidation -- see *Rai Ramkrishna and Others Vs. The State of Bihar*, . There is a legislative history for choosing the date of commencement. When the Act was in the Bill stage as Bill 146/73, the date, of commencement was 1-4-1970. The Select Committee modified it to 1-4-1973. It is not for us to cavil at this legislative wisdom or policy. A conspectus of the provisions of the Act does not justify our holding that it places unreasonable restrictions on the right to acquire, hold and dis-pose of property under Article 19.

14. The attack based on Article 301 of the Constitution of India does not at all appeal to us. It is well-recognised that the freedom of trade and commerce guaranteed by this Article can be invaded only if the legislation complained of directly and immediately affects the movement part of the trade. (see the *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, ; *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, ; and *Commissioner of Income Tax, Hyderabad Vs. Sri Rajareddy Mallaram*, -- not to refer to the other subsequent decisions. We see nothing in the provisions of the impugned Act which violate the provisions of Article 301 of the Constitution.

15. In the result, we repel the attack raised against the constitutionality of the impugned Act, and dismiss these writ petitions with no order as to costs.

16. Stay petitions dismissed.

Balakrishna Eradi J.

17. I have had the advantage of perusing the judgment prepared by the learned Chief Justice. I regret I am unable to agree with the conclusion reached therein that the provisions of the Kerala Building Tax Act 1975 do not offend Articles 14 and 19 of the Constitution of India, and that the original petitions have therefore only to be dismissed. In my opinion the attack levelled by the petitioners against the provisions of the impugned Act on the ground of infringement of Articles 14 and 19(1)(f) of the Constitution is well-founded and has to succeed and the original petitions have to be allowed on that ground.

18. The history of the legislation now under challenge has been succinctly set out in the judgment of the learned Chief Justice and hence it is unnecessary for me

to re-state the same in this judgment.

19. For a proper appreciation of the contentions urged by the petitioners it is necessary to set out in brief the substance and effect of the relevant provisions contained in the impugned Act. The preamble to the Act states that the statute has been enacted as it was considered expedient to provide for the levy of a tax on buildings. The expression "building" has been defined in Clause (e) of Section 2 as meaning a house, outhouse, garage, or any other structure or part thereof, whether of masonry, bricks, wood, metal or other material, but as not including any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass or thatch or a latrine which is not attached to the main structure. It is to be noted that this definition takes in only the structure proper and not the land on which it stands nor the site appurtenant to the structure. Section 5 which is the charging section is in the following terms:

"5. Charge of building tax.-- (1) Subject to the other provisions contained in this Act, there shall be charged a tax (hereinafter referred to as "building tax") at the rate specified in the Schedule in respect of every building the construction of which is completed on or after the 1st day of April, 1973, and the capital value of which exceeds twenty thousand rupees.

(2) Every major repair of, or improvements to, a building constructed before the 1st day of April, 1973, made on or after that date shall be liable to the building tax at the rate referred to in Sub-section (1) on the difference between the capital value of the building before effecting the major repair or improvement, as the case may be, and the capital value of the building after effecting the major repair or improvement.

(3) A building the construction of which is completed on or after the 1st day of April, 1973, and which is not liable to be taxed under the provisions of this Act on account of its having a capital value of not more than twenty thousand rupees, shall become liable to be so taxed if the capital value of the building subsequently increases to more than twenty thousand rupees by new constructions or additions or combinations or as a result of repairs or improvements to the building.

(4) Where the capital value of a building which has already been taxed under this Act, is subsequently increased by more than ten thousand rupees by new constructions or additions or combinations or as a result of repairs or improvements, building tax shall be computed on the capital value of the building including that of the new constructions or additions or combinations or, as the case may be, of the building as so repaired or improved, and credit shall be given to the tax already levied.

(5) Where there are out-houses, garages or other structures appurtenant to the main building, the capital value of such structures shall be determined in the manner specified in Section 6 and the capital value so obtained shall be added on to the capital value of the main building.

(6) The building tax shall be payable by the owner of the building.

Explanation 1.-- For the purposes of this Act, the construction of a building shall be deemed to have been completed when it is ready for occupation or has been actually occupied, whichever is earlier.

Explanation 2.-- For the purposes of assessment under Sub-section (3) or Sub-section (4), capital value of a building shall be the capital value on the date of completion of the new constructions or additions or combinations or, as the case may be, on the date of completion of the repairs or improvements." It is also necessary to extract the schedule referred to in Sub-section (1) of the aforesaid section. It reads:--

"RATE OF BUILDING TAX

Capital Value

Rate of tax

1. Where the capital value of a building is Rs. 20,000 or less

Nil

2. Where the capital value of a building exceeds Rs. 20,000

(a) on the first Rs. 5,000 of such excess

1 per cent

(b) on the next Rs. 25,000 of such excess

2 per cent

(c) on the next Rs. 50,000 of such excess

5 per cent

(d) on the next Rs. 50,000 of such excess

8 per cent

(e) on the next Rs. 50,000 of such excess

10 per cent

(f) on the balance

15 per cent"

While the tax is in respect of the buildings, the levy is correlated to the capital value of the buildings. The expression "capital value" is defined as follows in Clause (f) of Section 2.

"(f) "Capital value" of a building means the value arrived at by multiplying the annual value of a building by sixteen". That takes us to the definition of "annual

value" contained in Clause (a) of Section 2 which is in the following terms :

"(a) "annual value" of a building means the gross annual rent at which the building may at the time of completion be expected to let from month to month or from year to year".

The mode of determination of capital value is prescribed by Section 6 which reads:--

"6. Determination of capital value-

(1) For determining the capital value for the purposes of this Act, the annual value of a building shall be the annual value fixed for that building in the assessment books of the local authority within whose area the building is situate.

(2) Notwithstanding anything contained in Sub-section (1), if the assessing authority is of opinion that the annual value fixed for a building in the assessment books of the local authority is too low, it may, after giving the person or persons affected thereby an opportunity of being heard, fix the annual value of the building.

(3) Where the local authority has not fixed the annual value of a building in any case falling under Sub-section (2) or Sub-section (3) or Sub-section (4) of Section 5 within a period of six months after the completion of the repair or improvement or the construction or addition or combination, as the case may be, the assessing authority may, after giving the person or persons affected thereby an opportunity of being heard and after informing the local authority concerned, assess the annual value of the building.

(4) In determining the annual value under Sub-section (2) or Sub-section (3), the assessing authority shall have regard to the following factors, namely,--

- (a) the location of the building;
- (b) the nature and quality of the structure of the building;
- (c) the capability of the building for profitable use;
- (d) amenities provided in the building;
- (e) access to the building from public roads or waterways;
- (f) the value of the land on which the building is constructed;
- (g) the estimated cost of construction of the building;
- (h) such other factors as may be prescribed."

The expression "local authority" has been defined in Clause (g) of Section 2 as meaning a municipal corporation or a municipal council or a township committee or a panchayat or a cantonment board. The Act extends to the whole of the State of Kerala. (See Section 1 (2)). Subject to the exemption limit specified in Sub-

section (1) of Section 3, the charge u/s 5 is attracted in all cases where either the construction of new building is completed on or after 1st April 1973 or major repairs or improvements to buildings constructed prior to the said date are made on or after that date in such a way as to bring about an increase in the capital value of the building. The owner of every building, the construction of which is completed on or after 1st April 1973 or to which major repairs or improvements are made after the said date, is required by Section 7 of the Act to furnish to the assessing authority a return in the prescribed form, verified in the prescribed manner, and containing such particulars as may be prescribed in the section within the period indicated in Sub-section (2). The procedure for assessment is laid down in Section 9, which is in the following terms:--

"9. Assessment.-- (1) if the assessing authority is satisfied that a return made by an owner u/s 7 or Section 8 is correct and complete, it shall assess the amount payable by him as building tax on the basis of the return.

2. If the assessing authority is not so satisfied it shall serve a notice on the assessee either to attend in person at its office on a date to be specified in the notice or to produce or cause to be produced on that date any evidence on which the assessee may rely in support of his return.

3. The assessing authority, after hearing such evidence as the assessee may produce and such other evidence as it may require on any specified point and after conducting such inquiries or inspection as it may consider necessary, shall, by order in writing, assess the amount payable by him as building tax.

4. For the purpose of making an assessment under this Act, the assessing authority may serve on any person who has made a return under Sub-section (1) of Section 7 or Section 8 or upon whom a notice has been served under Sub-section (3) of Section 7, a notice requiring him to produce or cause, to be produced on a date specified in the notice such records or other documents as the assessing authority may require.

5. If any person fails to make a return in response to any notice under Sub-section (3) of Section 7, or fails to comply with the terms of any notice issued under Sub-section (2) or Sub-section (4) of this section, the assessing authority shall assess the amount payable by the person as building tax to the best of its judgment."

Section 10 provides for the issue of a notice of demand in pursuance of an order of assessment made under the preceding section. A provision for appeal is contained in Section 11 which states that an assessee objecting to the amount of building tax assessed u/s 9 or denying his liability to be assessed under this Act or objecting to any order of the assessing authority under this Act may appeal to the appellate authority against the assessment or against such order. There is however a proviso to the section which lays down that no such appeal shall lie unless the building tax has been paid.

20. Sub-section (8) of Section 11 confers finality upon orders passed by the appellate authority and declares them to be immune from being questioned in any court of law. u/s 12 it is provided that where the decision on the appeal pending before an appellate authority involves a question of law, the appellate authority may, if it is satisfied either suo motu or on application by any party to an appeal, draw up a statement of the case and refer it to the District Court. The District Court is to decide the question of law raised therein and deliver a judgment containing the grounds on which such decision is founded and forward a copy thereof to the appellate authority, which is enjoined to pass orders on the appeal in conformity with the judgment of the District Court. Section 13 confers on the District Collector a revisional power to call for and examine the record of any order passed by the appellate authority or the assessing authority and to pass such order in reference thereto as the Collector thinks fit. However, the proviso to the section states that no order passed by the appellate authority on the basis of a reference made to the District Court u/s 12 to the extent covered by the answer to such reference shall be subject to the revision by the District Collector. A further power of revision is conferred on the State Government u/s 14. That section states that the Government may on application by any person aggrieved, call for and examine the record of any order passed by the District Collector. Section 15 confers on the assessing authority as well as the appellate and the revisional authorities a power of rectification of mistakes, the said power being exercisable at any time within three years from the date of the order passed by the concerned authority.

21. Section 16 lays down that where the annual value of a building fixed by a local authority is enhanced or reduced under the law governing that local authority on the ground that the annual value originally fixed was excessive or low, the building tax levied under the Act shall be revised by the assessing authority in conformity with such enhancement or reduction. There is, however, a proviso which lays down that an assessment to building tax made under Sub-section (2) or Sub-section (3) of Section 6 shall not be revised under this sub-section.

22. The next section which is material is Section 27 which lays down that no suit shall be brought in any civil court to set aside or modify any assessment made under this Act and no prosecution, suit or other proceeding shall lie against the government or any authority or officer for anything in good faith done or intended to be done under this Act. The only other provision which needs to be noticed is Section 29 where-under it is declared that in fixing the fair rent of a building u/s 5 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (Act 2 of 1965), the rent control court shall not take into consideration the building tax that is payable in respect of the building under the provisions of this Act.

23. From the above summary of the provisions of the impugned Act it will be seen that the levy of the building tax is related to the capital value of the building and the "capital value" is to be arrived at by multiplying the "annual

value" of the building by 16 times. But there is no machinery provided under the Act for determination of the "annual value" of a building for the purposes of the Act. Instead, what Section 6 states is that in all cases where the local authority, within whose area the building is situate, has fixed the annual value of the building in its assessment books the value so fixed by the local authority shall be taken as the annual value of the building for purposes of calculation of its capital value. It is only in cases where the local authority has not fixed the annual value of a building within the period of six months after the completion of its construction, repair or improvement etc. that the assessing authority functioning under this Act is required to assess the annual value of the building. (See Sub-section (3) of Section 6). Thus if the local authority has fixed the annual value of the building in its assessment books, such fixation is to be automatically adopted by the assessing authority functioning under this Act for the purpose of determination of capital value. If the assessing authority is of opinion that the annual value fixed by the local authority is too low, it is empowered to fix the annual value of the building for the purpose of the Act after notice to the parties. There is however no corresponding power vested in the assessing authority to refix the annual value even if the valuation made by the local authority is shown to be excessive and arbitrary. The resultant position is that except in cases where the annual value fixed by the local authority is proposed to be enhanced by the assessing authority functioning under the Act, no enquiry, investigation or independent determination of the annual value of the building is required to be made by the assessing authority functioning under this Act; and the owner of the building is not entitled to any opportunity to contend that the annual value fixed by the local authority is arbitrary or high. In respect of such a vital matter pertaining to the incidence of the tax the assessee is pegged down to the determination made by an extraneous authority and is denied the ordinary right to have his liability to tax under the Act fixed by the assessing authority functioning under the Act on the basis of an objective determination by it of the capital value of the building, which forms the very base for quantification of the liability under the Act. The provisions for appeal and revision do not in any way alter the above unhappy situation since the appellate and the revisional authorities are both necessarily bound by the provision contained in Sub-section (2) of Section 6 which lays down that the fixation of the annual value made by the local authority shall be adopted for determination of the capital value under the Act except in cases where it is considered too low. Thus in cases not covered by Sub-section (2) of Section 6 the procedure laid down in the Act for determination of the capital value and for making an assessment amounts to nothing more than a mere mechanical process of multiplying by sixteen the figure relating to annual value entered in the assessment register of the local authority and calculating the amount of tax by applying thereto the rates mentioned in the schedule. The authorities constituted under the impugned Act have no kind of control whatever over the manner of functioning of the different types of local authorities in the matter of fixation of the "annual value" of the buildings by the latter, such fixation being effected by them for a totally different

purpose, namely, the levy of property tax under the provisions of the statutes governing those local authorities.

24. There are 5 types of local authorities in the State, namely, Municipal Corporations constituted in respect of the cities of Trivandrum, Calicut and Cochin under the Kerala Municipal Corporations Act, Municipal Councils set up under the Kerala Municipalities Act in respect of areas constituted into municipalities, township committee, Panchayats constituted under the Kerala Panchayats Act and cantonment boards governed by the Cantonments Act (Central Act II of 1924). These different types of local authorities are governed by the provisions of the respective statutes whereunder they are constituted. Divergent procedures have been laid down in the first three statutes for the determination and finalisation of the annual value of buildings situated within their respective local limits. There is therefore no guarantee at all of the applicability of any uniform principle or standard by the different authorities functioning under these different statutes in the matter of fixation of the annual value of the buildings. The Cantonments Act does not contain any provision for levy of property tax.

25. The method of assessment of property tax under the Kerala Municipal Corporations Act, the provisions of which are applicable in respect of buildings situated in cities of Trivandrum, Calicut and Cochin, is laid down in Section 102 thereof which is in the following terms:--

"102. Method of assessment of property tax:-- (1) Every building shall be assessed together with its site and other adjacent premises occupied as appurtenances thereto unless the owner of the building is a different person from the owner of such site or premises.

(2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may at the time of assessment reasonably be expected to let from month to month or from year to year a deduction in the case of buildings of ten per cent of that portion of such annual rent which is attributable to the buildings alone apart from their sites and the adjacent lands occupied as an appurtenance thereto and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever:

Provided that-

(a) in the case of-

(i) any Government or railway building; or

(ii) any building of a class not ordinarily let, the gross annual rent of which cannot in the opinion of the Commissioner be estimated, the annual value of the premises shall be deemed to be six per cent of the total of the estimated market value of the land at the time of assessment and the estimated cost of erecting the building at such time after deduction for depreciation a reasonable amount which shall in no case be less than ten per cent of such cost, and

(b) machinery and furniture shall be excluded from valuation under this section:

Provided further that where the annual value of any land or building is attributable partly to the use of such land or building or any portion thereof for the display of any advertisement or advertisements and tax is levied under this Act in respect of such advertisement or advertisements, the annual value of such land or building for the purpose of assessing the property tax thereon shall be ascertained as if such land, building or portion is not used for the display of such advertisement or advertisements.

(2) The Government, shall have power to make rules regarding the manner in which, the person or persons by whom and the intervals at which the value of the land, the present cost of erecting the building and the amount to be deducted for depreciation, shall be estimated or revised in any case or class of cases to which Clause (a) of the first proviso to Sub-section (2) applies, and they may, by such rules, restrict or modify the application of the provisions contained in Schedule II to such case or class of cases."

Part 2 of Schedule 2 of the said Act contains detailed rules of procedure to be adopted in making the assessment of property tax. The determination of the annual value is to be made in the first instance by the Commissioner and he is to enter the same in the assessment book-Rule 7 provides for revision petitions being filed before the Commissioner by persons aggrieved by such fixation. Rule 13 makes it obligatory for the Commissioner to give a reasonable opportunity to the revision petitioner to appear before him either in person or by authorised agent to represent his case before the revision petition is disposed of. Where the objector is not satisfied with the order passed by the Commissioner on his revision petition, he is allowed by Rule 23 to file an appeal against such order to the Standing Committee. Rule 24 provides that an appeal shall lie to the District Court having jurisdiction over the city against the decision of the Standing Committee. Under Rule 26 the District Court is empowered to state a case on any appeal for the decision of the High Court and it is mandatorily obliged to do so whenever a question of law is involved and if the Commissioner or the appellant applies in writing in that behalf within the time limit prescribed in the said rule. Thus, there are various safeguards provided under this enactment inclusive of an appeal on facts to the District Court and also a reference on questions of law to the High Court, Another significant fact to be noted is that u/s 102 every building is to be assessed together with its site and also the land appurtenant thereto treating them all as a single unit and the annual value required to be determined under the section is in respect of the entirety of the said composite unit. It is the value so fixed for the building and the land together that will be entered in the assessment register of the Municipal Corporation.

26. u/s 100 of the Kerala Municipalities Act also every building is to be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises. The procedure for making the assessment to property tax

is laid down in the rules contained in Schedule 2 of the said Act. Rule 7 lays down that the value of any land or building for purposes of the property tax shall be determined by the Commissioner. Rule 8 provides that the Commissioner shall enter the annual value of all lands and buildings determined by him and the tax payable thereon in assessment books to be kept for the purposes. Rule 10 provides for the filing of revision petitions before the Commissioner by persons aggrieved by the determination made by him. Against the order passed by the Commissioner upon such revision petition an appeal lies to the Council under Rule 24 Clause (b). Rule 29 declares that the adjudication of the Council on such appeal shall be final. Thus, under this enactment, excepting for a revision petition before the assessing authority himself and a right of appeal to the Council, there is no further remedy available to the party. It is manifest that the procedure available under this Act is much less advantageous to an assessee when compared to the procedure prescribed under the Kerala Municipal Corporations Act. Unlike in the Municipal Corporations Act where the assessee is given the right to get final adjudication from the District Court and in certain events from the High Court also, the assessee to property tax under the Kerala Municipalities Act is conferred no right of recourse to an independent forum like the court and the decision of the Municipal Council is declared to be final.

27. Coming to the Kerala Panchayats Act, Section 68 thereof contains the provision for the levy of a tax on buildings other than huts and extended structures at such percentage of the annual rental value of the building as may be fixed by the panchayat subject to a maximum of 10 per cent and a minimum of four per cent. Sub-section (4) of the section states that the manner of ascertaining the net annual rental value of buildings is to be prescribed by the Government by rules made in that behalf. Those rules are contained in the Kerala Panchayats (Building Tax) Rules 1963. Rule 3 thereof states that for the purpose of levy of building tax u/s 68 every building shall be assessed together with its appurtenant structures unless the owner of the appurtenant building is a different person from the owner of the building. Sub-rule (3) of Rule 6 lays down that the value of the building for the purpose of building tax shall be determined by the Executive Authority who shall enter the annual value so determined by him and the tax consequently payable in respect of the building in the assessment register kept for the purpose. Rule 7 provides that revision petitions may be filed before the Executive Authority by persons aggrieved by the entries so made in the assessment books. u/s 144 (1) of the Act an appeal lies to the Panchayat against the decision of the Executive Authority. A further appeal to the Deputy Director is provided for by Section 144 (2) as against the orders passed by the Panchayat and the decision of the Deputy Director is declared to be final subject to the provisions of Sub-section (3) which confer a revisional power on the State Government. Thus the position that obtains under the Panchayat Act is not at all similar either to the one prevailing under the Kerala Municipal Corporations Act or to that under the Kerala Municipalities Act.

28. The petitioners contend that the rigid method prescribed in the Act for the

computation of the capital value of the building on the basis of which the tax liability is to be determined is absolutely arbitrary and that it results in patent unequal treatment violative of Article 14 of the Constitution. It is submitted on behalf of the petitioners that in respect of the buildings situated in commercially important centres in the cities of Cochin and Calicut where the rents are very high, the product arrived at by multiplying the annual rental value by 16 as prescribed in the Act has no reasonable relation at all to the actual market value of the building. It is further contended on behalf of the petitioners that the prescription of the multiple of 16 for capitalisation of the "annual income" at a time when the prevailing rate of interest allowed by nationalised banks on fixed deposits for five years was about 10% is manifestly arbitrary. The petitioners urge that it is not open to the Legislature to lay down such a mode of computation of capital value which has no reasonable relation to the realities pertaining to the interest rates prevailing in respect of sound securities like National Savings Certificates and Bank deposits. In support of the above contention the petitioners have produced copies of two notifications issued by the Ministry of Finance (Department of Economic Affairs) dated 29th July 1974 which show that the rate of interest allowed in respect of national savings certificates in 1974 was 10% per cent per annum. Yet another plea taken by the petitioners is that by the adoption of the method prescribed in the Act for assessing the capital value based on the gross annual value of the building fixed by the local authority, the tax in effect falls not only on the building but also on the site on which the building is constructed as well as the land appurtenant thereto, whereas the charge and the levy authorised by the Act is in respect of the building alone. Another point very seriously pressed on behalf of the petitioners was that the owners of buildings situated within the jurisdiction of different types of local authorities, namely, Panchayats, Municipal Councils and City Corporations are subjected to dissimilar and discriminatory treatment in regard to the vital matter of procedure for fixation of the "annual value" which forms the base for calculation of "capital value" for the purpose of levy of the tax. While the owners of buildings situated in areas governed by the Kerala Municipal Corporations Act are given the right under the said Act to have the final fixation effected by the concerned District Court to which an appeal is provided as against the orders passed by the Corporation Council, and a further remedy by way of reference to the High Court is also available to them, the owners of buildings in areas governed by the Kerala Municipalities Act have only a right of appeal to the Municipal Council, whose decision is declared to be final. The position that obtains in regard to owners of buildings in Panchayat areas is that as against the decision taken by the Panchayat they have only a right of appeal to a Departmental Officer, namely, the Deputy Director whose decision is to be treated as final. The counsel for the petitioners contend that while providing for the levy of a tax on Buildings the Legislature ought to have prescribed a machinery under this Act itself for determining the capital value of the building which the statute has declared to be the base for computation of the tax liability. Counsel contended that in stipulating that the annual value fixed by the

concerned local authorities functioning under other-total-ly distinct and separate enactments is to be mechanically adopted by the assessing authority functioning under this Act as the "annual value" for the purposes of the Act without any independent enquiry or investigation and in laying down that the "capital value" of the building should be arrived at by a mere process of arithmetical multiplication of the annual value entered in the assessment register of the local authority by 16, the Legislature has completely ignored the position that the assessment of a tax on a person or property is at least of a quasi-judicial character and is not to be treated as of a purely administrative character. The petitioners submit that except in cases where the assessing authority considers the annual value fixed by the concerned local authority to be too low, the procedure for so called "assessment" prescribed under the Act involves nothing more than a mechanical adoption by the assessing authority of the fixation of the "annual value" made by some extraneous authority and the making of an arithmetical calculation by multiplying such annual value by 16 and applying to the resultant product the rate specified in the schedule of the Act. Stress was made by counsel on the fact that the assessee is to be allowed no opportunity at all under the Act to put forward his case before the assessing authority regarding the true annual value of the property and it is only in the event where the annual value has not been fixed by the local authority within the time limit specified in Sub-section (3) of Section 6 or where the assessing authority is of the opinion that the annual value fixed by the assessing authority is too low, that the assessing authority is required to apply its mind to the relevant materials and make a fixation of the annual value of the building. It is also pointed out by the counsel for the petitioners that even though a right of appeal is provided by Section 11, that has been rendered illusory by reason of the incorporation of the condition that the entirety of the tax levied should be paid by the assessee before filing an appeal. Counsel also urged that in any event the provisions for appeal and revision do not improve matters to any extent since the appellate and the revisional authorities are also fully governed by the mandatory provisions contained in the Act that the fixation of annual value made by the local authority is to be adopted as the base for the computation of the annual value of the building. The petitioners contend that arbitrariness is writ large on the provisions of the Act and that it is also inherent in the very provisions of the charging section, which completely rule out any obligation on the part of the assessing authority constituted under the Act to effect the levy and assessment in a quasi-judicial manner. It is, therefore, contended that the provisions of the Act violate Article 14 of the Constitution and also constitute an unreasonable restriction on the petitioners' right to hold property safeguarded under Article 19(1)(f) of the Constitution. As part of the argument based on Article 19(1)(f), counsel for the petitioners also referred to Section 16 in the Act which states that where the annual value of a building fixed by a local authority is enhanced or reduced under the law governing that local authority on the ground that the annual value originally fixed was excessive or low, the building tax levied under the Act shall be revised by the assessing authority in conformity with such enhancement or

reduction. Counsel urged that this provision clearly shows that the crucial task of determining the annual value for the purpose of imposition of building tax is left to a totally extraneous authority, namely, the concerned "local authority" over whom the assessing authority or the appellate authority or revisional authorities constituted under this Act have absolutely no manner of control. The petitioners submit that by entrusting a non-governmental body with the main and basic function to be discharged in the process of assessment, there is a clear infringement of the well-recognised principle that such an essential statutory function in relation to the levy of a tax cannot be left or delegated to non-governmental authority. Another ground of attack levelled by the petitioners is that even though the statute was enacted only in April 1975 the date of coming into force of its provisions has been arbitrarily fixed as 1st April 1973. According to the petitioners, there is no rational basis whatever justifying a classification of buildings the construction of which had been completed prior to the said date for excluding them from the purview of the Act. According to the petitioners if the Legislature wanted to impose a tax on buildings it should have either provided for such a levy only in respect of buildings, the construction of which is completed after the coming into force of the Act, or in case retrospectivity was proposed to be given to the enactment, it should have extended the charge to all buildings existing on the date of commencement of the Act unless there be valid grounds justifying a classification of buildings constructed prior to any specified date. According to the petitioners the date 1-4-1973 has been arbitrarily picked out of a hat as it were, without there being any reason having a nexus with the object and purpose of the Act for excluding from liability to tax buildings constructed prior to the said date. On this ground also the petitioners contend that the provisions of the Act are violative of Article 14 of the Constitution.

29. Lastly, it was contended that by reason of the prescription of a totally artificial and unrealistic method for computation of the "capital value" of buildings, the actual effect brought about is that the tax is levied on the basis of some inflated value far exceeding the actual capital value of the building whether computed with reference to the cost of its construction or its fair saleable value in the market. The petitioners submit that the result of the impugned provisions is to impose a tax burden of a kind which is economically impossible to meet and that the levy is manifestly extortionate and confiscatory. Detailed facts and figures have been furnished in the original petitions to demonstrate how, in actual working, the application of the method prescribed in the Act for the computation of "capital value" yields results that have no relation at all to the real market value of the building. Shri Anil Divan, who led the arguments on behalf of the petitioners, also filed before us statements in tabular form showing the particulars regarding the actual impact of the tax liability on the various petitioners in several of the writ petitions.

30. The learned Advocate General appearing on behalf of the respondents sought to sustain the constitutionality of the Act by contending that the adoption of the annual letting value and the capital value as the base for imposition of a tax on

lands and buildings has long been recognised as a permissible method for the purposes of rating statutes. He contended that in imposing a tax on buildings under Entry 49 of List 2 of the 7th Schedule of the Constitution, the Legislature is free to choose any of the recognised methods of valuation and that there is nothing illegal or improper in the Legislature having prescribed in the present statute that the building tax shall be levied with reference to the capital value of the buildings. The Advocate General submitted that the levy of building tax at 15% on the capital value of the building, which is the maximum rate prescribed in the schedule to the Act, cannot be regarded as confiscatory in nature. He refuted the arguments advanced on the side of the petitioners that discrimination is involved in the adoption of the "annual value" of the building fixed by the concerned local authority as the base for computation of the "capital value" and contended that the minor differences in the details of the procedure prescribed in the three different enactments, namely, the Kerala Municipal Corporations Act, the Kerala Municipalities Act and the Kerala Panchayats Act for determination of the annual value of the buildings are not at all sufficient to sustain the plea of discrimination. In answer to the contentions advanced by the petitioners that the multiple "16" prescribed by Section 2 (f) for computation of the "capital value" with reference to the "annual value" of a building is arbitrary and unrealistic, the Advocate General submitted that for the purpose of award of compensation under the Land Acquisition Act it has been held in more than one decision of this Court that it will not be unreasonable to capitalise the net annual income at 16 times. On this basis it was urged that the Legislature cannot be said to have acted arbitrarily in fixing the multiple at 16.

31. Although elaborate arguments were addressed by the learned Advocate General in support of his argument that "annual letting value" of land or building has all along been recognised in the field of Rating law as a safe measure of the income realisable from the property and a number of text books etc. were also cited and relied on by him, I do not consider it necessary to deal with this matter at any length, because the argument advanced by counsel for the petitioners was not that it was not open to the Legislature to adopt as the base for the purpose of levy of tax either annual letting value or the capital value according to its choice. The crux of the contention taken by the petitioners was that while the charging section -- Section 5--purports to authorise the levy of building tax based on the capital value of buildings and states that the tax is to be levied at the rates specified in the schedule of such "capital value" the entire complexion of the levy has been altered by the definition of the expression "capital value" contained in Section 2 (f) which states that the capital value of a building shall mean the value arrived at by multiplying the "annual value" of a building by sixteen. No doubt counsel for the petitioners had put forward a faint plea that the State is not competent to impose a tax on land or buildings based on "capital value" while legislating under Entry 49 contained in List 2 of the 7th Schedule and that such power is vested only in the Parliament since the subject-matter falls within the purview of Entry 86 of List I of the said schedule. This contention

obviously cannot stand in view of the pronouncement of the Supreme Court in *The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc.,* . Apart from the above plea no argument was advanced on behalf of the petitioners that it is not open to the Legislature to prescribe the capital value of a building as the base for levying the tax. Hence I do not feel called upon to discuss the effect of the textual authorities and rulings cited by the learned Advocate General relating to the position obtaining in the law of Rating. I may however observe that the legislation now impugned before us can- not strictly be regarded as a "rating statute." In *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad, Wanchoo J.,* as he then was, while dealing with the question of interpretation of the expression "rate on buildings or lands" occurring in Section 73 of the Bombay Municipal Boroughs Act has traced the origin and development, of the English rating law from which the word rate has been borrowed in this country for the purpose of tax by local authorities. After setting out the history of the growth of the law in England his Lordship observed thus (at p. 1746) ;

"This history will show that the rate was assessed generally on the occupier of lands and buildings on account of his beneficial occupation of such lands and buildings. The very fact that the rate was assessed on the occupier of lands and buildings leads clearly to the inference that the rate was to be levied on the annual value of the land or build-ings to the occupier and had nothing to do with the capital value of the land and buildings to the owner. In other words, the rate was to be levied on the annual value of the land or building depending upon its letting value and not on the capital value."

The learned Judge then proceeded to examine the legislative history and practice relating to rating statutes in India and summarised the position thus in para. 31 of the judgment.

"It will be clear further that in India up to the time the Act with which we are concerned was passed the word "rate" had acquired the same meaning which it undoubtedly had in English legislative history and practice up to the year 1925, when the Rating and Valuation Act came to be passed consolidating the various rates prevalent in England. It would therefore be right to say that the word "rate" had acquired a special meaning in English legislative history and practice and also in Indian legislation where that word was used and it meant a tax for local purposes imposed by local authorities, and the basis of the tax was the annual value of the lands or buildings on or in connection with which it was imposed, arrived at in one of the three ways which we have already indicated. It seems to us therefore that when in 1925 Section 73 (1) of the Act while specifying taxes which could be imposed by a municipal borough used the word "rate" on buildings or lands situate within the municipal borough, the word "rate" must have been used in that particular meaning which it had acquired in the legislative history and practice both in England and India before that date. The matter might have been different if the words in Clause (1) of that section were "a tax

on buildings or lands or both situate within the municipal borough", for then the word "tax" would have a wide meaning and would not be confined to any special meaning. But the use of the word "rate" in Clause (1) definitely means that it was that particular kind of tax which in legislative history and practice was known as a "rate" which the municipality could impose and not any other kind of tax. It is true that in the opening words of Section 73 (1) it is said that the municipality may impose any of the following taxes which are thereafter specified in Clauses (i) to (xiv). But when Clause (1) specifies the nature of the tax as a rate on buildings or lands or both, we must find out what the word "rate" used therein means, for it could not be an accident that the word "rate" was used in that clause when dealing with a tax on lands or buildings. Further if we find that the word "rate" had acquired a special meaning in legislative history and practice in England and India before 1925 with reference to local taxation, it must follow that when the word "rate" was used in Clause (1) instead of the general word "tax" it was that particular kind of tax which was known in legislative history and practice as a rate which the municipalities were being empowered to impose."

The statute with which we are concerned not being one empowering a local authority to impose a levy of the kind mentioned above, it cannot be regarded, as a rating Act and the decisions rendered under rating statutes have no direct application to the present case. In saying this, I should not, however, be understood to mean that the legislature while providing for the levy of a tax on buildings was not competent to base the measure of the levy on the capital value of the buildings.

32. The decision of the Supreme Court in *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, is itself clear authority for the position that the Legislature can provide that the tax should be quantified on the basis of the capital value of the building. The real point to be considered is whether there is substance in the contention of the petitioners that the mode of computation of "capital value" prescribed u/s 2 (f) of the Act is artificial, unrealistic and arbitrary and is such as to render the Act violative of Article 19(1)(f) of the Constitution.

33. It is now well established that the power of the Legislature to legislate for levying tax on lands and buildings under Entry 49 of List II in the 7th Schedule to the Constitution cannot be used arbitrarily and in a manner inconsistent with the fundamental rights guaranteed to the people under the Constitution. No tax may be levied or collected under our constitutional set up except by authority of law and the law must not only be within the legislative competence of the State, but it must also not be inconsistent with any provision of the Constitution. The validity of a taxing statute is open to question on the ground that it infringes fundamental rights. (See *The State of Kerala Vs. Haji K. Kutty Naha and Others etc.*, . In determining whether the provisions of the impugned statute infringe any of the fundamental rights of the citizen, the Court will not concern itself merely with the phraseology employed in the statute but will look into the actual results directly brought about by the statute in relation to the concerned

fundamental rights alleged to have been infringed. It is the substance and the practical result of the provisions of the enactment that should be considered rather than the pure legal form (see *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, , *Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others*, , *State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others*, , paragraph 23 at p. 1469 and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . The Legislature has undoubtedly a very wide discretion in the matter of selection of persons and things for being subjected to taxation. The power of the Legislature to classify is of extensive range and flexibility so that it can adjust the system of taxation in all proper and reasonable ways. (See *State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others*, , *Khandige Sham Bhat v. Agricultural Income Tax Officer*, AIR 1963 SC 591 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 actually adopted by the Legislature is capricious, fanciful, arbitrary or clearly unjust. Where objects, persons or transactions essentially dissimilar are treated alike by the imposition of a uniform tax, discrimination may result, for refusal to make a rational classification may itself in some cases operate as denial of equality. There cannot be any dissimilarity of treatment in matters of essential procedure connected with the levy of the tax as between persons subjected to such levy unless there be valid grounds for reasonable classification having a nexus with the object and purpose of the enactment. A statutory provision may offend Article 14 of the Constitution both by finding differences where there are none and by making no difference, where there is one. Decided cases have laid down the tests to ascertain whether a classification is permissible or not, namely, the classification must be founded on intelligible differentia which distinguishes persons or things that are grouped together, from those left out of the groups and (2) that the differentia cannot have a rational relation to the object sought to be achieved by the statute in question. The above principle has to be upheld to be fully applicable to the case. (See *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, , *East India Tobacco Co. Vs. State of Andhra Pradesh*, and *Khan-dige Sham Bhat v. Agricultural Income Tax Officer*, AIR 1963 SC 591 It is, therefore, manifest that the court while conceding a larger discretion to the Legislature in the matter of fiscal adjustment will insist that a taxing statute just like any other statute cannot infringe Article 14 of the Constitution by introducing unreasonable discrimination between persons or properties either by classification or lack of classification. The legislature is competent to classify persons or properties into different categories and tax them differently and if the classification thus made is rational, the taxing statute cannot be challenged merely because different rates of taxation are prescribed for different categories of persons or objects. But, if in its operation, any taxing, statute is found to contravene Article 14, it would be open to courts to strike it down as denying to the citizens the equality before the law

guaranteed by Article 14. Similarly, if a taxing statute makes no specific provision about the machinery to recover tax and the procedure to make the assessment of the tax and leaves it entirely to the executive to devise such machinery as it thinks fit and to prescribe such procedure as appears to it to be fair, an occasion may arise for the Courts to consider whether the failure to provide for a machinery and to prescribe a procedure does not tend to make the imposition of the tax an unreasonable restriction within the meaning of Article 19(5). An imposition of tax which in the absence of a prescribed machinery and the prescribed procedure would partake of the character of a purely administrative affair can, in a proper sense, be challenged as contravening Article 19(1)(f). (See *Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another*, . A taxing statute is liable to be struck down also on the ground that its provisions are confiscatory in character and effect. (See *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, . But the mere fact that a tax is found to be excessive or even oppressive will not justify its invalidation by the court. When a challenge is raised against a taxing statute on the ground that its provisions are confiscatory in character the court will have to clearly examine the true nature of the levy with a view to find out whether there is justification for regarding the impost as a colourable device to take away from the assessee almost entire value of the property in the guise of levying a tax thereon, in which event the levy ceases to be a tax. The financial burden and impact of the tax, the methodology or the process by which the tax liability is determined and the practical effect of the tax on the assessee in a business sense will all have to be carefully scrutinised by the court.

34. I shall now proceed to test the validity of the impugned enactment in the light of the legal principle enunciated above. It has been noticed already that the impugned Act does not itself provide for an independent machinery for the determination of the "capital value" of a building, which is the base prescribed for the computation of the tax liability. As per the definition contained in Section 2 (f), the capital value of a building is arrived at by multiplying the annual value of the building by sixteen. Though the expression "annual value" of a building has been defined in Section 2 (a) as meaning "the gross annual rent at which the building may at the time of completion be expected to let from month to month or from year to year", it is not left to the assessing authority or any other authority functioning under the Act to determine in a quasi-judicial manner the "annual value" of a building. On the other hand, the scheme of the Act as disclosed by Section 6 is that the assessing authority is merely to mechanically adopt the "annual value" fixed for the building in the assessment books of the local authority within whose area the building is situated. The local authority referred to in Section 6 is not an authority constituted under this Act and its manner of functioning is not under the control of any of the authorities set up under this Act. The different types of "local authorities" existing in the State are governed by different statutes whereunder they are constituted and the provisions contained in those different statutes relating to the procedure for

fixation of annual value of a building are materially divergent. The resultant position is that the "capital value" which forms the base for quantification of liability to tax under this Act is to be calculated by the assessing authority on the basis of the fixation of the annual value of the building made by some extraneous authority by applying different forms of procedure depending upon the nature of the local authority within whose area the building is situate. If a building is situated within the limits of a city corporation, the assessee gets the advantage of having the final fixation of the annual value effected by the District Court or even by the High Court. If the building is situated in a municipality governed by the Kerala Municipalities Act, the assessee has only a right of appeal to the Municipal Council itself and not to any independent body that can be trusted to act objectively and judicially like a District Court or even an administrative tribunal. The decision of the Standing Council is declared final. The position in respect of the building situated in panchayats is that the assessment is made by the Executive Authority, who is normally of the grade of an Upper Division Clerk and cannot be expected to have either the right of appeal first to the Pancha-yat itself and thence to the Deputy Director of Panchayats. The failure on the part of the Legislature to prescribe a machinery under this Act itself for determination of the capital value of building in a judicial manner so as to afford to the assessee a full and fair opportunity to state their case in respect of their liability if any under the Act has resulted in the assessee owning building situated within the areas of Municipalities and Panchayats without even any effective opportunity to have their tax liability determined objectively by an authority constituted under this Statute. Any levy of tax without providing necessary machinery for a just and fair adjudication and determination of the tax liability amounts to imposition of unreasonable restriction within the meaning of Article 19(5) of the Constitution. Further, discrimination is writ large in subjecting the assessee whose buildings are situated within the areas of the different types of local authorities to differential treatment. No justification at all has been made out for classifying the buildings situated within the areas of the different types of local authorities into distinct groups so as to warrant such discriminatory treatment as between the owners of such buildings in regard to the vital matter concerning the procedure of the determination of the annual value for the purpose of levy of the impugned tax. This is not a case where special procedure which is at variance with that obtaining under the general law is prescribed under a statute and an authority constituted under such statute is empowered to apply in respect of persons coming within the purview of the statute either such special procedure or the ordinary procedure available under the general law in the exercise of its unfettered discretion, On the other hand, this is a case where a taxing statute has not prescribed the requisite procedural machinery for the working out of its provision but has left the assessee to be governed by fixations of annual value effected under other different and distinct enactments after following divergent procedures. Further unlike in the case before the Supreme Court *M. Chhaganlal v. Greater Bombay Municipality* (AIR 1974 SC 2009) the divergence of procedure in the present case is not formal, superficial

or minor in nature but is substantial, crucial and real. Hence the said decision is clearly distinguishable on facts. In respect of the enforcement of the provisions of this very statute different persons are subjected to materially divergent procedures for determination of the vital factor, namely, the annual value on the fixation of which wholly depends the liability to tax under the Act. No reasonable basis having any relevance to the object and purpose to the enactment is disclosed to justify or support such a classification of persons owning buildings within the areas of the different types of local authorities. I am, therefore, clearly of the opinion that the provisions of Sections 2 (f), 5 and 6 of the Act are violative of Article 14 of the Constitution and are unconstitutional and void for that reason.

35. The petitioners are also well-founded in their contention that since the Act does not afford to the assessee any opportunity to make their representations concerning the matter of fixation of the "capital value" of the building and to have the said crucial question relating to their liability to tax determined in a judicial or quasi-judicial manner by some authority constituted under this Act the provisions of the statute impose unreasonable restrictions on their fundamental right under Article 19(1)(f) of the Constitution. As already noticed except in cases where the assessing authority considers the "capital value" fixed by the local authority to be too low or where no fixation of the annual value has been made by the concerned local authority within the time specified, the function of the assessing authority is only to mechanically calculate the "capital value" by multiplying the "annual value" fixed by the local authority by 16. When the expression "annual value" has been specifically defined in the Act in Section 2 (a) and when the "capital value" on which the measure of the tax liability under the statute is made to depend, is to be determined with reference to such "annual value" of a building, the assessee has a right to expect that before he is subjected to a levy of tax, his liability for such levy will be determined by the assessing authority constituted under the Act in a quasi-judicial manner after an independent application of his mind to the relevant facts. But instead of providing for such a procedure for assessment the Legislature has divested the assessing authority of this essential function and made it obligatory for it to adopt the fixation of the annual value made by a wholly extraneous authority (which is not even a limb of the Government) namely, the local authority, for a wholly different purpose, namely, the levy of the impost of property tax under the concerned statutes governing the different types of the local authorities. The true effect of the provisions contained in Section 6 (i) of the Act is to reduce the procedure for assessment contained in Section 9 to a mere empty formality. At the risk of repetition it may also be pointed out that the provisions for appeal and revision also do not improve matters in any way since the appellate and revisional authorities are also equally governed by the mandatory provisions contained in Section 6 and the definition of "capital value" contained in Section 2 (f). Thus despite the window-dressing attempted in Sections 7 and 9 of the Act in the shape of provisions for filing of returns and the making of an assessment the

true position that emerges is that except in the rare cases covered by Sections (2) and (3) of Section 6, the statute does not contemplate any determination of the tax base by assessing authority constituted under this Act on the application of his own mind after affording to the assessee an opportunity to state his case. The absence of such a minimal procedural safeguard renders the taxing provisions contained in the statute unreasonable restrictions on the fundamental rights of the assessee guaranteed under Article 19(1)(f) of the Constitution.

36. There is also force in the contention put forward by the petitioners that even though the charging section-- Section 5 -- purports to authorise the levy of building tax only with reference to the "capital value" of a building, the character of levy is entirely altered by reason of the artificial definition given to the expression "capital value" in Section 2 (f) and that the result of applying the said definition is to arbitrarily inflate the so-called capital value to an extent that renders the levy extortionate and confiscatory. As pointed out by Supreme Court in *Sudhir Chandra Nawn Vs. Wealth-tax Officer, Calcutta and Others*, the Legislature may, for the purpose of levying a tax under Entry 49 of List II of the Seventh Schedule to the Constitution, adopt for determining the incidence of tax the annual or the capital value of lands and buildings. But it is not open to the Legislature while purporting to make such levy related to the capital value of buildings to give an artificial definition to the expression "capital value" which is wholly at variance with its ordinary connotation and content as recognised in judicial decisions and adopted in legislative practice.

37. The expression "capital value" has not been defined in any statute either English or Indian. The meaning of the expression "capital value" came in for detailed consideration by the Supreme Court in *Union of India v. Harbhajan Singh Dhillon*, (1972) 83 ITR 582 (SC) . The following observation of Mitter J. may be extracted with great advantage (at page 1109).

"158. The expression "capital value" has not been defined in Act either English or Indian, but is a term well known to the English Law of Rating. According to Ryde on Rating eleventh Edition, page 433 :

"Where property is of a kind that is rarely let from year to year, recourse is sometimes had to interest on capital value, or on the actual costs, of land and buildings, as a guide to the ascertainment of annual value."

Further, according to the learned author:

"Where better evidence is in the circumstances of a particular hereditament impossible, resort may be had to either capital value or cost of construction either of which can, with appropriate corrections, be converted into approximately equivalent terms of annual value (See p. 436 quoting the rule expressed by Scott. L. J. in *Robinson Bros. (Brewers) Ltd. v. Houghton and Chester-le-street Assessment Committee*, 1937-2 KB 445, at p. 481)."

According to Farady on Rating (5th Edition) p, 42.

"Effective capital value" is a term commonly used by valuers, but so far no definition of such term appears in any text book, and in order to determine "effective capital value" of any building the valuer must appreciate the proper significance of the term. The learned author then goes on to discuss the positive meaning of the expression by first explaining its negative meaning and at page 43, after noting some instances, states:

"The above instances are sufficient to illustrate the difficulty of defining "effective capital value". It is submitted that the substantive definition of this expression is "the selling price between a willing seller and a willing purchaser of the property in question, subject to the restriction that it can only be occupied substantially in its present condition." This takes into consideration all the above qualifications but it will be observed that it is then no easier to assess the figure than to arrive at the rental value direct."

According to Halsbury's Laws of England, third edition, Volume 32 at p. 79:

"Where neither the actual rents nor the profits of trade afford evidence of annual rental value, a percentage on the costs of construction or structural value of the hereditament, or of a substitute hereditament, is sometimes taken as evidence. The value taken is sometimes called the "effective" capital value, that is to say, the capital value leaving out of account expenditure on unnecessary ornamentation, or accommodation surplus to requirements and after allowing, if necessary, for age and obsolescence."

It is stated further:

"This method of valuation has been applied, for instance, to the directly productive parts of public utility undertakings (such as water works), to Municipal property such as schools, sewage system, a town hall, a fire station, a swimming pool, to colleges and university buildings, public schools, a light house, an old people's home etc." Except in the Law of Rating, the expression "capital value" does not seem to have been used in any branch of English Law. There is no reference to it in Stroud's Judicial Dictionary or Jowitt's Law Dictionary. Yet the expression was used in the Government of India Act, 1935.....a statute passed by the Parliament of England and drawn up by people expected to be familiar with words and expressions known to lawyers in England. It will therefore not be improper to interpret the expression "capital value of assets" as meaning the aggregate value of the assets which a willing purchaser would offer a willing seller for the property in its condition at the time of the transaction. Naturally, a purchaser would enquire into encumbrances on the property and charges thereon created by the seller but he would not be concerned with any other debts or liabilities incurred by the seller for the purpose of acquiring the property or maintaining it. So interpreted the expression "capital value of assets of an individual" will take in only the assets less the charges secured but not any other liability."

After referring to various decided cases dealing with the scope and ambit of the Entries 86 and 87 of List I and Entry 49 of List II of the 7th Schedule of the Constitution his Lordship concluded the discussion in these words :

"The various decisions and authorities cited above which bear on the true meaning of the expression "capital value of assets" makes it amply clear that the same can only mean the market value of the assets less any encumbrances charged thereon."

Entry 86 of List I of the 7th Schedule of the Constitution reads :--

"Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies, taxes on the capital of companies."

If the definition contained in the Act for the expression "capital value" is such that its application yields a result which is wholly different from its ordinary and legal connotation of the said expression as recognised and explained in the ruling of our Supreme Court the base for quantification of the levy will then be not the "capital value" of the building but something wholly different. The definition clause which in effect is intended to disguise the nature of the impost must be held to be arbitrary and the statute must be regarded as a piece of legislation imposing a tax unauthorised by law in the guise of a levy under Entry 49 of List II related to capital value of the building. The principle laid down by the Supreme Court in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, is clearly attracted to this case.

38. At the time of enactment of the statute in 1974 the prevailing rate of interest on long term deposits in nationalised banks was about 10% and even the interest allowed by the Central Bank in respect of investments in National Savings Certificates was 10 1/2% per annum. While the method of capitalisation of the net annual income of a property is undoubtedly one of the recognised modes of computation of its capital value, the multiple applied for such capitalisation must have a reasonable relation to the prevailing rate of interest on firm securities like Government bonds and bank deposits. The fixation of any rigid multiple which bears no relation to the prevailing rate of interest would be wholly arbitrary and any capitalisation by the application of a multiple so fixed will not reasonably reflect the capital value of a building or land. The decisions rendered by this Court holding that the application of a multiple of 16 for the purpose of computation of the market value of agricultural lands, such as, paddy fields, gardens etc. by the process of capitalisation of the net annual income will not be unreasonable are distinguishable since the income from agricultural lands is liable to serious fluctuations by reason of its being largely dependent upon various uncertain factors like weather conditions, fluctuations in the market price of agricultural commodities etc. In respect of buildings fetching a regular rental income, no such considerations of uncertainty or fluctuations enter into the picture and hence the multiple for capitalisation will have to be fixed with reference to the prevailing rate of interest on sound securities. In my opinion the

Legislature has acted arbitrarily in fixing the multiple for capitalisation at the income at 16 at a time when the rate of interest allowed even by the Govt. of India on investments in nationalised banks and National Savings Certificates etc. was not less than 10%.

39. Another important point to be noted is that the levy of tax sanctioned under the Act is only on "buildings" and the definition of the expression "building" contained in Section 2 (e) makes it clear that the expression connotes only the structure proper exclusive of the site on which it stands. The capital value of a building for the purpose of the Act can, therefore be only the capital value of the structure alone. The scheme of levy of the property tax under the Kerala Municipal Corporations Act, the Kerala Municipalities Act and the Kerala Panchayats Act is entirely different. In all these enactments property tax is to be levied by taking into account not only the annual value of the structure but also the value of its site and other adjacent premises occupied as an appurtenance thereto. Section 100 (1) of the Kerala Municipalities Act lays down that every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises. The wording of Section 102 (1) of the Kerala Municipal Corporations Act is identical. Rule 3 of the Kerala Panchayats (Building Tax) Rules, 1963 states that for the purpose of levy of building tax u/s 68 of the Act, every building shall be assessed together with its appurtenant structures, unless the owner of the appurtenance is a different person from the owner of the building. That the land appurtenant to the building is also to be taken into account for the purpose of determination of the annual rental value of a building is made clear by the proviso to Rule 4 of the aforementioned rules. Thus, for the purposes of assessment of property tax under all the three aforementioned statutes governing the local authorities, a building, the site on which it stands and the adjacent land occupied as an appurtenance thereto are all to be treated as forming a single composite unit and the annual value is to be fixed for the said unit. It is the annual value so computed that will be entered in the property register of the local authority. u/s 6 of the impugned Act it is such annual value entered in the register of the local authority that is enjoined to be adopted as the base for calculation of the capital value of the building for the purposes of assessment of building tax under the present Act. It requires no discussion to show that by this process of calculation what we would get is not the capital value of the building, but the capital value of the entire composite unit consisting not merely of the building but also its site and the land appurtenant thereto. The charge sanctioned u/s 5 is only in respect of the building; but the result of the application of the procedure for computation of "capital value" laid down in Section 6 is to impose the tax not merely on the building proper but also on its site as well as on appurtenant land. The Legislature having made it clear in the charging section (Section 5) that the tax is to be levied only on the building, the nature and subject-matter of the impost cannot be altered or extended by the later provision contained in Section 6 which

purports to lay down only a procedure or machinery for implementation of the taxing provision contained in Section 5. For this reason also the provisions contained in Section 6 (1) are in my opinion illegal and void.

40. Going by the meaning of the expression "capital value" as explained in *Union of India v. Harbhajan Singh Dhillon*, (1972) 83 ITR 582 (SC) it should represent the fair market value of the building, that is the price that will ordinarily be fetched for the building in a transaction of sale as between a willing seller and a willing purchaser. Such price is to be ascertained after taking due note of any existing encumbrances on the property. The startling results yielded by an application of the formula laid down in the Act for determination of the capital value of buildings are amply demonstrated by the facts pertaining to the buildings involved in some of these writ petitions, which facts have been sworn to by the petitioners and in respect of the correctness whereof no serious controversy has been raised on the side of the respondents.

41. The petitioner in O. P. No. 3909 of 1974 is the Managing Partner of a registered firm engaged in the business of taking sites on lease, constructing buildings thereon for commercial purposes and letting them out on rent. Under a registered lease deed dated 2nd November 1972 the petitioner took on lease an extent of II cents and 200 sq. links of land by the side of the M. G. Road, Ernakulam. Ext. P1 is a copy of the said lease deed. The period of the lease is only 5 years and the annual rent agreed to be paid to the lessor is Rs. 10,000. It is stipulated in the lease deed that the lessee should surrender possession of the land with buildings to the lessor on the expiry of the period of five years on receiving the value of the structures as per valuation of an approved valuer. The petitioner's firm constructed on the leasehold land a three storeyed building. The construction of the said building was completed after 1-4-1973. The total expenditure incurred by the firm for the construction of the building as borne out by the audited accounts of the firm was only Rs. 2,79,686.26. The entirety of the building has been let out on rent and the total monthly rent for the building comes to Rs. 11,200. The annual value fixed for the said building by the Corporation of Cochin as per the orders Exts. P2, P5 and P6 is Rs. 1,23,810. It is needless to re-state that this fixation is not only in respect of the building, but also in respect of its site and also the appurtenant land. The court can take judicial notice of the fact that the cost of land on the M. G. Road in Cochin is extremely high. The capital value of the building calculated u/s 6 of the Act amounts to Rs. 19,80,960.00 and the tax payable thereon under the Act is Rs. 2,79,194.00. The petitioner has got the fair market value of the building estimated by an "approved valuer", whose report has been produced and marked as Ext. P4. As per that report the fair market value of the building as on 1-9-1974 was only Rs. 3,21,256.00 as against which the capital value determined u/s 6 is 19,80,960.00 The tax demanded from the petitioner under the Act -is almost as much as the whole cost of construction of the building since it falls short of the latter only by Rs. 400 and odd. (The cost of construction was Rupees 2,79,655.26 while the tax demanded is Rs. 2,79,194).

42. In O. P. No. 3970 of 1974 the petitioner owns an extent of 31 cents of land by the side of the M, G. Road Erna-kulam. He put up a two-storeyed building in 10 cents by expending 1,15,000. By reason of its advantageous situation in the commercial area of the city, the building has been let out on a monthly rent of Rs. 4,312. The annual rental value fixed by the local authority, namely, the Corporation of Cochin is Rupees 37,820. On the basis thereof the capital value of the building has been worked out u/s 6 and fixed at Rs. 6,05,120 while the actual cost of construction is only Rs. 1,15,000. The tax demanded in respect of the building u/s 5 of the Act is Rs. 72,818.

43. The petitioner in O. P. Nos. 4252 and 4256 of 1974 has constructed a go-down in a small extent of 3700 sq. feet. The cost of construction was only Rupees 55,160. The market value of the building has been got assessed by an approved valuer, whose report has been produced and marked as Ext. P1. He has estimated the value of the building at Rs. 55,160. The local authority has fixed the annual value of the building at Rs. 35,670. On the basis thereof the capital value of the building has been worked out u/s 6 at Rupees 5,70,720 which is more than 10 times the actual cost of construction of the building as well as the market value estimated by the approved valuer. The tax demanded as payable u/s 5 is Rs. 67,658.

44. The petitioner in O. P. No. 4169 of 1974 owns an extent of 16 cents of land lying by the side of the Mahatma Gandhi Road in Ernakulam. The said property was purchased by him for a consideration of Rs. 45,000 with the aid of funds borrowed by him from the Federal Bank Ltd., by undertaking to pay interest at 10% per annum and by utilising also some further amount borrowed from private parties. The petitioner put up a building on the said property and its construction was completed only subsequent to 1st April 1973. The building has been let out for a total monthly rent of Rs. 3,940. The annual value of the land as well as the building has been fixed by the Corporation of Cochin as Rs. 36,220. On the basis of the said fixation the capital value of the building works out u/s 5 at Rs. 5,79,520. The petitioner has got the building valued by a chartered architect who is also an approved valuer u/s 34AB of the Wealth Tax Act. Ext. PI is the valuation report furnished by him. As per the said report the value of the building is Rs. 1,15,011.22. The "capital value" worked out u/s 5 amounts to more than 5 times the said figure and it is on the basis of the said "capital value" that the tax liability of the petitioner is to be computed u/s 5.

45. The facts set out above clearly illustrate how far reaching and arbitrary are the consequences flowing from the, application of the procedure for computation of capital value laid down in Section 6 of the Act read with the definition contained in Section 2 (f) which prescribes the multiple of 16 for capitalisation of the annual income. I have no hesitation to hold that the capital value arrived at by the procedure specified in Section 6 has no reasonable relation at all either to the cost of construction of the building or to the capital market value of the building and the tax liability itself works out in some cases to as much as or even

more than the very cost of the building. (For example-- O. P. Nos. 3909 of 1974, 4252 of 1974 and 4256 of 1974). In my opinion, such a levy cannot but be held to be confiscatory. It also amounts to an unreasonable restriction on the right to hold property guaranteed under Article 19(1)(f) of the Constitution.

46. The petitioners are also well-founded in their contention that there is no rational basis for excluding from the scope of charge u/s 5 buildings, constructed or repaired prior to 1st April, 1973 and subjecting to tax only buildings construction or repairs of which is completed after the said date. No valid ground for classification, which has the relevance or purport of the enactment, has been shown to exist so as to justify the exclusion of buildings constructed or repaired prior to 1st April, 1973 from the levy. While the legislature is fully entitled to give retrospectivity to a taxing statute, there must be a rational basis for grant of exemption with reference to any specified date and it is not open to it to arbitrarily fix a date by picking it out from a hat as it were. Inasmuch as no valid significance is shown to attach to the date 1-4-1973 in relation to any aspect that has relevance or bearing to the object and purpose of the enactment, I am inclined to uphold the contention of the petitioners that the classification so made by subjecting to tax only buildings, the construction or repair of which was completed after 1-4-1973, is discriminatory and violative of Article 14 of the Constitution.

47. Although it was contended on behalf of the petitioners that the impugned Act is violative of Article 301 of the Constitution, I do not see any merit in the said contention and I am in respectful agreement with the reasons stated by the learned Chief Justice in his judgment for the conclusion that the provisions of the impugned Act do not violate Article 301 of the Constitution.

In the light of what I have said above I have no hesitation to declare that the provisions of Section 2 (f) and Sections 5 to 9 of the Kerala Building Tax Act, 1975 are violative of Articles 14 and 19(1)(f) of the Constitution of India and are hence unconstitutional and void. I would accordingly allow the original petitions.

JUDGMENT OF THE COURT.

48. In accordance with the majority view, these writ petitions are dismissed. No order as to costs.