

(2003) 08 MP CK 0038

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 4009 of 1997, 156/98, 1351, 1374, 1387, 1570, 1587, 1843, 2431, 2586, 2995, 3163, and 5829, of 1998, 3411, 3412, 4100 and 4890 of 1999, 4184, 4342, 4344-4358, 5374-5377 of 2000, 2419 of 2001 and 250 and 1416 of 2002

Sakhi Gopal Agrawal and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 29-08-2003

Acts Referred:

Constitution of India, 1950 — Article 13(3), 14, 243W, 243X

Madhya Pradesh Municipal Corporation Act, 1956 — Section 135, 136, 137, 138, 138(1)

Madhya Pradesh Municipalities Act, 1961 — Section 126, 126(1), 127, 127A

Madhya Pradesh Municipality (Determination of Annual Letting Value of Building/Land) Rules, 1997 — Rule 10, 11, 3, 4, 5

Citation : (2004) 1 JLJ 26 : (2003) 4 MPHT 1 : (2004) 1 MPLJ 390 : (2003) 3 MPLJ 554

Hon'ble Judges : S.K. Kulshrestha, J;K.K. Lahoti, J;Dipak Misra, J

Bench : Full Bench

Advocate : M.L. Jaiswal, in W.P. No. 156/98, Maya Verma, in W.P. No. 1351/98, Rakesh Jain, in W.P. No. 1374 and 2431/98, P. Shandilya, in W.P. No. 1387, 1570 and 2995/98, Sudha Pandit, W.P. No. 1587/98, Ashok Agrawal, in W.P. 1843 and 5829/98, V.K. Jain, in W.P. No. 2586/98, Prashant Singh, in W.P. No. 3163/98, B.B.L. Agrawal, in W.P. No. 3411 and 3412/99 and 4346 and 4356/2000, Manish Datt, in W.P. No. 4100/99 and 5374, 5375, 5376 and 5377/2000, Shobha Menon, in W.P. No. 4890/99, Ravindra Srivastava, in W.P. No. 4184/2000, Champalal Yadav, in W.P. No. 4342/2000, R.D. Bapat, in W.P. No. 4344/2000, A.S. Srivastava, in W.P. No. 4345/2000, V.L. Palsikar, in W.P. No. 4347/2000, Ashok S. Garg, in W.P. No. 4348/2000, M.V. Apte, in W.P. No. 4350/2000, A.G. Dhande, in W.P. No. 4351/2000, Anil Srivastava, in W.P. No. 4352/2000, N.K. Dave, in W.P. No. 4353, 4354 and 4355/2000, Shobhit Aditya, in W.P. No. 4357/2000, Sanjay K. Agrawal, in W.P. No. 2419/2001, Alok Aradhe, in W.P. No. 4009/97, P.N. Pathak, in W.P. No. 250/2002 and Bhoop Singh, in W.P. No. 1416/2002, for the Appellant; R.S. Jha, Dy. A.G. in W.P. No. 4009/97, 156, 1351, 1374, 1387, 1570, 1587, 1843, 2431, 2586, 2995, 3163 and 5829/98, 3411, 3412, 4100 and 4890/99, 4184, 4342, 4344, 4345, 4346, 4347, 4348, 4349, 4350, 4351, 4352, 4353, 4354, 4355, 4356, 4357, 4358, 5374, 5375, 5376, 5377 and 5377/2000, 2419/2001, 250 and 1416/2002, for the Respondent

Judgement

Dipak Misra, J. Expressing the view that the issues involved arc of immense significance and placing reliance on the decisions rendered in the cases of Abdul Taiyab Abbasbhai Malik and Others Vs. The Union of India (UOI) and Others, and Balkrishan Das v. Harnarayan 1979 MPLJ 644, wherein it has been held that the existence of two earlier conflicting decisions on the same point is not a condition precedent to make a reference for a decision of a question by a Larger Bench, the Division Bench referred the matter in entirety to be adjudicated by a Larger Bench and that is how the batch of cases has been placed before us.

The bunch of matters can be categorised into two compartments; one batch assail is to certain provisions and rules of the M.P. Municipal Corporation Act, 1956 (for brevity "the Act") as ultra vires and in the other challenge is to the certain provisions of M.P. Municipalities Act, 1961 (in short "the Municipalities Act") and the rules framed for carrying out the purposes of the said statute. As the assail and attack is to the constitutional validity of such provisions in both the enactments relating to the imposition of property tax, the jurisdiction, the manner, the mode and the method, we arc inclined to deal with the same in a composite order though we will be advertng to the pertinent provisions in both the statutes separately wherever it is necessitous. We may also hasten to state here that in addition to the challenge of the provisions in issue, there is also a prayer for quashment of the resolutions passed by the various Municipalities and Municipal Corporations, and the directions issued by the State Government and notices issued to the owners for levy of property tax and in some cases water tax and other taxes. It is condign to mention here that the centrum issue being rclatable to the questioning of the constitutional validity of the provisions pertaining to property tax, we would be dealing with the said aspect and thereafter would address ourselves in relation to other facets depending upon the nature of the attack as facts warrant.

To appreciate the factual score, it is seemly to state that in W.P. No. 1374/98 the relevant provisions, namely, 126, 127 and 127-A of the Municipalities Act and M.P. Municipality (Determination of Annual Letting Value of Building/Land) Rules, 1997 (hereinafter referred to as "the 1997Rules") are under scrutiny and in W.P. No. 2431/98, the relevant provisions of the Corporation Act, 1956, namely, Sections 132, 135 and 138 are under question. For the sake of clarity and convenience, we would refer to the factual matrix in both the cases. In W.P. No. 1374/98, the petitioner No. 1, Panagar Sangarsh Samiti, has been constituted to look after the interest of the residents of Panagar so far as various taxes arc imposed by the Panagar Municipal Committee is concerned. The said Samiti is represented by its President, and the petitioner Nos. 2 and 3, the members of the said Samiti are the residents of two wards situated within the limits of the Municipal Area and they have been personally aggrieved. It is putforth that Section 126 of the Municipalities Act provides for determination of the annual letting value of land or a building. The procedure has been prescribed how the

same has to be determined. the said provisions have been incorporated by M.P. Act No. 18 of 1997 which came into force on 21 -4-1997. Section 127 of the Act confers power on the Municipal Council to impose several taxes including water tax, general sanitary tax, general lighting tax, general fire tax and general welfare tax etc. Reference has been made to Section 127 (4) which deals with water tax. Section 126 (1) empowers the State Government to make certain rules in regard to the annual letting value. The said rules have been brought into existence by Notification dated 29-5-1997, and thereafter, certain amendments were introduced in the rule by notification dated 30th September, 1997.

According to the writ petitioners, a resolution has been passed by the Municipality under the Rules which is in vogue. The resolution was sent for approval which was given on 29-8-1998 vide Annexure P-2. On the basis of the aforesaid resolution, the Municipal Committee sent notices to the different owners of the houses for deposition of the property tax and other taxes. A stance has been taken that it was well nigh difficult on the part of the petitioners to file any reply inasmuch as when notice was issued, adequate time was not granted to file the reply. It is pertinent to slate here that various averments have been made relating to imposition of fire tax, water tax and property tax but we would be addressing to the basic averments which have the connectivity with the constitutional validity of the provisions.

In W.P. No. 2431/98 which relates to the imposition of property tax and other taxes under the Corporation Act, the factual score as has been expositied is that the petitioner No. 1 is a registered society working for the benefit of all the persons who are engaged in business. The petitioner No. 2 is a Public Trust having a "Dharmashala" meant for charitable purposes. The Municipal Corporation, Jabalpur in its meetings dated 11-3-1998 and 24-4-1998 discussed the resolution in regard to imposition of property tax but the passing of the resolution was opposed to by many a member. The matter was then referred to the prescribed authority as provided under Rule 7 of the Rules and a date was fixed in July, 1998 for the purpose of giving of self-assessment by all the owners of the houses. In view of the aforesaid action, certain notices were issued to the owners of the houses. It is further set forth that there are imposition of lighting tax, compulsory sanitary tax and fire tax. Various factual averments have been putforth assailing the imposition of property tax and thereafter averments have been made in seriatim assailing the constitutional validity of the provisions.

A return has been filed in W.P. No. 4184 of 2000 and a memorandum has been filed to adopt the same for the purpose of all these cases. In the aforesaid return filed by the respondent No. 1, the Slate of Madhya Pradesh, it has been contended that the challenge to the amendment is quite belated and, therefore, untenable. It is also put forth that certain rules have been amended in the meantime and hence, questioning the validity of earlier unamended rules has been rendered infructuous. New Rules have been brought on record as Annexure R-1. According to the respondent No. 1, the imposition of property tax is similar

under both the statutes and the said tax is charged on the annual letting value and, accordingly a common rule, namely, Madhya Pradesh Municipality (Determination of Annual Letting Value of Building/Land) Rules, 1997 has been framed. According to the answering respondent, the petitioners have not referred to the amendments brought in the Rules in the year 1999. It is contended that the premises on which the edifice of the petitioners' grievance has been built is without any substratum inasmuch as the rules which have become extinguished have been sought to be assailed.

As pleaded, there is nothing illegal in the imposition of the tax and making of the rules. Various factual averments have been made to justify the constitutional validity and to support the action relating to issue of notices and making of demands.

At this juncture, we feel it apposite to state that reference to the averments in the writ petitions as well as in the return with regard to legal issues need not be stated in detail as we are inclined to deal with the same while narrating the contentions raised by the learned Counsel for the parties. We are also disposed to state that the challenge to the provisions in both the statutes being common with slight variation, we would enumerate the contentions putting them in a composite whole.

The learned Counsel for the petitioners in both categories of cases have propounded the following proponements :--

(a) Article 243P(e) defines "Municipality" as an institution of self-governance and under Article 243W the Legislature has been enjoined the power to confer the authority on the Municipalities to enable them to function as institutions of self-governance. The conditions are limited only to two subjects mentioned therein. Article 243X ordains the Legislature to authorise a Municipality to levy and collect specified taxes and only the procedure for levy etc. can be fixed by the State Legislature subject to the limits which are in accordance with the concept of institution of self-governance. In other words, the Legislature can not prescribe any particular criterion on the basis of which certain zones can be created for taxing purposes. The Municipalities or the Municipal Corporation has the exclusive power to take its own decision without being constrained or governed by the rules framed by the State Government as the rules framed by the executive can not be binding on the Municipalities or Municipal Corporation in the matter of imposition of taxes. Differently put, the local bodies have been conferred immense power under the Constitution and by framing of rules there has been entrenchment of the same.

(b) The Legislature can not delegate the powers to executive to frame rules and consequently the Government is conferred the power to compel the local authorities to impose tax in accordance with the rules framed by it and by such an act the Legislature has abdicated its essential function. Hence, the rules are ultra vires as they suffer from the vice of excessive delegation.

(c) Section 135 read with Section 138 of the Corporation Act authorises the Municipal Corporation to impose tax with reference to gross annual letting value of the building. A definite meaning has been given to the words "subject to any general or special order which the State Government may make in this behalf. The Constitution has by 73rd amendment abrogated the power of the State Government which might have existed prior to the amendment. The Corporation Act was enacted in the year 1956 and with the introduction of the Constitutional amendment the above mentioned words would be deemed to have been deleted as the Corporation has become an institution of self-governance which negates the authority of the State Government to make either general or special order. Section 132 has to be read in that context and as a necessary corollary the Municipal Corporation is required to take its own decision and not required to be guided by the rules as such an action does contravene the mandate of Article 243X of the Constitution.

(d) The term "gross annual letting value" can either be on actual or hypothetical basis but not on notional or irrational foundation. The determination qua each building as has been done previously has to be respected and followed. The foundation or base of zonal system can not be the controlling factor. A prospective tenant may like to pay higher rent for the building constructed in the same zone where as the neighbouring house of the same area with poor structural design would not fetch the same rent and hence, conferment of equivalence to both the houses on the backdrop of zone system is irrational, arbitrary and unreasonable.

(e) The situation/location of the house is also a factor to be taken into consideration. The house may be situated at the main road and there may be a house situated 100 feet or 100 yards away in the side lane of hardly 6 feet width. Both of them can not be equally treated because of the placement in the same zone and gross annual letting value can not be determined on that criterion. Therefore, the real reference has to be the gross annual letting value of a particular/specific building for determination of annual quantum received or even hypothetical rent receivable. Fixation of the quantum of rent in any other manner is illegal and unjustified as it invites the frown of Article 14 of the Constitution which in its second limb encompasses avoidance of arbitrariness and unreasonableness.

(f) The provision of General Clauses Act would not apply because in a case of this nature singular would not include plural as contrary intention is clearly demonstrated by use of the words "a building's gross annual letting value".

(g) The tax has to be assessed qua each building and not on the basis of a cluster of building based on the zone basis. When the law lays a postulate that each building has to be assessed on certain definitive criteria for the purposes of taxes the said stipulation can not totally succumb to the zonal system or any other categorisation or compartmentalisation.

(h) The use of the word "gross" can never convey the meaning "average", either connotatively or denotatively, as it has a different connotation altogether. Gross includes everything without any kind of deduction and, therefore, it has to be in respect of each individual building with its own peculiarity of structural design, beauty, situation and aesthetic decor etc. The emphasis on the non-obstanle clause used in the provision does not totally mar or destroy the effect and impact of the M.P. Accommodation Control Act, 1961. Assuming the standard rent is determined by the Rent Controlling Authority under the aforesaid statute, the landlord would be entitled for that rent only and not more and in that event there can not be any assessment for the purpose of property tax and such an anomaly has to be removed by giving a rational interpretation to the provisions otherwise total inequity is bound to usher in.

(i) The decisions rendered in the case of Municipal Corporation, Indore and Ors. v. Smt. Ratnaprabha and Ors. AIR 1977 SC 308, which has been reiterated in the case of Indian Oil Corporation Ltd. Vs. Municipal Corporation and Another, , are still applicable and once the law laid down therein are made applicable the fixation of standard rent under the M.P. Accommodation Control Act is to be allowed to have full play and the property tax would be dependent on determination of standard rent by the competent authority under the Accommodation Control Act.

(j) Though the Legislature has amended the provisions relating to the imposition of property tax and framed rules yet certain provisions have not been deleted or suitably amended and hence there is inconsistency in the provisions and as the provisions can not be harmonised or construed in a harmonious manner the provisions which are sought to be declared as ultra vires, are bound to be declared as such.

Mr. R.S. Jha, learned Deputy Advocate General, per contra, has contended :

(i) The proponent of learned Counsel for the petitioners that the State Legislature could not have legislated in view of the incorporation of Chapter IX in the Constitution of India suffers from an inherent fallibility inasmuch as in the said Chapter itself there is mention of conferment of power on the local bodies by the legislative action itself.

(ii) The State Legislature can always make law to delegate certain legislative powers but it can not abdicate its basic legislative functions. Neither the Municipal Corporation nor the Municipality can themselves impose property tax as that would tantamount to creating a sovereign within a sovereign.

(iii) Article 243X of the Constitution does not denude the power of the State Legislature to make enactment and such an interpretation has the support of the law. The guidance has been given in the rules itself and power has been conferred and specific circumstances have only been illustrated. When such rules have been made, they are supportable in law and they do not suffer from any vice.

(iv) The criteria which have been fixed in the main enactment and the rules framed have a rationale behind it and, therefore, the averments made with regard to fixation of criteria by citing hypothetical examples are sans substance. Classifications have been made on the basis of intelligible differentia and the same are permissible for the purpose of taxation.

(v) When number of methods are available to assess the tax, the State has the power to choose any of them and if a particular mode is chosen no fault can be found with it.

(vi) The incorporation of non-obstante clause in the provision takes away the effect of other enactments. The submission that there would be anomaly between the M.P. Accommodation Control Act, 1961 and the Municipalities and Municipal Corporation Acts in regard to determining the letting value is of no consequence inasmuch as all the decisions rendered by this Court as well as by the Apex Court have become ineffective because the amendments brought in the statute book have removed the base of the said judgments.

(vii) The inconsistency which is being highlighted by the petitioners is an edifice built in air inasmuch as the provisions can be harmoniously construed and the apparent conflict or inconsistency is not the realm of reality and is not going to affect the workability of the provisions in any manner, whatsoever.

At this juncture, we may state that the learned Counsel for the petitioners and the learned Counsel for the State have cited number of decisions and we shall be referring to some of them at the relevant time while dealing with the submissions.

To appreciate the submissions put forth at the Bar, it is appropriate to refer to the provisions which are relevant. Section 138 of the Corporation Act reads as under :--

"138. Annual letting value of land or building.-- (1) Notwithstanding anything contained in this Act or any other law for the time being in force, the annual letting value of any building or land, whether revenue paying or not, shall be determined as per the resolution of the Corporation adopted in this behalf, on the basis of per square foot of the built up area of a building or per square foot of land, as the case may be, taking into consideration the area in which the building or land is situated, its location, situation, purpose for which it is used, its capacity for profitable user, quality of construction of the building and other relevant factors and subject to such rules, as may be made by the State Government in this behalf.

(2) On the basis of the resolution adopted by the Corporation under Sub-section (1), every owner of land or building shall assess the annual letting value of his land or building and deposit the amount of property tax along with a return in this behalf, in the prescribed form, on or before the date fixed by the Corporation, failing which a surcharge at the rate, as may be determined by the Corporation, shall be charged.

(3) The variation up to ten per cent on either side in the assessment made under Sub-section (2) shall be ignored. In cases where the variation is more than ten per cent, the owner of land or building, as the case may be, shall be liable to pay penalty equal to five times the difference of self assessment made by him and the assessment made by the Corporation.

(4) An appeal shall lie to the Mayor-in-Council against the orders passed under Sub-section (3)."

Section 126 of the Municipalities Act reads as follows :--

"126. Annual letting value of land or building.-- (1) Notwithstanding anything contained in this Act or any other law for the time being in force, the annual letting value of any building or land, whether revenue paying or not, shall be determined as per the resolution of the Council adopted in this behalf, on the basis of per square foot of the built up area of a building or per square foot of the land, as the case may be taking into consideration the area, in which the building or land is situate, its location, situation, purpose for which it is used, its capacity for profitable use, quality of construction of the building and other relevant factors and subject to the rules, as may be made by the State Government in this behalf.

(2) On the basis of the resolution adopted by the Council under Sub-section (1), every owner of land or building shall assess the annual letting value of his land or building and deposit the amount of property tax alongwith a return in this behalf, in the prescribed form, on or before the date fixed by the Council, failing which a surcharge at the rate, as may be determined by the Council, shall be charged.

(3) The variation up to ten per cent on either side in the assessment made under Sub-section (2) shall be ignored. In cases where the variation is more than ten per cent, the owner of land or building, as the case may be, shall be liable to pay penalty equal to five times the difference of self-assessment made by him and the assessment made by the Council.

(4) An appeal shall lie to the President-in-Council against the orders passed under Sub-section (3)."

Section 127 of the Municipalities Act provides what taxes are to be imposed under the Act. Section 127-A deals with imposition of property tax. It is pertinent to mention here that Sub-section (2) of the aforesaid provision stipulates the property tax which is leviable under Sub-section (1) of Section 127-A is not to be levied in respect of certain properties. Thus, 127-A (2) of the Municipalities Act is not required to be reproduced. Section 127-A (1) is relevant for our present purpose. It reads as under :--

"127-A. Imposition of property tax.-- (1) Notwithstanding anything contained in this Act, the tax under Clause (i) of Sub-section (1) of Section 127 shall be charged, levied and paid, at the rate not less than six per cent and not more

than ten per cent of the annual letting value as may be determined by the Council for each financial year."

We may state here in the passing that the proviso to 127-A (2) (b) has been struck down as ultra vires by the Apex Court in the case of Mathuram Agrawal Vs. State of Madhya Pradesh, on the ground that the same is contrary to the charging section. In any case, we are not concerned as it deals with the exclusion clause.

The combined rules which have been framed for determination of the annual letting value of building/land are required to be referred to at this stage. The rules which have been referred to by the learned Counsel for the petitioners to show that they are basically irrational and sensitively pregnable are Rules 4, 5, 6, 10 and 11. They read as under :--

"4. Classification of buildings and lands.-- The classification of buildings and lands situated in every zone shall be as follows :--

(a) Quality of construction-

- (i) Building having roof made of R.C.C.R.B.C.or stone;
- (ii) Buildings having roof made of sheets of cement or iron or tiles;
- (iii) Other semi-pakka or kuccha buildings which does not fall within Sub-clause (i) or (ii).

(b) On the basis of use-

- (i) Buildings/lands for the purpose of commercial or industrial;
- (ii) Buildings/lands for the purpose of residential.

(c) On the basis of location-

- (i) Building/land situated at main road;
- (ii) Buildings/land situated at main market.

Rate of annual letting value.-- Every Municipality as per criteria described in Rule 4 shall fix separate rates for each type of houses and lands situated in each zone on the basis of their quality of construction, use and location for the purpose of determination of their annual letting value :

Provided further that apart from the criteria described in this rule or Rule 4 the municipality subject to the provisions of Sections 135, 136 and 138 of the Madhya Pradesh Municipal Corporation Act, 1956, in case of a Municipal Corporation and Sections 126 and 127-A of the Madhya Pradesh Municipalities Act, 1961 in case of a Municipal Council or Nagar Panchayat, may also fix separate criteria.

Adoption of resolution by municipality.-- It shall be essential for every

municipality to adopt a resolution by including the following points, within maximum six months from the date of commencement of each financial year-

(a) In case of Municipal Corporation under the provisions of Section 135 of the Act and in case of Municipal Council and Nagar Panchayat, under the provisions of Sub-section (1) of Section 127-A of the Act, the determination of such rates of property tax which shall not be less than six per cent and more than ten per cent of the annual letting value.

(b) The classification of municipal area in more than one zone, as far as possible, on the basis of the similar location of houses and lands situation therein, under Rule 3

(c) For the purpose of determination of annual letting value of the buildings and lands, the fixing of per square foot per annum for the constructed area of the houses and per square foot per annum for the lands, under Rule 5.

(d) To fix the date within which the return and the payment of the amount of property tax by the owners of building or land shall be essential, provided that such date shall not be earlier to four months from the beginning of the year.

(e) To fix the rate of surcharge if the return alongwith the amount of property tax is not filed within the date fixed under Clause (d).

6-A. Prevailing of the last year rates in case the resolution is not adopted.-- If in any year the municipality does not adopt the resolution under the provisions of Rule 6, the owners of buildings/lands shall in an interim way deposit the amount of the tax along with the return in accordance with Rule 10 on the basis of the last year's rates and on the declaration of the rates for the current year the revised return along with the amount of difference, if any, shall be deposited.

Self assessment of the property tax.-- (1) Every owner of the building or land of the municipal area, shall himself calculate the annual letting value of his property and the amount of the property tax as per the rates of annual letting value described in resolution published by the municipality as per provisions of Rule 8 and by adding the amount of water tax and the consolidated amount of general sanitary cess, general lighting tax and general fire tax as determined under Sub-sections (4) and (5) of Section 132, in case of Municipal Corporation and under Sub-sections (4) and (5) of Section 127 in case of Municipal Council and Nagar Panchayats, in the amount of property tax payable and after indicating the information in the return appended to these rules, deposit the consolidated amount of the aforesaid taxes in the municipality within the prescribed time along with the return.

(2) If any person is the owner of more than one house or land in the municipal area, then every such owner shall pay the amount alongwith the separate return for each house or land, provided that the consolidated annual letting value of all his houses or lands or both, shall be deemed to be the basis for purpose of exemption under the provisions of Clause (b) of Section 136 in case of Municipal

Corporation and Clause (b) of Sub-section (2) of Section 127-A in case of Municipal Council and Nagar Panchayats.

(3) If the owner of building or land finds any mistake in the return filed by him as above, then such owner of building or land may submit the revised return within sixty days from the date on which he had submitted the return and if the amount of property tax exceeds according to the revised return, then he shall deposit such amount in the municipality along with the revised return :

Provided that if the amount of property tax deposited earlier exceeded according to the revised return, then he may demand to refund such excess amount and after scrutinising of the demand is found to be correct, then the municipal officer shall order to refund such excess amount.

10-A. To declare place for depositing the amount of tax.-- Each municipality shall declare the counter or the branch of the Bank as determined for depositing the amount of tax.

Scrutiny of the return.--If on the scrutiny of return received under Rule 10, it is found by the municipal officer that any information mentioned therein is not correct or is doubtful or he deems it necessary to reassess the annual letting value due to any reason, then the municipal officer may take action for the reassessment of the annual letting value under the provisions of the Act:

Provided that in the reassessment, the variation upto ten per cent on either side shall be ignored but when the variation is more than ten per cent, the owner of land or building, as the case may be, shall be liable to pay such penalty which will be equal to five times of the amount of difference of self-assessment made by such owner and the reassessment made by the municipality : Provided further that against the order passed by the municipal officer under the first proviso, an appeal may be filed before the Mayor-in-Council in case of a Municipal Corporation and President-in-Council, in case of a Municipal Council or Nagar Panchayat within thirty days from the date of passing the orders, on which the Mayor-in-Council or the President-in-Council, as the case may be, after hearing the parties concerned, shall give its decision which shall be final."

We have reproduced the provisions to appreciate the whole gamut of facts and the argumentative missiles that have been pierced into the marrows and the fabrics of the said provisions.

The first submission advanced by the learned Counsel for the petitioners is that in view of the incorporation of certain Articles under Chapter IX-A of the Constitution, the Municipal Corporations and the Municipalities should have been given a free hand to take their own decision but the Legislature having prescribed the criteria, has transgressed the constitutional mandate. To appreciate the aforesaid submission, it is apposite to refer to certain provisions of the Constitution. Article 243Q deals with constitution of Municipality. By virtue of the said Article, the word "Municipality" covers Municipal Corporation. This view

has been taken by the Apex court in the case of Cantonment Board, Secunderabad Vs. G. Venketram Reddy and Others, . Article 243R deals with composition of Municipalities. Article 243S provides for constitution and composition of Wards Committees etc. Emphasis has been laid on Article 243Y which provides that the Finance Commission constituted under Article 243I shall also review the financial position of Municipalities and make recommendations to the governor as to the principles which should govern the distribution between the State and the Municipalities of the net proceeds of the taxes, tolls and fees leviable by the State. The said provision also prescribes the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities.

Article 243W reads as under:--

"Article 243W. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self- Government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-

(b) the preparation of plans for economic development and social justice;

(c) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(d) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule."

Immense emphasis has been given on the Article 243X. The said Article reads as under :--

"Article 243X. The Legislature of a State may, by law,--

(a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

(c) provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom, as may be specified in the law."

It is submitted by the learned Counsel for the petitioners that if the aforesaid Article is scanned and scrutinized in proper perspective, it is absolutely vivid that the Legislature of the State has been authorised by the Constitution only to authorise the Municipalities for the purpose of levy, collection and appropriation of certain taxes but there is no other power bestowed on the Legislature. The Legislation has to be in accordance with concept of institution of self- governance but the Legislature by ordaining the procedure has transgressed its limits.

On a bare reading of the aforesaid Articles, it is perceptible that Article 243W clearly stipulates that subject to provisions of the Constitution, the Legislature of a State may, by law, endow the Municipalities with such powers. Thus the source of power rests with the State Legislature. True it is, there is some concept of self-governance but the Constitution has not empowered the Municipalities to impose taxes on its own as if it has the power to impose taxes by itself as that would have defeated and destroyed many a provision of the Constitution. Article 243X also postulates that the Legislature of a State may, by law, authorise a Municipality to collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits. The aforesaid provision is plain as day to indicate that the Legislature has the authority and it may authorise the Municipality to collect such taxes in accordance with such procedure and subject to such limits. The significance of the term "such" used at three places under Article 243X(a) can not be allowed to be marginalised. Thus the submission that the Legislature should have left it to the total discretion of the Municipality or Municipal Corporation is absolutely sans substance.

The next contention that has been putforth is relatable to realm of excessive delegation. Submission of learned Counsel for the petitioners is that the Legislature while engrafting the provisions, namely, Section 126 of the Municipality Act and Section 138 of the Municipal Corporation Act in Sub-section (1) has used the words "as may be made by the State Government in this behalf and such a prescription in the said enactments is not permissible inasmuch as the constitutional command is in favour of the Legislature alone. It is urged that the Legislature has abdicated its basic legislative powers. On a X-ray of the anatomy of both the provisions, it is luminiscent that the Legislature after providing certain parameters in Sub-section (1) of Section 138 as well as in Sub-section (1) of Section 126 has mentioned "subject to the rules, as may be made by the State Government in this behalf. The Constitution has allowed the State Legislature to endow such powers by law. The term "law" has been defined under Article 13(3)(a) of the Constitution and the said definition stipulates that law includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage in the territory of India to have the force of law. The rules which are statutory have the force of law. The Municipalities Act as well as the Corporation Act has the provisions authorising the State Government to make rules. Section 138 of the Municipal Corporation Act and Section 126 of the Municipalities Act stipulate subject to such rules. The rule making power is vested with the State Government. When the procedure is so laid down and is a part of the enactment

and it comes within the definition of the term "law" as per the Constitution. The real crux of the matter is whether the Legislature should have itself said everything and dealt with every spectrum in the statute or left some aspects to be filled up or supplemented or backed by the rules. It is contended with vehemence that by such prescription not only there is violation of the provisions of the Constitution but there is abdication of the essential power of the legislative functions of the State Legislature. As far as the first facet of this contention is concerned, we are not at all impressed as the provisions in the Constitution use the word "law" made by the Legislature. Legislature itself has authorised under the statute the State Government to make rules. The second question that forms a part of this submission is whether such a power could have been delegated. It is well settled in law that the Legislature can not visualize all circumstances. Some power has to be conferred on the rule making authority for carrying out the purposes of the Act. There are certain parameters and guidelines to which we shall advert to at a later stage. The decisions rendered in the cases of *In Re. Article 143, Constitution of India and Delhi Laws Act (1912) etc.* AIR 1951 332; *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, ; *Banarsi Das v. State of M.P.*, AIR 1958 SC 909; *D.S. Garewal Vs. The State of Punjab and Another*, ; *Corporation of Calcutta and Another Vs. Liberty Cinema*, ; *Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another*, ; *State of Mysore and Others Vs. M.L. Nagade and Gadag and Others*, ; *Darshan Lal Mehra and others Vs. Union of India and others*, ; *Almitra H. Patel and Another Vs. Union of India (UOI) and Others*, , support the proposition that the executive authority can be authorized to frame rules and work under the rules but the said rules should not transgress any of the Constitutional provisions and should not travel beyond the scheme of the enactment as that is the source from which they draw their power. In this context, we pay profitably refer to the decision rendered in the case of *Darshan Lal Mehra (supra)*, wherein a contention was raised that Section 172 (2) of the U.P. Nagar Mahapalika Adhiniyam, 1959 is unconstitutional because the Legislature has abdicated its basic function by delegating the essential legislative powers upon the Municipality to levy the taxes enumerated in the Section. It was contended before the Apex Court that the said power was unguided and uncanalised. In that context the Apex Court held as under:--

"Section 172 (2) of the Act authorises the Mahapalikas to impose the taxes mentioned therein, "for the purposes of this Act". The obligations and functions cast upon the Mahapalikas are laid down in various provisions of the Act. The taxes u/s 172 (2) of the Act, therefore, can be levied by the Mahapalikas only for implementing those purposes and for no other purpose. The Mahapalikas have to provide special civic amenities at the places where cinemas/theatres are situated. So long as the tax has a reasonable relation to the purpose of the Act the same can not be held to be arbitrary. The rate of tax to be levied and the persons or the class of persons liable to pay the same is determined by inviting objections which are finally considered and decided by the State Government.

There is no force in the argument that the legislature has abdicated its function to the Mahapalikas. The tax is levied in accordance with the statutory rules framed by the State Government and the said rules are laid before each House of the State Legislature for not less than 14 days and are subject to such modifications as the legislature may make during the session they are so laid. In the view we have taken, we are supported by the judgments of this Court, in *Gopal Narain Vs. State of Uttar Pradesh and Another*, and *Western India Theatres Limited v. Municipal Corporation of the City of Poona* (supra). We therefore, reject the contention raised by the learned Counsel for the petitioners."

In this regard, we may also refer with profit to the Division Bench judgment of this Court rendered in the case of *Shahid Hussain Zahind Hussain v. Municipal Council, Bewda and Ors.* 1995 MPLJ 581, wherein the Court was dealing with the procedure for imposition of tax and the role ascribed to the Municipality. In that context, the Division Bench held as under :--

"The procedure for imposition of tax is contemplated in Section 129 of the M.P. Municipalities Act and the Legislature has specially left it to the discretion of the State to frame rules to effectuate the purpose of the Act, i.e., collection under the M.P. Municipalities Act. Section 160 though it does not refer to collection of tax clearly authorises the Municipal Council to collect the levy of tolls, market dues and fees which may be imposed under the Act by auction. Section 127 (2) and Section 355 (2) (xxxv) authorise framing of any rules for the purpose of effectuating the purpose of the Act. All local authorities are invested with powers of taxation. The taxes have to be recovered. The taxes are required for their administration and as such it is left to the local authorities to impose and collect the taxes and lay down the policy in the bye-laws and the rules. If the purpose of imposition of tax is to collect revenue, then the further intendment is also to collect the same by easy convenient mode as will be in the interest of local administration. By laying down the right to collect toll or fee by auction, the Legislature itself intended that the authorities may make rules for imposition and collection of tax. Moreover, a perusal of Rule 12 of the M.P. Municipal Terminal Tax on Passengers (Regulation of Assessment and Collection) Rules, 1988, does not in any way suggest that the same are not within the scope and ambit of the powers conferred by the statute. There is yet another aspect of looking at the powers of the State to make rules. The rule making power may enumerate specifically matters on which the rules may be framed but that will not take away the general power conferred on the State to make rules for effectuating the purpose of the Act."

In view of the aforesaid enunciation of law what emerges is that the basic inherent legislative powers can not be delegated but to have a functional measure to carry out the purposes of the Act, delegation to that extent is permissible. It is worth noting here that what is canvassed before us is a different kind of proposition. It is urged with rigorous vehemence that the Legislature should have enacted the law itself and should not have left it to the executive. If

the aforesaid submission is tested on the touch-stone of the aforesaid pronouncement of law, in our considered opinion, the aforesaid argument is totally without any substance inasmuch as the Legislature itself has enacted the provision and in the provision itself has authorised the State Government to make rules. No basic legislative function has been abdicated and, therefore, the said submission does not merit any consideration and we unhesitatingly repel the same.

The next facet of contention relates to the aspect that Section 135 read with Section 138 of the Corporation Act authorises the Municipal Corporation to impose tax. There are provisions occurring therein that confer special or general power on the State Government to pass a general or special order. Such power has been conferred in flagrant violation of the Constitution of India after 73rd Amendment. In this context, we may refer with profit to a Division Bench decision of this Court rendered in the case of Smt. Meera Khandelwal Vs. State of Madhya Pradesh and Others, . In the aforesaid case, the Division Bench after referring to the scheme of the Act, held as under:--

"In this connection, learned Counsel invited our attention to the case of A.N. Parasuraman Etc. Vs. State of Tamil Nadu, . In this case, it was held :

"It is well established that determination of legislative policy and formulation of rule of conduct are essential legislative functions which can not be delegated. What is permissible is to leave to the delegated authority the task of implementing the object of the Act after the Legislature lays down adequate guidelines for the exercise of power."

In the instant case, the Legislature has laid down the procedure by amending Section 129 of the Act and left the State Government to implement the same by laying down the guidelines and which have been laid down in terms of Ex. P-I."

In view of the aforesaid, the submission though advanced with astute ingenuity is actually sans substance.

The next spectrum that is to be dwelled upon is whether the provisions under challenge are hit by Article 14 of the Constitution of India because of the absence of acceptable and reasonable guidelines and rational guidance for the purpose of computation of property tax. In this context, it is also to be seen whether the classification made for the purpose of taxation is permissible under the quintessential equality spectrum of Article 14 of the Constitution of India, but a significant one, which by no stretch of imagination can be lost sight of, in fact, it has become imperative on our part to deeply dwell upon the said contention which has been putforth by the learned Counsel for the petitioners with all the armoury at their command. The proposition is : by virtue of the amended provisions in both the enactments, the effect of the decision rendered in the case of Smt. Ratnaprabha (supra) which has been reiterated in the case of Indian Oil Corporation Ltd. (supra) has lost its effectiveness and cease to be a binding precedent. Before we enter into the debate qua Article 14, we are inclined to

address ourselves with regard to this aspect as it has an overwhelming impact on the controversy in issue. In the case of Smt. Ratnaprabha (*supra*) the Apex Court was dealing with the unamended provision contained in Section 138. The said provision read as under:--

"138. Annual value of land or building how to be ascertained.-

For the purpose of assessing land or buildings to the property tax,--

(a) the annual value of land, whether revenue paying or not, shall be deemed to be the gross annual rent at which the land might at the time of assessment reasonably be expected to be let from year to year;

(b) the annual value of any building shall notwithstanding anything contained in any other law for the time being in force be deemed to be the gross annual rent at which such building, together with its appurtenances and, any furniture that may be left for use or enjoyment therewith might reasonably at the time of assessment be expected to be let from year to year, less an allowance of ten per cent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross annual rent.

Explanation I :-- For the purpose of this clause it is immaterial whether the building and the land let for use or enjoyment therewith are let by the same contract or by different contracts, and if by different contracts, whether such contracts are made simultaneously or at different times.

Explanation II:--The term "gross annual rent" shall not include any tax payable by the owner in respect of which the owner and tenant have agreed that it shall be paid by tenant.

(c) the annual value of any building, the gross annual rent of which can not be determined under Clause (b), shall be deemed to be five per cent on the sum obtained by adding the estimated present cost of erecting the building, less any amount which the Commissioner may deem it reasonable to deduct for depreciation, to the estimated market value of the land valued with building as part of the same premises:

Provided that-

(i) in calculating the annual value of any land or building under this section the value of any machinery on such land or in such building shall be excluded; and

(ii) when a building is occupied by an owner under such exceptional circumstances as to render excessive a valuation of five per cent on the cost of erecting the building, less depreciation, a lower percentage may be taken."

In that context, Their Lordships of the Apex Court held as under:--

"It would be a proper interpretation of the provisions of Clause (b) of Section 138 of the Act to hold that in a case where the standard rent of a building has been fixed u/s 7 of the M.P. Accommodation Control Act, and there is nothing to show

that there has been fraud or collusion, that would be its reasonable letting value, but where this is not so, and the building has never been let out and is being used in a manner where the question of fixing its standard rent does not arise, it would be permissible to fix its reasonable rent without regard to the provisions of the M.P. Accommodation Control Act, 1961. This view will, give proper effect to the non-obstante clause in Clause (b), with due regard to its other provision that the letting value should be "reasonable".

In the case of Indian Oil Corporation Ltd. (supra), Their Lordships expressed the view as under:--

"8. It is thus clear that the decision of this Court in Ratnaprabha (supra), on the construction of Section 138 (b) of the M.P. Act has all along been understood and justified on the basis of the presence of the non-obstante clause in Section 138 (b) of the M.P. Act and the later decisions have distinguished it on that ground. That is the basis on which the decision in The Corporation of Calcutta Vs. Sm. Padma Debi and Others, was distinguished in Ratnaprabha (supra) itself. It is also obvious that a Bench of 3-Judges only in the later decision of this Court in Ratnaprabha (supra) and, therefore, none of the later decisions could be so read to have that effect. The Division Bench of the High Court in 1989 MPLJ 20 was clearly in error in taking the view that the decision of this Court in Ratnaprabha (supra) was not binding on it. In doing so, the Division Bench of the High Court did something which even a later co-equal Bench of this Court did not and could not do. The view taken by the Division Bench of the High Court in 1989 MPLJ 20 proceeds on a total misunderstanding of the law of precedents and Article 141 of the Constitution of India, to which it referred. But for the fact that the view of the Division Bench of the High Court proceeds on a misapprehensions of the law of precedents and Article 141 of the Constitution, it would be exposed to the criticism of an aberration in judicial discipline. The decision of the Division Bench of the High Court was, therefore, rightly overruled by the Full Bench in the impugned judgment."

Submission of the learned Counsel for the petitioners is that though there is total substitution of provision in both the Acts, namely, Municipal Corporation Act and Municipality Act, the said amendment does not take away the effect of the decision rendered in the case of Ratnaprabha (supra). On the contrary Mr. Jha has argued with vehemence that by way of amending the provisions the basic concept which was intrinsically woven to the fabric of Ratnaprabha (supra) has been wiped out. In this context, before we enter into the discussion whether the effect and impact of Ratnaprabha (supra) has been taken away, we think it appropriate to refer to certain decisions in the field under what circumstances such a thing does occur and the concept gets concretised.

In the case of I.N. Saksena v. State of Madhya Pradesh AIR 1976 SC 2250, the Apex Court expressed the view that Legislature can not by bare declaration, without more, directly overrule, reverse or override a judicial decision. It may, at any time in exercise of the plenary powers conferred on it by Articles 245 and

246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralising effect the conditions on which such decision is based. In the case of *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, , it has been clearly held that a Court's decision always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. A mere declaration by the Legislature that the decision of a Court could not be binding or would not be given effect to tantamounts to reversal of the said decision which is impermissible. In this regard we may refer with profit to the decision rendered in the case of *Utkal Contractors and Joinery (P) Ltd. and Others Vs. State of Orissa*, . Similar view has been expressed in the decision rendered in the case of *Bhubaneshwar Singh and Bimla Devi Poddar and Others Vs. Union of India (UOI) and Others*, , wherein Their Lordships ruled that the Legislature can make judgment and order of Competent Court ineffective if it removes the statutory vices which had led to those judgments or the base of invalidity of the provisions. In this regard, it is appropriate to refer to the Constitution Bench judgment rendered in the case of *State of Tamil Nadu Vs. M/s. Arooran Sugars Ltd.*, . In the aforesaid case the Apex Court referred to the decision rendered in the case *West Ramnad Electric Distribution Co. Ltd. Vs. State of Madras*, , *Udai Ram Sharma v. Union of India* AIR 1968 SC 1138, *Hindustan Gum and Chemicals Ltd. Vs. State of Haryana and Others*, ; and eventually expressed the view as under :--

"It is open to the legislature to remove the defect pointed out by the Court or to amend the definition or any other provision of the Act in question retrospectively. In this process it can not be said that there has been an encroachment by the Legislature over the power of the judiciary. A Court's directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such decisions could not have been given. This will include removal of the defect in a statute pointed out in the judgment in question, as well as alteration or substitution of provisions of the enactment on which such judgment is based, with retrospective effect."

This being the position of law the decisions at hand are to be seen whether by incorporating of amendments of provisions contained in Section 138 the position has so fundamentally altered that the decision rendered in the case of *Ratnaprabha* (supra) has lost its binding force. To put it differently, decision in the case of *Ratnaprabha* (supra) could not have been rendered in the manner as it has been done had the present provisions been in existence on the statute book. This being the heart of the matter, we have reproduced both the provisions and the relevant paragraph from *Ratnaprabha* (supra) which has been reiterated in the case of *Indian Oil Corporation Ltd. (supra)*. In the earlier provision, there was the non-obstante clause but the wording used in the unamended Section 138 were "might reasonably" had garnered immense significance. The unamended Section 126 of the Municipalities Act reads as under :--

"126. Definition of annual letting value.-- In this Chapter, The expression "annual letting value" shall mean-

(i) where any building or land is let out, the annual rent for which it is actually let out;

(ii) where the rent of any building has been determined under the Madhya Pradesh Accommodation Control Act, 1955 (23 of 1955), the annual rent as so determined; and

(iii) in any other case, the annual rent for which any building or land exclusive of furniture or machinery contained or situated therein or thereon, might reasonably be expected to let from year to year;

and shall include any payment made or agreed to be made by a tenant to the owner of the building or land on account of occupation taxes, insurance or other charges incidental to the tenancy:

Provided that if it appears to the Council that the annual rent of any building or land is much lower than the annual rent for which it might reasonably be expected to let at the time of assessment, such latter rent shall be deemed to be the annual letting value in respect of such building or land."

In the unamended provision there has been reference to the provision under the M.P. Accommodation Control Act and where there has been no determination under the said Act the words used were "reasonably be expected to let from year to year". Presently there is non-obstante clause in both the enactments. The Apex Court in the case of *Ratnaprabha* (supra), while interpreting the use of non-obstante clause in the statute in juxtaposition with the word "reasonably" in the enactment expressed the view as we have reproduced. On a perusal of Their Lordships' view, it is manifest that Their Lordships taking into consideration the concept of reasonableness and the existence of the rental statute in the State of Madhya Pradesh had arrived at the aforesaid conclusion. Similar view was reiterated in the case of *Indian Oil Corporation Ltd.* (supra). In that context Their Lordships had expressed the view in *Ratnaprabha* (supra) by further adding as under:--

"5. As has been stated, Clause (b) of Section 138 of the Act provides that the annual value of any building shall "notwithstanding anything contained in any other law for the time being in force" be deemed to be gross annual rent for which the building might "reasonably at the time of the assessment be expected to be let from year to year". While therefore, the requirement of the law is that the reasonable letting value should determine the annual value of the building. It has also been specifically provided that this would be so "notwithstanding anything contained in any other law for the time being in force". It appears to us that it would be a proper interpretation of the provisions of Clause (b) of Section 138 of the Act to hold that in a case where the standard rent of a building has been fixed u/s 7 of the Madhya Pradesh Accommodation Control Act, and there is

nothing to show that there has been fraud or collusion, that would be its reasonable letting value, but, where this is not so, and the building has never been let out and is being used in a manner where the question of fixing its standard rent does not arise, it would be permissible to fix its reasonable rent without regard to the provisions of the Madhya Pradesh Accommodation Control Act, 1961, This view will, in our opinion, give proper effect to the non-obstante clause in Clause (b), with due regard to its other provision that the letting value should be "reasonable".

Thus, the emphasis was on the reasonableness of the rent fixed under the M.P. Accommodation Control Act and a synthesis and harmony was accentuated by Their Lordships. In this context, we may profitably refer to the decision rendered in the case of East India Commercial Co. Pvt. Ltd. Vs. Corporation of Calcutta, . In the aforesaid case, Their Lordships referred to the decision rendered in the case of Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, , and took note of the fact that at the time the Municipal Act was enacted, West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 was applicable. Their Lordships referred to Sections 3, 4 and 8 of the Rent Statute. Their Lordships referred to the decisions rendered in the cases of The Corporation of Calcutta Vs. Sm. Padma Debi and Others, ; The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc., ; Dr. Balbir Singh and Others Vs. M.C.D. and Others, ; Morvi Municipality Vs. State of Gujarat and others, ; Bhagwant Rai and others Vs. State of Punjab and others, ; New Delhi Municipal Committee Vs. M.N. Soi and Another, and thereafter, Their Lordships came to analyse the decision rendered in the case of Ratnaprabha (supra). In Paragraph 15, the Apex Court stated thus :--

"15. One decision in which a different view was expressed is the case of Municipal Corporation v. Ratnaprabha. There also the question arose whether for fixing the gross annual rental value for the purpose of assessment to property tax, the Corporation must adopt as the annual value the standard rent which could be fixed under the Accommodation Control Act when the premises were let out. While answering this question in the negative, this Court distinguished the earlier decisions in the cases of Padma Debi, L1C, Guntur Municipal Council and M.N. Soi because the peculiar language of Section 138 (b) of the M.P. Municipal Corporation Act, 1956, which was differently worded as it contained a non-obstante clause. The said clause read as under:--

"138. (b) the annual value of any building shall notwithstanding anything contained in any other law for the time being in force be deemed to be the gross annual rent at which such building, together with its appurtenances and any furniture that may be let for use or enjoyment therewith might reasonably at the time of assessment be expected to be let from year to year, less an allowance of ten per cent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross annual rent."

It is for this reason, namely, the existence of non-obstante clause in Section 138

(b) of the said Act, that Ratnaprabha case (supra) was distinguished and was held to be non-applicable in Dewan Daulat Rai case because the Delhi Act did not contain any non-obstante clause like the one with which this Court was concerned in Ratnaprabha case (supra). This distinction has again been emphasized by this Court in Indian Oil Corporation Ltd. v. Municipal Corporation (supra) which was a case relating to Section 138 (b) of the M.P. Municipal Corporation Act, 1956, where Ratnaprabha case (supra) was followed and the other decisions in the cases of Dewan Daulat Rai, Balbir Singh were distinguished because of the existence of the non-obstante clause in Section 138 (b) of the said Act. In Section 168 of the Municipal Act with which we are concerned in the present case the non-obstante clause is not there. The Municipal Act is different from the M.P. Municipal Act, 1956. Section 168 of the Municipal Act is similar to the corresponding provisions in Delhi and in Andhra Pradesh and, therefore, it is the ratio of the decisions in the cases of Padma Debi, Dewan Daulat Rai and Guntur Municipal Council which should apply."

Thereafter, the Apex Court referred to Section 168 of the Municipal Act and expressed the view that the said provision does not contain any non-obstante clause so as to make the Tenancy Act inapplicable, nor does the Act itself provide the method or basis for determining the annual value. In this context we may also refer with profit to the decision rendered in the case of Asstt. General Manager, Central Bank of India and Others Vs. Commissioner, Municipal Corporation for the City of Ahmedabad and Others, . In that case the Apex Court was dealing with the provisions of Bombay Provincial Municipal Corporations Act, 1949 and the concept of annual letting value provided therein. There was reference to proviso (aa) to Sub-clause (ii) of Clause (1-A) of Section 2 of the aforesaid statute. The said provision defined the expression "Annual Letting Value". Proviso (aa) stipulates that where in respect of any building or land or premises, standard rent is not fixed u/s 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1944 "the annual rent received by the owner in respect of such building or land or premises shall, notwithstanding anything contained in any other law for the time being in force, be deemed to be the annual rent for which such building or land or premises might reasonably be expected to let from year to year with reference to its use". In that context, Their Lordships in Paragraph 17 referred to the cases of Ratnaprabha (supra) and Indian Oil Corporation Ltd. (supra). Later on there was reference to the cases of Padma Debi. (supra) and Guntur Municipal Council (supra). In Paragraph 31 Their Lordships observed that the case of Ratnaprabha (supra) was distinguished in many cases by the Apex court by saying that it is based wholly and exclusively upon the non-obstante clause found in the Madhya Pradesh Act. It is relevant to state here that in the case of Indian Oil Corporation Ltd, (supra) a plea to reconsider the correctness of the ratio in Ratnaprabha (supra) was rejected on the ground that the view taken by the Apex Court in the case Ratnaprabha (supra) was a reasonably permissible construction of Section 138 (b) of the M.P. Act. It was also observed that in later decisions the Apex Court invariably

distinguished the case of Ratnaprabha (supra) and not referred for reconsideration by a Larger Bench. We have referred to the aforesaid decisions only to show how the case of Ratnaprabha (supra) was dealt with in the aforesaid cases. In this regard a decision rendered by the three-Judge Bench of the Apex Court in the case of The Commissioner Vs. Griha Yajamanula Samkhyha and Others, , is useful to be referred to. In the aforesaid case, Their Lordships were considering the provisions of Hyderabad Municipal Corporations Act, 1955 and Hyderabad Municipal Corporations (Assessment of Property Tax) Rules, 1990. In the said case, the Apex Court referred to the decision rendered in the case of East India Commercial Co. Pvt. Ltd. Vs. Corporation of Calcutta, and thereafter, in Para 34 ruled thus :--

"34. Recently, in the case of East India Commercial Co. Pvt. Ltd. Vs. Corporation of Calcutta, , this Court taking note of several earlier decisions including The Corporation of Calcutta Vs. Sm. Padma Debi and Others, , Guntur Municipal Council v. Guntur Town Rate Payers" Asson., (1970) 2 SCC 802, Corporation of Calcutta Vs. Life Insurance Corporation of India, , Municipal Corporation, Indore and Others Vs. Smt. Ratnaprabha and Others, and Asstt. General Manager, Central Bank of India and Others Vs. Commissioner, Municipal Corporation for the City of Ahmedabad and Others, summed up the gist of the principles deducible from the decisions in the following words :--

"17. From the aforesaid decisions, the principle which is deductible is that when the Municipal Act requires the determination of the annual value, that Act has to be read along with Rent Restriction Act which provides for the determination of fair rent or standard rent. Reading the two Acts together the rateable value can not be more than the fair or standard rent which can be fixed under the Rent Control Act. The exception to this rule is that whenever any Municipal Act itself provides the mode of determination of the annual letting value like Central Bank of India case relating to Ahmedabad or contains a non-obstante clause as in Ratnaprabha case then the determination of the annual letting value has to be according to the terms of the Municipal Act. In the present case, Section 168 of the Municipal Act does not contain any non-obstante clause so as to make the Tenancy Act inapplicable and nor does the Act itself provide the method or basis for determining the annual value. This Act has, therefore, to be read along with Tenancy Act of 1956 and it is the fair rent determinable u/s 8 (1) (d) which alone can be the annual value for the purpose of property tax."

After so stating Their Lordships in Paragraph 35 expressed the view as under:--

"35. From the statutory provisions noted above, it is clear that the Act provides that the tax shall be levied at such percentages of the rateable value as may be fixed by the Corporation. It further provides the method and manner of determination of the rateable value. The determination of the annual rental value which is the basis for calculation of the rateable value is also provided in the Act and the Rules. The Act mandates that the Commissioner shall determine the tax to be paid by the person concerned in the manner prescribed under the statute

and the Rules. It is our view that the Act and the Rules provide a complete code for assessment of the property tax to be levied for the buildings and lands within the municipal corporation. There is no provision in the statute that the fair rent determined under the Rent Control Act in respect of a property is binding on the Commissioner. The legislature has wisely not made such a provision because determination of annual rent value under the Act depends on several criteria. The criteria for such determination provided under the Act may not be similar to those prescribed under the Rent Control Act. Further the time when such determination was made is also a relevant factor. If in a particular case the Commissioner finds that there has been a recent determination of the fair rent of the property by the authority under the Rent Control Act he may be persuaded to accept the amount as the basis of determining the annual rental value of the property. But that is not to say that the Commissioner is mandatorily required to follow the fair rent fixed by the authority under the Rent Control Act. The High Court therefore did not commit any error in holding that the determination of fair rent under the rent control statute will not be binding on the Commissioner for the purpose of assessment of property tax under the Act."

In this context, reference to the decision rendered in the case of *India Automobiles (1960) Ltd. Vs. Calcutta Municipal Corporation and Another*, is profitable. Their Lordships were dealing with Calcutta Municipal Corporation Act, 1980. In Paragraph 21 Their Lordships referred to two categories of cases and put them into two compartments after discussing the law in the field and eventually held as under :--

"21. A perusal of various judgments, relied upon by the learned Counsel for the parties, clearly shows that this Court has taken a consistent view regarding the determination of annual value of land or building for the purposes of determination of taxes under the Municipal Acts. On the basis of various statutes relating to the determination of the annual value for the purpose of the Municipal Acts, this Court has devised two distinct groups. One such group deals with the Municipal Laws of some States which do not expressly exclude application of the Rent Restrictions Acts in the matter of determination of annual value of a building for the purpose of levying municipal taxes and the other group deals with the municipal laws which expressly exclude application of the Rent Restriction Acts in the matter of determination of annual value of land or building or rental method. Whereas in the first category of cases the determination of annual value has to be made on the basis of fair or standard rent notwithstanding the actual rent even if it exceeds the statutory limits. In the other group where the restriction in the Rent Acts has been excluded, the determination of annual value of the building or rental method is referable to the method provided under the Municipal Act. Whereas *Padma Debt case*, *LIC case*, *Guntur Town Rate Payers'* case and *Dewan Daulat Rai case* deal with the first group of municipal laws, the cases in *Ratnaprabha case*, *AGM*, *Central Bank of India case*, *East India Commercial Co. case*, *Balbir Singh case*, *Indian Oil Corpn. case* and *Srikant case* deal with the second group. As already noticed, this Court

in LIC case dealt with the first category as in Section 168 of the Calcutta Municipal Corporation Act, there existed no non-obstantc clause. The observations of the Bench of this Court which dealt with the case on 10-10-2001 can not be taken in isolation."

In this context, we may refer with profit to the decision recently rendered by the Apex Court in the case of Municipal Corporation of Greater Mumbai and Another Vs. Kamla Mills Ltd., . Their Lordships in Paragraph 11 referred to earlier decisions in the field and specifically referred to the case of East India Commercial Co. (P) Ltd. (supra) and observed that the Municipal Act did not contain any non-obstante clause. Thereafter, Their Lordships referred to Paragraphs 21 and 23 of India Automobiles (1960) Ltd. (supra). We have referred to the aforesaid paragraphs to show how the Apex Court dealt with this kind of situation. Eventually in Para 31 Their Lordships scanning the provisions of Bombay Municipal Corporation Act in juxtaposition with Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 came to hold that the proposition urged by the respondent that in the facts of the said case, standard rent would be the limit of rateable value and the burden of proving that is always on the respondent.

For the purposes of our case, it is worth referring to the decision rendered in the case of State of Bihar and Others Vs. Sachchidanand Kishore Prasad Sinha and Others, . In the said case the decision of the Patna High Court striking down Clauses (a) and (c) of Sub-rule (1) of Rule 3 of the Assessment of Annual Rental Value of Holding Rules, 1993 framed by the State Government u/s 227 read with Section 130 of the Patna Municipal Corporation Act and the two notifications issued by the Patna Municipal Corporation under Rules 3 and 5 of the said Rules, were called in question. It is relevant to state here the High Court of Patna was of the opinion that the said clauses offended the equality clause enshrined in Article 14 of the Constitution of India. The Apex Court in Paragraph 4 referred to Rule 2(b) of the Rules therein which defines "annual rental value" to mean the rent that a holding is capable of fetching over a period of one year. Clauses (d) and (e) of Rule 2 define the expression "commercial holding" and "industrial holding". Rule 3 deals with classification of holdings, and provides that the holding in the Corporation area shall be classified by the Corporation on the three criteria, namely, situation of the holding, use of the holding and type of construction, under situation of the holding, three further criteria were mentioned, namely, holdings on the Principal Main Road, Holdings on the Main Road and Holdings other than the aforesaid two. Under the heading "Use of the Holding", the Rule provides further four classifications, namely, purely residential; purely commercial or industrial (whether self owned or otherwise); partly residential and partly commercial/industrial and all other holdings other than the aforesaid three. In the heading "Type of construction", there are three categories, namely, Pucca building with R.C.C. roof, Pucca building with asbestos/corrugated sheet roof and in the third all other buildings not covered by the aforesaid two. Rule 6 therein provide rate of tax. Rule 7 empowers the

Corporation to revise the rate of tax on Annual Rental value. The Apex Court referred to various decisions in the field, namely, *The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another*, ; *State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and Others*, and *P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others*, and eventually in Paragraph 16 came to hold that the grounds upon which the Rules have been invalidated are unsupportable in law. Their Lordships also in Para 17 held that grounds upon which the notifications have been invalidated are also unsustainable in law.

Recently in the case of *Ram Vimal Krishna and Ors. v. State of Bihar and Ors.* AIR 2003 SCW 3360, a two-Judge Bench of the Apex Court was dealing with the Patna Municipal Corporation Act referred to Sections 133, 137, 138 (1), 149 and 150 of the Act and after scanning the scheme of the Act in Paragraph 13 referred to the decision rendered in the case of *S.K.P. Sinha (supra)*, wherein the constitutional validity of the Rules was upheld along with the two notifications. In Paragraph 14 Their Lordships expressed the view as under :--

"As a result of the 1993 Rules, the provisions of Sections 130 and 136 are no longer relevant for our purposes as they have laid down a different method of valuation and assessment. There is no dispute that the Corporation followed the Rules and the notifications issued thereunder in preparing Valuation and Assessment List thereby revising the holding tax for the first time since 1978-79."

Their Lordships in Para 18 expressed the view as under :--

"18. The third submission was not accepted as the High Court held that Section 149 (1) itself provided for area-wise assessments in respect of parts of Patna. The High Court also accepted the explanation given by the Corporation that they had given different publications for different areas since they did not have sufficient working hands and because of other administrative difficulties. Further, it held that since there was no allegation of any malafides. "The action of the respondents is saved in this case but keeping in view the spirit of Article 14 of the Constitution of India in any view they would be well advised to take prompt steps in advance so that a general assessment for the entire area under the Corporation may be made effective from one date."

And eventually in Para 22 the Apex Court laid down thus:--

"22. The next submission of the appellants that the Corporation does not have the power to issue separate assessment lists in respect of different kinds of properties in different area is also not tenable. The 1993 Rules and the notifications issued there-under clearly provide for assessment based on the localities as well as different kinds of properties, classified according to its user and the type of construction. Additionally, the proviso to Section 138 (1) expressly indicates that assessment lists may be prepared in respect of a specific area within the Corporation. Finally, Section 149, Sub-section (1) itself shows that assessment lists may be made in respect of "any part of Patna".

We have referred to the aforesaid decision in extenso to highlight that the criteria prescribed by Rules in the State of Bihar are almost *pari materia* to the provisions and the rules which are subject-matter of assail in the cases at hand.

At this juncture, we may hasten to state that while dealing with the effect and impact of the decision rendered in the case of *Ratnaprabha* (supra) and *Indian Oil Corporation Ltd.* (supra), we have referred to the various decisions dealing with the imposition of property tax in various States and how they have been dealt with by the Apex Court. We have already referred to few citations to show that by legislative process the base of a decision can be taken away. We have referred to the earlier provisions which were considered in the case of *Ratnaprabha* (supra) and *Indian Oil Corporation* (supra). The moot question that arises for consideration whether by virtue of the present amendment, the effect and impact of both the decisions have been taken away. It is worth noting here that *Ratnaprabha* (supra) is the parent decision in the field which was followed in *Indian Oil Corporation Ltd.* (supra) and it was held that the said decision still holds the field as far as the State of Madhya Pradesh is concerned. By that time the amendments had not come into force. The amendment in the statute book were brought in the year 1997. Rules were framed thereafter. We have referred to the other decisions how the Apex Court from time to time had dealt with similar provisions and rules, and how Their Lordships have delineated with regard to the non-obstante clause. The rigor of language used in the statute and concept of synthesis of the non-obstante clause and reasonableness was the foundation of the *Ratnaprabha* (supra). We may repeat at the cost of repetition that in the earlier provision under the Corporation Act despite the non-obstante clause the reasonable criteria was mentioned. To harmonise the provisions subsisting in the Corporation Act then and the prevalence of the provisions of the M.P. Accommodation Control Act, Their Lordships took the view in the case of *Ratnaprabha* (supra) which we have reproduced earlier. By way of amendment the Legislature in the main enactment itself has laid down number of criteria. It has also prescribed further criteria in the Rules. It is pertinent to state here that unamended provision of Section 126 of the Municipalities Act, 1961 there was provision for determination of annual letting value under the Madhya Pradesh Accommodation Control Act, 1955. Under the Municipal Corporation Act in the unamended provision of Section 138 there was use of certain words, namely, "enjoyment therewith might reasonably at the time of assessment be expected to be let from year to year". If both the statutes are taken into consideration in one there was reference to the M.P. Accommodation Control Act and in the other there was reference to concept of enjoyment therewith might reasonably at time of assessment be expected to be let from year to year. In that context, Their Lordships laid down the law as in *Ratnaprabha* (supra). Both the provisions have undergone a sea change. In Section 126, there is no reference whatsoever to M.P. Accommodation Control Act and there is use of non-obstante clause. Similarly, in the Corporation Act the provision that existed earlier does not find mention. The total complexion has been changed. The marrow and fabric of the

provision has been amended. The grammar of synthesis in a way has become non-existent. In this backdrop, if we hold that there are guidelines in the provision itself and the rules have been made to supplement the guidelines and there is immense guidance in the provision not to invite the frown of Article 14, it has to be held that the effect of the decision rendered in the cases of *Ratnaprabha* (supra) and *Indian Oil Corporation* (supra) has been wiped away or to put it differently the ratio laid down therein is no more applicable to the State of Madhya Pradesh. To say so we have to proceed to test the aforesaid provisions on the anvil and touchstone of Article 14 of the Constitution of India. We have already reproduced the provisions and they need not be re-stated. Before we consider the provisions, we think it proper to quote a passage from the decision rendered in the case of *R.K. Garg and Others Vs. Union of India (UOI) and Others*, wherein the Constitution Bench expressed thus :--

"Now while considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well established principles which have been evolved by the Courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.

.... Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved.

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adaption of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it can not provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it can not be struck down as invalid. The Courts can not, as pointed out by the United

States Supreme Court in *Secretary of Agriculture v. Central Roig Refining Co.*, be converted into Tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too can not of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues."

In this context, it is also profitable to refer to the observation of the Apex Court in the case of *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*,

"Let us not evolve, through imperceptible extensions, a theory of classification which may subvert, perhaps submerge, the precious guarantee of equality. The eminent spirit of an ideal society is equality and so we must not be left to ask in wonderment; what after all is the operational residue of equality and equal opportunity?"

We have referred to the aforesaid decisions as the learned Counsel for the petitioner have urged with vehemence that the classification by zonal system is totally impermissible and the rent should be the sole criteria. In Section 126 of the Municipalities Act, it is noticeable that the Legislature has referred to determination of the annual letting value of land or building on the basis of per square foot of the built up area or per square foot of the land and while doing so the factors which are to be taken into consideration are the area in which the building or land is situate, its location, situation, purpose for which it is used, its capacity for profitable use, quality of the construction of the building and other relevant factors. Quite apart from the above, the Legislature has not made the criteria exhaustive and further stipulated subject to the rules, as may be made by the State Government in this behalf. Similar language has been used in Section 138 of the Municipal Corporation Act. Rule 3 of the Rules deals with the classification of municipal area. Rule 4 of the Rules deals with classification of buildings and lands. It classifies the buildings on the basis of quality of construction, the basis of use, and the basis of location. Rule 5 deals with Rate of annual letting value. If the rules are understood in proper perspective and reflected in the logical prism, we have no hesitation in holding that the provisions which have been provided for classifying the buildings are reasonable, rational, acceptable and non-arbitrary. In fact, we may say without any scintilla of doubt

that the provisions of the Bihar Act which were dealt with in the case of S.K. Sinha (supra) were almost pan materia with the provisions which are under challenge. It is contended by the learned Counsel for the petitioners that Rule 3 of the Rules stipulates that every municipality shall classify the municipal area in more than one zone on the basis of as far as possible, similar locations of the buildings and lands (per square foot prevailing market value) situated therein. Severe criticism has been advanced that there can not be classification of the municipal area on zone basis. It is urged that if zone is accepted as the sole criterion it would lead to incurable anomaly as in a particular zone the buildings are not the same and the construction is not the same. At this juncture, we may state that the learned Counsel for the petitioners while urging the aforesaid submission with vehemence, in our considered opinion, had read Rule 3 in total isolation but the same is not to be read as if the singular rule governing the whole scenario. It has to be read along with Rule 4 which deals with classification of buildings and lands on three criteria, namely, quality of construction, the basis of use and the basis of location. That part, needless to emphasize the provisions in the main enactment are to be taken into consideration. Thus, classification of the municipal area on zone basis is not the sole governing formula for classification. As we have understood there will be classification of area by zone and thereafter there would be classification of building and land situated in the zone shall be done as per Rule 4 and the rates are to be determined. Thus, the submission made by the learned Counsel for the parties in this regard is totally sans substance.

Quite apart from above, it is worthnoting that in Section 126 (1) of the Municipalities Act and 138 (1) of the Municipal Corporation Act while providing guidelines the Legislature has used the words "other relevant factors". In this context, we may profitably refer to the decision rendered in the case of The Commissioner Vs. Griha Yajamanula Samkhya and Others, , wherein the Apex Court dealt with the Hyderabad Municipal Corporation Act. In that case the Apex Court was considering Hyderabad Municipal Corporations (Assessment of Property Tax) Rules, 1990. The three-Judge Bench while dealing with the provisions in question took note of the conclusions arrived at by the Andhra Pradesh High Court in Para 2 which were to the effect that the annual rental value to be fixed by the Commissioner in the Corporation areas shall be limited to the fair rent either determined or determinable under the A.P. Buildings (Lease, Rent and Eviction) Control Act and the Rules 3 to 7 of the Municipal Corporations Rules are to be read only as enabling provisions for the Commissioner to aid him in discharge of his function under the Corporation or the Municipal Act to arrive at working figures for the purpose of determination but not as fettering his discretion in the matter as conferred upon him under the statutes. Their Lordships referred to earlier cases and in Para 35 held that the Commissioner is not mandatorily required to follow the fair rent fixed by the authority under the Rent Control Act. We have referred to this case again as in the case of Kamla Mills Ltd. (supra) Their Lordships analysed the ratio of the

decision of the said case in Para 22 and expressed the view as under:--

"22. We are unable to accept the contention of Shri Singhvi that his case falls within the ratio of *Griha Yajmanula Samkhya & others* (supra). In that case the municipal legislation in Hyderabad specifically contained detailed provisions for fixation of monthly or yearly rent. Examining the statute before it, this Court took the view that the statutory provisions required the tax to be levied on the basis of rateable value as fixed by the Corporation and there was further provision in the Act as to the method or manner of determination of the rateable value. Hence, this Court observed (vide Paragraph 35), "the Act mandates that the Commissioner shall determine the tax to be paid by the person concerned in the manner prescribed under the statute and the rules. It is our view that the Act and the Rules provide a complete code for assessment of the property tax to be levied upon buildings within the Municipal Corporation. There is no provision in the statute that the fair rent determined under the Rent Control Act in respect of a property is binding on the Commissioner. The Legislature has wisely not made such a provision because determination of annual rent depends on several criteria". We are, therefore, unable to accept the contention of Shri Singhvi in this regard."

At this juncture, it is necessitous and useful to refer to decision rendered in the case of *India Automobiles (1960) Ltd.* (supra) (though we have already referred and quoted Para 21 of the said judgment) wherein Their Lordships in Paras 23 and 24 expressed the view thus :--

"23. As already noticed even without specific determination, the standard rent was held to have been statutorily determined u/s 2 (10) (b) of the Rent Act. Upon analysis of the various municipal laws and the judgments of this Court it is held that in cases where the municipal laws exclude the applicability of the Rent Acts by incorporating non- obstante clause in the taxing statute, the powers of the authorities under the Municipal Acts are not circumscribed by the limits indicated in *Padma Debi* case and followed in that group of cases. In cases where the fair rent payable by the tenant has been determined and there is no justification for refusing to accept that fair rent as rental value of the premises, the municipal authorities should generally accept the standard rent fixed, notwithstanding the non-applicability of the Rent Acts because such a view would be a reasonable guideline to determine the rate of rent at which such land or building might, at the time of assessment, be reasonably expected to let from year to year. The rent which the tenant is receiving from his sub-tenant is also an important statutory consideration for determining the rent at the time of assessment to which the property might reasonably be expected to be let from year to year. Such a consideration is also justified on the principles of reasonableness. We can not agree that in all cases, notwithstanding the non- obstante clause the annual rental value can not be fixed beyond the standard rent determined or determinable under the rent statute. We also find it difficult to hold that in all cases the rent actually paid by the sub-tenant to the tenant be

taken as a sole criterion for determining the annual value on the assumption that such land or building might, at the time of assessment, is reasonably expected to get the aforesaid amount of rent if let from year to year. The argument that the rent actually received by the owner should always be deemed to be reasonable rent in the absence of fraud, collusion and other extraneous considerations is too general and broad proposition of law which can not be accepted for the purposes of determining the annual value of the property for the purposes of Section 174 of the 1980 Act. In the light of clear and unambiguous provisions of Section 174 of the 1980 Act, it can not be held that the amount realised by a tenant from a sub-tenant can not, at all be taken into consideration for the purposes of determining the gross annual rent in the absence of extraneous considerations. There is no substance in submission of the learned Counsel appearing for the appellant that allowing the municipal corporations to assess the annual rateable value on the basis of the income of a tenant from the property would be grossly unfair and would have the effect of rendering the rate provisions of the Act unreasonable, arbitrary and unconstitutional. The Act itself has taken care by making sufficient provision in Sections 193 and 194 regarding the liability to pay the rent and apportionment of such liability when the premises are assessed, let or sub-let. On proof of creation of sub-tenancy, the owner of the building may also be entitled to seek eviction of their tenants under the relevant provisions of the Rent Acts applicable in the State where the land or property is located. We find some substance in the submission of the learned Counsel for the appellant that permitting the municipal authorities to assess the annual value on the basis of the rent paid by the sub-tenant to the tenant and fixing its liability on the owner may adversely affect the owners of the buildings who have let their premises at a time when rents were meagre and who under the rent control statutes are deprived of getting possession back of the lands and buildings from their tenants. The 1980 Act, therefore, requires application of mind by the municipal authorities to determine the rents on the basis of reasonableness by keeping into account all relevant circumstances including the actual rent received by the owner, hypothetical standard rent, the rent being received by the tenant from his sub-tenant and other relevant consideration, such as prevalent rate of rent of lands and building in the vicinity of the property being assessed. Only because the owner of the building is not getting the same rent which the sub-tenant is paying to his lessor, can not be made a basis to deprive the corporations from determining the annual valuation and taxing the land or building on that basis. If such a plea is accepted, it would be against the provisions of the statutes which has been enacted to provide civic services in the form of water, drainage, sewerage, collection, removal and disposal of solid waste, fire prevention and fire safety maintenance of street and public places etc., in the municipal area where such land or building is situate.

We do not find any conflict in the judgments of this Court so far as the determination of annual value of the property under the municipal laws is concerned. Distinction, if any, is based upon the relevant provision of the statute

of a State with which this Court was dealing, particularly with respect to such statutes which contained a non-obstante clause. We are of the view that the basis for determination of annual rent value has to be the standard rent where the Rent Control Act is applicable and in all other cases reasonable determination of such rent by the municipal authorities keeping in view various factors as indicated herein earlier, including the rent which the tenant is getting from his sub-tenant. In appropriate cases the owner of the property may be in a position to satisfy the authorities that the gross annual rent of the building of which the annual valuation was being determined can not be more than the actual rent received by such owner from his tenant. The municipal authorities shall keep in mind the various pronouncements of this Court, the statutory provisions made in the specified Municipal Acts, keeping in mind the applicability or non-applicability of the Rent Act and the peculiar circumstances of each case, to find out the gross annual rent of the building including service charges, if any, at which such land or building might, at the time of assessment, be reasonably expected to let from year to year in terms of Section 174 of the 1980 Act."

In view of the aforesaid, we can not accede to the submission of the learned Counsel for the petitioners that once there is provision of fixation of standard rent under the M.P. Accommodation Control Act, that must be the sole criterion as laid down in Ratnaprabha (supra). By virtue of the amendment that has come into existence in both the statutes a complete code has come into being. In view of the aforesaid, we are of the considered opinion that the classifications made, the guidelines given, the guidance provided create an inbuilt mechanism for the assessment of the property tax and we do not perceive any kind of unreasonableness or arbitrariness or irrationality which would be defiant of Article 14 of the Constitution. In view of the aforesaid we find that the provisions being a complete code accentuating on the conception of reasonableness in itself, the said reasonableness is not to be controlled or governed by the provisions of M.P. Accommodation Control Act. The Municipal Corporation is not bound under the obtaining legislative provisions of the M.P. Accommodation Control Act. The concept of standard rent does not play the centripetal or the pivotal role. However, we may hasten to add, it would be a factor to be taken note of while passing the resolution as the statute has engrafted the words "other relevant factors" which have an inseparable and inescapable nexus with fixation of the annual letting value of the building per square foot. However, it is imperative to clarify that the standard rent fixed in respect of a singular house in a zone would not persuade the Municipality in the matter of determination. There has to be fixation of standard rent in respect of cluster of houses to have the impact and effect on resolution. The singular fixation should succumb to the cluster quotient which have a role in the zonal system. As we have held that Sections 126 (1) and 138(2) are totally reasonable and do not offend Article 14 of the Constitution, we irresistibly come to the conclusion that the effect and import of Ratnaprabha (supra) which has been followed in Indian Oil Corporation Ltd. (supra) have lost their effectiveness and binding nature inasmuch as the base of

the aforesaid decisions have been removed by the legislative amendment which as fundamentally altered the situation.

Now we shall deal with the submissions relating to Section 138(3) of the Municipal Corporation Act. It is submitted by the learned Counsel for the petitioners that Section 138 (3) creates a discrimination inasmuch as a person who files the return on his own and there is a variation more than ten per cent, he is compelled to pay five times of the penalty whereas a person who has not taken the burden of self-assessment and adopted evasive attitude, is not visited with penalty. The aforesaid submission on a first flush looks quite attractive but on a deeper probe its fulcrum is sans substance. It is because though there is a provision for imposition of penalty, we are inclined to hold that if an owner of a building can explain to the authorities concerned that he had acceptable reasons to assess the tax in the manner in which he has done the authority concerned can reduce the penalty depending upon the facts and circumstances of the case and using the discretion. Our view gets fortified by the decision rendered in the case of State of Madhya Pradesh and others Vs. Bharat Heavy Electricals, . It is noticeable that a person who does not file a return is liable to pay surcharge. A person who files the return does not incur the liability to pay surcharge. Thus, if we interpret the provision of Section 138 (3) a penalty can be reduced depending upon the facts and circumstances of the case, but the surcharge is not subject to reduction, there is no difficulty in upholding the constitutional validity of the aforesaid provision.

The next facet of contention relates to inconsistency. It is submitted by learned Counsel for the petitioners that though Section 126 of the Municipalities Act and 138 of the Municipal Corporation Act have been amended, yet as the other provisions have not been amended a discordant note crops up in both the enactments. The learned Counsel have referred to Sections 139 to 149 of the Municipal Corporation Act. Section 139 deals with requisition of name of owner. Section 140 deals with the treatment of property which is let to two or more persons in separate occupancies. Section 141 deals with responsibility for payment of property tax. Section 142 deals with employment for the purposes of assessment. Section 143 deals with assessment of annual value and duration of assessment. Section 144 deals with returns for purposes of valuation. Section 145 deals with public notice and inspection of valuations. Section 146 provides notice when valuation made for the first time is increased. Section 147 provides for notice of objection of valuation. Section 148 deals with investigation of objection by the Commissioner and Section 149 deals with Appeals to District Court. It is contended that Section 138 (4) provides for appeal to the Mayor-in-Council though the assessment is made by the Corporation and this is a larger body and hence a smaller body can not stand in appeal. The aforesaid submission has to be read in the backdrop of Section 142. Section 142 reads as under:--

"142. Employment for the purposes of assessment.-- (1) The Corporation may, if

it thinks fit, employ any person to determine the annual value of lands and buildings in accordance with the principles laid down in Section 138.

(2) Any person so employed shall have power, at all reasonable times and after giving due notice, and on production, if so required of authorisation in that behalf from the Commissioner, to enter on, survey and value any land or building within the city which the Commissioner may direct him to survey and value.

(3) If any person wilfully delays or obstructs any person in the exercise of any of his powers under this section, he shall be liable to a fine not exceeding one hundred rupees."

It is also essential to reproduce Section 135 in this context which was substituted by M.P. 18 of 1997 and came into force with effect from 21-4-1997. It reads thus :--

"135. Imposition of property tax.-- (1) Notwithstanding anything contained in this Act, the tax under Clause (a) of Sub-section (1) of Section 132 shall be charged, levied and paid, at the rate not less than six per cent and not more than ten per cent of the annual letting value, as may be determined by the Corporation for each financial year."

If the above provisions are read in juxtaposition, it is perceivable that penalty is imposed by the assessing officer so there is no technical difficulty for preferring an appeal before the Mayor-in-Council. We may clarify here the appeal to Mayor-in-Council lies only against the order passed under Sub-section (3). Sub-section (3) deals with imposition of penalty. We may observe that an assessee or building owner may accept the assessment but may be aggrieved by imposition of penalty, in that case appeal shall lie to the Mayor-in-Council. It is contended by the learned Counsel for the petitioners that there are two forums for appeal and in this context reference has been made to Section 149 (1) which is relevant for our present purpose reads as under:--

"149. Appeals to District Courts.-- (1) If any dispute arises as to the liability of any land or building to assessment or as to the basis or principle of assessment or as to the amount of tax assessed, an appeal shall lie from the decision of the Municipal Commissioner to the District Court, whose decision shall be final."

We are inclined to read the provisions in a harmonious manner. We have already stated that as far as penalty is concerned, appeal shall lie to the Mayor-in-Council but as far as the assessment is concerned it is in a different compartment and is a different conception. Section 149 deals with assessment. On a harmonious reading we would like to interpret that if a person is aggrieved by an order of assessment, he can prefer an appeal to the District Court and the District Court shall appropriately deal with it and if eventually the assessment order is quashed or the quantum is reduced, he may proportionately direct for reduction of penalty. If the order of assessment remains untouched, the District Court would have no option to deal with penalty inasmuch as that power is not

vested u/s 149 and Section 138 (4) deals with that facet. We are inclined to read it in that manner so that both the provisions can co-exist. In view of our preceding analysis, we do not find any inconsistency in the provision. Similar is the situation in the Municipalities Act. In the Municipalities Act Section 126 (4) provides that an appeal shall lie to the President-in-Council against the order passed under Sub-section (3). An appeal lies to Civil Judge u/s 139. The relevant part of the said provision reads as under :-

"139. Appeal to Civil Judge.- (1) If any dispute arises as to the liability of any land or building to assessment or as to the basis or principle of assessment or as to the amount of tax assessed an appeal shall lie from the decision of the Council to the Civil Judge, Class I having jurisdiction over the Municipal area and if there be no Civil Judge, Class I at the headquarter of the Municipality to the Civil Judge, Class II having jurisdiction at such headquarter and if there be no Civil Judge, Class II at such headquarter to the Civil Judge, Class III having jurisdiction, and in case of more than one such Civil Judges at the headquarter or having jurisdiction as the case may be, to such one of them as the District Judge may specify."

We are of the considered view the analysis which has been done in respect of the Municipal Corporation Act shall also apply to the provision under Municipalities Act. Accordingly, we do not perceive any inconsistency therein.

At this stage, it has become imperative to advert to the contention raised at the Bar that resolutions have been passed by the Municipal Corporation and Municipalities without following due procedure and they are epitomes of whim and caprice. It is urged by Mr. Jha, learned Deputy Advocate General that there is statutory provision to challenge the resolution. Section 421 of the Municipal Corporation Act confers power on the Government to suspend any resolution or order. It is contended by him that in view of the aforesaid provision the State Government has authority to suspend the resolution passed by the Municipal Corporation if it is not in conformity with the law or the rules. Similarly, in the Municipalities Act u/s 323 power has been conferred on the Divisional commissioner, Collector or any other officer authorised by the State Government, in this behalf, to suspend the execution of any order or resolution of a Council on certain grounds. Section 326 authorises the State Government to conduct an enquiry into Municipal matters. Reading the aforesaid provisions in proper perspective we have no hesitation in our mind that the resolution passed by the Municipal Corporation or Municipality can be assailed before the appropriate authority. What would be the parameters of challenge need not be stated here. We only state that the same are not immune from challenge. However, we would like to make it clear here that while challenging the resolution of a Municipal Council, every facet of resolution can be the subject-matter of assail.

We have already indicated earlier that an appeal with regard to imposition of penalty either by Municipal Corporation or by Municipal Council can be challenged under Sections 138 (4) and 126 (4) respectively before the competent body

mentioned therein. We have only confined the aforesaid challenge to the penalty. We have held so as Section 149 of the Corporation Act provides and appeal to the District Judge. Sub-section (1) of Section 149 categorically postulates with regard to liability of any land or building to assessment or as to the basis or principle of assessment or as to the amount of tax. What is to be clarified here that this provision has to be read in harmony and in consonance or in tune with Section 138 of the Act. Section 138 confers power on the Municipal Corporation to pass resolution for determining the annual letting value of the land on the basis of per square foot of the built up area of a building or per square foot of land. Keeping certain facets in view rules have been framed by making various classifications. If a person who is affected by the imposition of property tax can assail the order u/s 149 calling in question the quantum, liability, categorization of the building and various other aspects which fall in the rule. But as far as the rate provided in the resolution square foot basis can not be challenged in appeal before the District Court. We may hasten to clarify that while passing the resolution, it is incumbent on the part of the Municipal Corporation or the Municipality to act in accordance with the statute and the rules. The rules provide various type of classifications which include quality of construction, basis of use and basis of location. A resolution can not be passed stipulating a flat rate putting all the lands or buildings into one category. The resolution must clearly spell out what is the rate qua a particular category. Once such a rate is fixed that may be subject to challenge before the appropriate authority as has been stated earlier but as far as the assessment of individual building, it can be assailed before the appellate authority in respect of every aspect except the rate.

In view of our preceding analysis, we proceed to enumerate our conclusions in seriatim :--

- (i) The concept of self-governance as provided under Chapter IX-A of the Constitution is not absolute and subject to law made by the Legislature.
- (ii) Neither the Municipal Corporation nor Municipality can impose tax independently without the authority of State Legislature as that would tantamount to create a sovereign within a sovereign which is impermissible in our constitutional framework and philosophy.
- (iii) The contention that the Legislature could not have made law in respect of the role of Municipal Corporation and Municipality is absolutely unfounded and baseless, (iv) The submission that even if the Legislature has the competence to make law, it should have provided in a specific manner in the main enactment and not left a part of it to the executive, is sans substance.
- (v) There is no abdication of basic legislative function by the Legislature. The proponent that there is excessive delegation is devoid of merit.
- (vi) The decision rendered in the case of Ratnaprabha (supra) which has been followed in the case of Indian Oil Corporation Ltd. (supra) have lost their effectiveness because of the base of the said pronouncements has been wiped

out by amendment brought in the enactments which has fundamentally altered the situation.

(vii) Sections 138 of the Municipal Corporation Act and Sections 126, 127 and 127-A of the Municipalities Act are not defiant of Article 14 of the Constitution of India and do not suffer the frown of the equality clause or any kind of arbitrariness or irrationality.

(viii) Though amendments in respect of other provisions in both the statutes have not been carried out, there is no inconsistency and a harmonious construction is possible and, therefore, on that score the aforesaid provisions can not be declared as ultra vires.

(ix) With regard to imposition of penalty as provided u/s 138 (3) of the Corporation Act and 126 (3) of the Municipalities Act, it is inappropriate to state that the authorities have no discretion to reduce it or there is an unrebutable presumption in that regard. If the property owner can satisfactorily show that there was bona fide error or mistake on his part, the competent assessing authority can reduce the penalty.

(x) The property owner who is under legal obligation to file the return in regard to self assessment but fails to do so, would be liable to pay surcharge which is irreducible.

(xi) The imposition of penalty can be assailed by way of an appeal before the Mayor-in-Council inasmuch as the assessment is done by an authority so designated under the statute and the Mayor-in-Council being the microcosm of Municipal Corporation has the competence to deal with the same in appeal.

(xii) It would be incumbent on the Municipal Corporation or the Municipality to pass a resolution by fixing the rate on per square foot basis taking into consideration the concept of standard rent fixed under the M.P. Accommodation Control Act though fixation of standard rent would not be the governing or principal primal factor but would be one of the factors. It is also clarified that the fixation of standard rent in respect of a singular house would not meet or subserve the purpose of guidance but when there is fixation of standard rent in respect of a cluster of houses or group of houses that would be taken cognizance of by Municipality or by Municipal Corporation while fixing the annual letting value per square foot on zone basis.

(xiii) If a property owner is affected by the resolution passed by the Municipal Corporation or Municipality can assail the same in entirety before the appropriate authority as provided under both the statutes which we have indicated hereinabove.

(xiv) If a person is aggrieved with regard to assessment of a property situate inside the Corporation can assail it before the District Judge u/s 149 of the Corporation Act and if a person whose property is situated in the Municipality and is grieved by an order of assessment can file an appeal before the Civil Judge as

provided u/s 139 of the Municipalities Act. It is hereby made clear that the challenge can be made on every ground except on the ground pertaining to rate as fixation of rent is intrinsically collective and can only be assailed when resolution is challenged before the competent authority.

(xv) It is imperative to state here that it is requisite on the Municipal Corporation as well as the Municipality to fix the rent on category basis taking into consideration the classifications made under the principal enactment and the 1997 Rules.

The writ petitions are accordingly disposed of without any order as to costs.