

(1966) 09 GUJ CK 0002
In the Gujarat High Court

Case No : Special Civil Application No's. 846 of 1963 and 765 of 1964

Shri Prithvi Cotton Mills Ltd.

APPELLANT

Vs

Broach Borough Municipality and Others

RESPONDENT

Date of Decision : 10-09-1966

Acts Referred:

Bombay Municipal Boroughs Act, 1925 — Section 73(1), 75, 78, 79, 80
Civil Procedure Code, 1908 (CPC) — Section 115, 148, 96
Constitution of India, 1950 — Article 141, 145(4), 145(5), 226, 245
Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963 — Section 1, 3

Citation : AIR 1968 Guj 124 : (1970) 11 GLR 226

Hon'ble Judges : N.M. Miabhoy, C.J.; J.B. Mehta, J

Bench : Division Bench

Advocate : M. Nanavati and R.M. Vin, for the Appellant; B.R. Shah, J.G. Shah, J.M. Thakore A.G. and K.L. Talsania, Addl. Govt. Pleader, for the Respondent

Judgement

Miabhoy, C.J.

(1) These two petitions raise common questions of law and some common questions of fact. Each of the petitions has a common petitioner and a set of common respondents. Therefore, both the petitions were heard together and a common argument was addressed by learned counsel on both sides. With their consent, we are writing this common judgment which would dispose of both the petitions.

(2) The two petitions challenge the validity of a house tax imposed by the Broach Borough Municipality and embody prayers for issuance of a writ of mandamus, a direction or an order for restraining respondents, their agents and servants from enforcing the tax, and the provisions of law under which the tax is sought to be levied from petitioner.

(3) The facts which are required to be stated to dispose of the two petitions are as follows: In both the petitions the common petitioner is Prathvi Cotton Mills Ltd., a company registered under the Indian Companies Act VII of 1913

(hereinafter called petitioner simpliciter). In Special Civil Application No. 846 of 1963, it is the sole petitioner. The second petitioner in Special Civil Application No. 765 of 1964 is one Laxminivas B. Rungta, a director and share holder of the above mills. In both the petitions, respondents are the Broach Borough Municipality, a body constituted under and governed by the provisions of the Bombay Municipal Boroughs Act, 1925 (hereafter called the Boroughs Act), and one V. M. Bhatt, its Chief Officer, who are respectively respondents Nos. 1 and 2. In the second petition, the State of Gujarat is the third respondent. The first respondent will be called Municipality simpliciter in the rest of this judgment. The municipality was governed by the Borough Act till 31st December 1964. The Boroughs Act was repealed by the Gujarat Municipalities Act, 1963 (hereafter called the Municipalities Act) which came into force on 1st January 1965. As and from that date, the municipality became governed by the Municipalities Act. The impugned house tax, though levied much earlier and continued from time to time, came to be permanently imposed by the Municipality u/s 73 of the Borough Act. The tax was permanently imposed as and from 1st April 1959. For that purpose, the Municipality framed rules called the House Tax Rules (hereafter called the rules) u/s 58, clause (i) of the Boroughs Act. Petitioner owns lands and buildings situated within the limits of the Municipality. The house tax is paid on 1st April of every year. For the years 1961-62 and 1962-63, bills were presented to petitioner by the Municipality, claiming payments of the amounts mentioned in the respective bills, for the years also mentioned therein, by way of house tax. Out of the bills so presented, the Municipality recovered a sum of Rs. 4,602-89 nP. However, after the presentation of the above bills, the Supreme Court decided, on 26th March 1963, the case of Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad, since reported in AIR 1963 SC 1742. In that case, a tax designated as rate imposed by the former Municipal Borough of Ahmedabad under the same section 73 of the Boroughs Act, was challenged on two grounds, one of the grounds being that, the Ahmedabad Municipality had levied a rate and that therefore, the impost could be levied only on the annual letting value of the open land and not on its capital value. The latter contention was upheld by the Supreme Court by a majority judgment. The respondent municipality also had levied the house tax on the basis of the capital value of the lands and buildings situated within its limits. After petitioner came to know about the above judicial pronouncement. It started correspondence with the Municipality, contending, that the house tax was illegal and that, petitioner was under no obligation to pay the amount of the house tax claimed from it. The Municipality refused to stay its hands and threatened to employ its coercive machinery for the recovery of the house tax. Therefore, petitioner filed Special Civil Application No. 846 of 1963. Thereafter, the Municipality presented two sets of bills, one dated 11th September 1963, and another dated 1st August 1964, in respect of the self-same properties of petitioner and certain other properties which had since been constructed by petitioner. The total amount claimed in the two sets of bills was Rs. 23.159 including the arrears of Rs. 8,105 in respect of the previous year 1962-63. Petitioner resisted this claim also on the same ground as it did in

respect of the previous demand and met with the same answer and threat. Therefore, petitioner filed the second petition bearing No. 765 of 1964. However, before the second petition was filed, the State Legislature had passed the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963 (hereinafter called the Validation Act) which came into force on 26th January 1964. By this latter Act, the Legislature purported to validate the imposition, collection and recovery of taxes or rates assessed, inter alia, under the Boroughs Act and sought to confer authority on municipalities to collect and recover such taxes. After the two petitions were filed, the same Legislature also passed the Municipalities Act, which came into force on 1st January 1965. Section 99 of the latter Act was suitably amended to enable the Municipality to impose a tax on the capital value of lands and buildings, thereby enabling municipalities to get over the decision of the Supreme Court recorded in *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, . As already stated, the latter Act repealed the Boroughs Act. But, the saving clause in section 279 of the Municipalities Act saved the House Tax Rules and the tax imposed thereby. Therefore, both the petitions were suitably got amended by petitioner. By the amendment, petitioner challenged the validity of the Validation Act and the relative position under the Municipalities Act, which either purported to save the house tax or to confer power on the Municipality to collect and recover such tax to get over the law pronounced by the Supreme Court in *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, .

(4) In order to understand and appreciate the submission formulated by Mr. Nanavati on behalf of petitioner and the replies given by respondents to those submissions, it is necessary to read the relevant law governing municipal taxation at the relevant times and to state a few facts in regard to the house tax which the Municipality seeks to levy from petitioner. The subject of taxation was dealt with by Chapter VII of the Boroughs Act. Section 73 conferred powers on a municipality to impose one of the fourteen specified taxes, subject to any general or special orders of the State Government and to the provisions of sections 75 and 76. Amongst the taxes so specified are the two with which we shall be directly concerned in this case. The first tax is mentioned in clause (i) and is designated as "a rate on buildings or lands or both situated within the municipal borough." The second tax is specified in Cl, (xiv) and is designated "any other tax which, under the Constitution, the State Legislature has power to impose in the State." Sub-section (2) of section 73, however, created an embargo enacting that, nothing in section 73 "shall authorise the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution." There was a proviso to sub-section (2) which it is not necessary to reproduce, as no reliance has been placed thereon by any side. Section 75 prescribed the procedure for imposing a municipal tax. Shortly, the procedure was as follows :- Firstly, the municipality was, by a resolution passed at a general meeting, required to select one of the taxes specified in section 73 and to approve rules prepared for the purposes of clause (i) of section 58 prescribing the tax selected.

The resolution and the rules were also required to specify certain other matters which it is not necessary to enumerate. Then, the municipality was required to publish the rules with a notice inviting objections, consider those objections and to submit the rules and the objections for the consideration and sanction of the State Government. Section 76 conferred power upon the State Government to sanction the rules aforesaid subject to such modifications as it might feel proper. Section 77 required the Municipality to publish the sanctioned rules together with a notice and to specify in that notice a date, not being less than one month from the date of the publication of such notice, from which the selected tax would come to be imposed. The District Municipalities Act of 1901 contained the same provisions relating to the imposition of taxes. These provisions came up for consideration before their Lordships of the Supreme Court in the case of Municipality of Anand v. State of Bombay AIR 1962 SC 988, as to when a tax is imposed under the above provision. Their Lordships held that a tax comes to be imposed only on the date specified in the notice mentioned in the section corresponding to section 77, from which the tax was to be levied from the citizens. There was an Explanation attached to section 75 which ran as follows:

"In the case of lands, the basis of valuation may be either capital or annual letting value."

Then came a group of sections under the heading "Assessment of and liability to rates on buildings or lands" beginning from section 78 and ending with section 89. These sections cast duties on municipal officers to prepare a list of assessment when a rate on buildings or lands or both was imposed, to invite objections thereto and to authenticate such a list. There is no dispute that, these provisions applied only to those taxes which were designated as rates in section 73 or those which were imposed in the forms of rates on buildings or lands or both. Chapter VII of the Boroughs Act dealt with the topic of recovery of municipal claims, including the claims arising out of municipal taxation. From the above provisions, it is quite clear that, the chapters on municipal taxation and recovery of municipal claims dealt with, broadly speaking among other subsidiary topic, the topic of the imposition of a tax, its assessment and its collection or recovery. The Municipalities Act deals with the topic of taxation in Chapter VIII. The subject of imposition of tax is dealt with by sections 99 to 104 and the topic of assessment of and liability to taxes on buildings or lands, is dealt with by sections 105 to 117. Though, the provisions relating to the above two topics in the Municipalities Act are not identical with the provisions contained in the boroughs Act, substantially they are the same. It is not necessary for the purposes of the present case to notice any change therein, except the change which is to be found in clause (i) of section 99, sub-section (1) which corresponds to clause (i), sub-section (1) of section 73 of the Boroughs Act. That clause is worded as follows:-

"A tax on buildings or lands situated within the municipal borough to be based on the annual letting value or the capital value or a percentage of capital value of

the buildings or lands or both."

The Explanation attached to section 75 of the Boroughs Act and reproduced by us Boroughs Act and reproduced by the above, is not to be found in the corresponding section 101 of the Municipalities Act. The second change, which requires to be noticed is that, whereas the provisions relating to assessment of lands and buildings were restricted under the boroughs Act to rates, they are extended under the Municipalities Act, to all taxes on buildings and/or lands. Section 279 of the Municipalities Act repeals the Boroughs Act, and sub-section 92) enacts the saving clause. The relevant part of clause (vi) of sub-section (2) of section 279 is as follows:

"279. (1)

(2) Notwithstanding the repeal of the said Acts -

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(vi) any tax rules made imposed in respect of the said boroughs and in force immediately before the date of the commencement of this Act shall in so far as they are not inconsistent with the provisions of this Act be deemed to have been made imposed "..... under this Act in respect of the borough and shall continue in force until it is superseded or modified by only tax rule made imposed under this Act:"

Sub-section (vii) of section 2 of the Validation Act defines "the relevant municipal law" as meaning, in relation to a municipal borough in the former Bombay area of the State of Gujarat, the Boroughs Act. Section 3 of the Validation Act says, inter alia, that, the imposition, collection and recovery of a tax or rate assessed under the relevant municipal law or any rules made thereunder on the basis of the capital value of a building or lands, shall be valid and shall be deemed always to have been valid and shall not be called in question merely on the ground that the assessment of the tax or rate on the basis of the capital value of the building or land was not authorised by law.

(5) The rules were first approved by the Municipality at a special general meeting held on 24th December 1955. These rules were sanctioned by the Government, in the first instance, only for a year and thereafter, they were extended from time to time, until they were sanctioned permanently by the Government by its resolution on 17th January 1959. As already stated, the rules came into force with effect from 1st April 1959. Rule 2 levies the house tax on all buildings and/or lands, except those specially exempted, situated within the limits of the Municipality "at the amounts or rates specified in the annexed Schedule E." Schedule E consists of five columns, the last two being marked as 4 (a) and 4 (b). The second column designates the tax as house tax. The third column mentions the capital values of lands and/or buildings in different rates according to the amount of the value, under the heading "Class of persons or property

Liabale". The heading of columns 4 (a) and 4 (b) is common and is "amount for which or rate at which classed liable." Column 4 (b) contains the amounts or rates for buildings and/or lands used for industrial purposes, and column 4 (a) deals with amounts or rates for buildings and/or lands used for purposes other than industrial. The amount of the house tax mentioned against both kinds of buildings and/or lands is a fixed amount up to the capital valuation of Rs. 20,000, and in respect of properties bearing value of more than Rs. 20,000 a percentage rate is mentioned for different valuation of Rs. 10,000 each upto Rs. 50,000 and thereafter a uniform rate is given for excess of valuation beyond Rs. 50,000. Broadly speaking, the house tax for buildings and lands used for industrial purposes is one and a half times that for buildings and lands for purposes other than industrial. Rule 5 State that, the tax shall be levied and recovered as provided in the Boroughs Act. Rule 10 states that, in the case of a dispute about the succession to any person whose name is entered as owner of any property in the assessment list, the name of the person in actual occupation shall be entered as the owner in the assessment list and that, the house tax shall be recovered from him until the dispute is settled or an order of a competent Court is produced. The Chief Officer has been given the power to decide the question as to whose name should be entered in the assessment list, and the person whose name is so entered is rendered responsible for the payment of the house tax. Rule 12 casts an obligation on the purchaser of a property to pay all the arrears of the house tax due on the building or land purchased previous to the date of the purchase. The thirteenth and the last rule says that, the house tax shall be levied "on the capital value of buildings and/or lands."

(6) In Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad, the Ahmedabad Municipality levied in impost on open land by framing rule 350a, the relevant part of which is reproduced in the minority judgment of Sarkar J. At page 1752. The rule imposed a rate upon open land and levied it at the rate of one per cent of the valuation based on capital. This rate was challenged as ultra vires the power of the Ahmedabad Municipality substantially on the ground that the rate levied under the rule amounted to a capital levy. In a suit filed by Gordhandaas and twenty-two other rate-payers, the contention was urged that, such a levy was beyond the powers of the Ahmedabad Municipality, because, the levy fell under Entry 55 of List 1 of Schedule VII to the Government of India Act, 1935, and not under Entry 42 in List II of the said Schedule. The defence of the Ahmedabad Municipality was that, though the levy purported to be based on capital value, it was, in substance and effect, a levy on the annual letting value of open land and that, it was a rate on open land and the value of the capital had been utilised merely as a means of machinery to enable the Ahmedabad Municipality to levy a reasonable rate on an open plot. The trial Judge accepted the contention of the rate payers and declared the levy to be ultra vires the Ahmedabad Municipality. The Municipality went in appeal, and the appeal was decided by a Division Bench consisting of Gajendragadkar J., (as he then was), and Vyas J. The judgment recorded is that appeal is reported in Municipal Commissioner, the

Municipal Corporation of the City of Ahmedabad Vs. Gordhandas Hargovandas and Others, . Municipality Commissioner, Ahmedabad v. Gordhandas Hargovindas. The Division Bench took the view that, the levy fell within the purview of entry 42 in List II even though it was based on capital value of open land. Consequently, it allowed the appeal and dismissed the rate-payers suit. The rate-payers went in appeal to the Supreme Court. In the Supreme Court, the case was argued on the basis that, what the Municipality had purported to do was to levy a rate u/s 73, sub-section (1). Clause (i) of the Boroughs Act and that, in law, a rate excludes a levy based on capital value. The rate-payers repeated their challenge to the levy on the ground of legislative incompetence of the Provincial Legislature. The learned judges of the Supreme Court were divided on the first question and a majority of four Judges held that, a rate was a levy on beneficial occupation and that, the connotation of that term included only a levy based on annual letting value and could not take within its purview a levy based on capital value. On that interpretation of the term "rate". Their Lordships held that rule 350A and the consequential assessment and levy were void, and allowed the appeal. In that view of the matter, the majority of the learned Judges did not deal with the question of legislative competence and kept the question open. Sarkar J., however, after observing that the contention that a rate did not include a levy on capital value was not raised in the High Court, disagreed with the majority view and held that , a rate could be imposed on the basis of capital value. On that view of the matter, the learned Judge proceeded to deal with the question of legislative competence and, in agreement with the judgment of the Bombay High Court under appeal, the learned Judge held that the rate in question fell within the purview of Entry 42 in List II of Schedule VII of the Government of India, Act 1935, and was within the competence of the Provincial Legislature.

(7) The main contention of petitioner in the present petitions is based upon the judgment delivered by their Lordships of the Supreme Court in Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad, . Petitioner contends that the impugned house tax is a rate within the meaning of section 73, sub-section (1), clause (i) of the Boroughs Act and, being based on capital value, came directly within the mischief of the judgment of the Supreme Court. The reply of respondents to his contention is that, in substance and in effect, the house tax is not a rate, but it is a tax and makes within its purview not only a levy based on annual letting value, but also on capital value. Petitioner contends that, such a plea does not arise on the pleadings and that, in any case, in the first petition, the Municipality has clearly and distinctly admitted in its affidavit in reply that, the levy was a rate, and sought to justify it on the basis of the Validation Act. Alternatively, petitioner contends that even if the house tax does not come within the mischief of the Supreme court judgment in Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad, it is not within the competence of the Municipality to levy such a tax, as it fails directly under entry 36 of List I in Schedule VII of Constitution and does not come under entry 49 of List II. On the

other hand, respondents contend that a tax on the capital value of lands and buildings is within the purview of entry 49 of the State List and is within the legislative competence of the State Legislature and as such, under sub-section (2) of section 73 of the Act, is within the competence of the Municipality, and the competence continues under sub-section (2) of section 99 of the Municipalities Act. Alternatively, respondents contend that, even if the levy comes within the mischief of the judgment of the Supreme Court in Gordhandas' case, the house tax is now validated by the Validation Act and is a competent levy under the Municipalities Act and as such, the collection thereof in the past and its recovery in future are valid. Petitioner contends that even if this were so, the relevant provisions of the Validation Act and the Municipalities Act would themselves be beyond the legislative competence of the State Legislature and consequently of the Municipality. Petitioner says that, the Validation Act is ultra vires Article 265 inasmuch as it purports to confer authority to levy and collect tax for a period when there was in fact no such authority at all. Alternatively, petitioner contends that, even if it confers such authority, the Validation Act has misfired inasmuch as it has not armed the Municipality with the necessary authority to levy and collect the house tax by amending the taxing section of the Boroughs Act. Alternatively, petitioner contends that, in any case, whereas the levy upto 26th January 1964 can be validated under the Validation Act the levy for the subsequent period from 27th January 1964 upto 31st December 1964 does not come within the purview of the Validation Act and the levy for the period beginning from 27th January 1964 to 31st March 1964 does not come within the purview of the Municipalities Act. In addition to this, petitioner contends that, the House Tax Rules and the house tax imposed thereunder are confiscatory in nature and, therefore, violative of his fundamental right enshrined in Article 19, clause (1), sub-clause (f).

(8) Therefore, the submissions which Mr. Nanavati raises for the decision of this Court are as follows:

(1) the Municipality had no power to levy, impose or collect the house tax on lands and buildings on the basis of capital value or by a method other than a percentage of rental value and the House Tax Rules framed by the Municipality and the consequential assessment, levy and collection of the house tax are illegal and ultra vires the power of the Municipality;

(2) that the Validation Act is ultra vires the power of the State Legislature, because, the Act trenches upon entry No. 86 of the Union List and is no legislation under entry 49 of the State List or any other entry in the State List;

(3) Section 99 sub-section (1), clause (i) of the Municipalities Act is ultra vires the powers of the Municipality for the same reason as given in submission No. (2):

(4) that the Validation Act is ultra vires Art. 265 since it purports to validate the house tax levied or collected without the authority of law at the time when it was

so levied or collected.

(5) that even in an authority to levy and collect the house tax can be conferred retrospectively such authority is not in fact conferred by the Validation Act inasmuch as that Act does not attempt to amend section 73 of the Boroughs Act or any other provision of the Boroughs Act so as to confer retrospectively authority to levy and collect the house tax on the basis of capital value;

(6) that, in any event, the house tax for 1964-65 levied on the basis of the capital value is not saved by the Validation Act or by any other provision of the Municipalities Act;

(7) that the proportionate tax from 27th January 1964 to 31st March 1964 is not saved by the Validation Act or any other provisions of the Municipalities Act;

(8) section 279 sub-section (2), of the Municipalities Act does not save the house tax for the period 27th January 1964 to 31st December 1964, nor does any other provision of that Act; and

(9) that the impugned House Tax Rules and the house tax imposed thereunder are confiscatory in nature and, therefore, violative of the fundamental right embodied in Article 19, clause (1), sub-clause (f).

(9) The first submission is based on the allegation that the impugned house tax is a rate on lands and buildings within the meaning of section 73, sub-section (1), clause (i) of the Boroughs Act. Respondents concede that, if the allegation that the house tax is a rate as aforesaid is correct, then, the first submission is valid and must be upheld, as the point is directly covered by the Supreme Court case of Gordhandas. Respondents, however, challenge the allegation that, the house tax is a rate. The learned Advocate General contends that, there is no warrant for the allegation or for making the assumption. Mr. Nanavati repels this contention with reference to the pleadings in Special Civil Application No. 846 of 1963. He draws our attention to the averments in the petition that the house tax was an impost u/s 73 (1) (i) of the Boroughs Act contained in paragraphs 5 and 6 of the petition and the affidavit in reply filed by the Chief Officer of the Municipality for himself and on behalf of the Municipality, in which it is distinctly admitted that the contents of the aforesaid two paragraphs are substantially true. Mr. Shah on behalf of the Municipality and the Chief Officer concedes that this is so. But, he contends that, the admission has been made under a misapprehension of law and an incorrect of the resolution and the rules imposing the house tax. In any case, the learned Advocate General contends that, the admission made by the Municipality and its Chief Officer is not binding on the State. He contends that, such an admission not having been made by the State, the State is entitled to call for a decision on merits as to whether the house tax is a rate or not. The pleadings in the second petition are not exactly alike those in the first petition. In the latter petition, the averment that the house tax is an impost u/s 73, sub-section (1), clause (i) has been traversed even by the Municipality and its Chief Officer, in the same way as it has been done by the

State in both the petitions. Therefore, contends learned counsel for respondents, that it will not be proper for this Court to base a decision only on the admission contained in the affidavit made by the Chief Officer in the first petition. They contend that, even in the first petition a decision on the merits will have to be reached because of the contention raised by the State and that, therefore, it will not only be just and proper for this Court not to base its decision on the admission, but it is its duty to undertake the task of determining the true nature of the house tax by reference to the materials existing on the record. However, Mr. Nanavati contends that even the stand taken by the State in both the petitions and by the Municipality and its Chief Officer in the second petition is not tantamount to a pleading that the house tax is not a rate. He contends that, those pleadings must, in law, amount to an admission that the impost is a tax u/s 73 (1) clause (i). Now, the pleadings of the State in the first petition and of both the State and respondents in the second petition disclose three averments on this subject. The first averment is that the house tax is not merely a tax u/s 73, sub-section (1), clause (i), but also a tax u/s 73, sub-section (1), clause (xiv). The second averment is that, the house tax is a tax under both the clauses. The third averment is that the house tax is a tax under S. 73, sub-section (1), Clause (I) read with Clause (Xiv). Now, Cl (xiv) referred to in this averment is a clause which specifies the residuary taxes and is worded as "any other tax." Mr. Nanavati contends that, a tax of any of the several varieties enumerated in clauses (i) to (xiv) of section 73, sub-section (1), excludes the tax of the variety specified in clause (xiv). Therefore, he contends that, once it is admitted that the impugned house tax was u/s 73 (1) (i) , it necessarily excludes the residuary tax and therefore, the second averment is fatuous and in law, the averment is virtually the same as the averment of the Municipality in the first petition. Mr. Nanavati contends that, the Municipality is the taxing authority and the State is the sanctioning authority for the impugned house tax and these authorities know best what tax they have imposed. He contends that, in any case, petitioner is entitled to assume, having regard to the aforesaid State of the pleadings, that respondents had admitted its contention that the house tax was a rate under S. 73 sub-section (1), clause (i). We have given our careful consideration to the rival contentions. On the whole, we have come to the conclusion that, though undoubtedly, there is a clear admission made by the Municipality and its Chief Officer in the first petition, we cannot say that there is any such admission in the second petition or in the pleadings of the State in the first petition. The learned Advocate General draws our attention to the fact that the provisions embodied in sections 78 to 89 in the Boroughs Act deal with not only a rate u/s 73 (1) (i), but also with a tax in the form of a rate on buildings and lands. He contends that, the house tax rules do not in terms provide for a specific procedure for the assessment of the house tax, and what the State intends to convey by reference to clause (i) of S. 73, sub-section (1), is that, the procedure which is laid down in section 78 onwards is to be followed in the case of the house tax too. He contends that, the mere fact that the procedure for the preparation of the assessment list specially provided for a rate u/s 73 (1) (i) is

actually followed by the Municipality , it does not convert a tax, which otherwise falls under any other clause, into one u/s 73 (1) (i) and it cannot be regarded on that account as a rate. The first explanation of the learned Advocate General may not be regarded as convincing. But, on the whole, we have come to the conclusion that reference to clause (xiv) cannot be regarded as superfluous. In any case, in our judgment having regard to the aforesaid State of the pleadings, we should exercise our discretion by not trying respondents down to their admission which concerns public finance and should undertake a decision on the merits as to the true nature and character of the house tax. Therefore, we proceed to consider this question on its own merits.

(10) From the material on the record, it appears that, prior to 1955, the Municipality had imposed four taxes within the Municipal limits -a house tax, a sanitary tax, a lighting tax and a special education cess. Latter three taxes were linked to the house tax. The latter three taxes were increased from time to time as a result of the house tax being increased, without following u/s 75, 76 and 77 of the boroughs Act. The imposition of the increase in the latter taxes was challenged as illegal in a litigation started by some of the rate -payers referred to in a resolution of the Municipality dated 24th December 1955. The High Court of Bombay, in an appeal from that litigation, held the increase to be illegal, and the decision of the High Court is reported in *Gopal Mills Co. Ltd. Vs. The Broach Borough Municipality*, *Gopal Mills Co Ltd v. Broach Borough Municipal*. After this decision. The Municipality canceled the earlier imposition of all the four aforesaid taxes and, by its resolution dated 24th December 1955, imposed one tax called house tax by framing the impugned rules, which tax was sanctioned by the Government for a period of one year in the first instance. This period was extended from time to time and, ultimately, the house tax rules were sanctioned permanently by the Government by its sanction accorded on 17th January 1959. The question is whether, this house tax is a rate or a tax. If it is a rate, then, it must be struck down as illegal on the ground that, the tax is levied on the basis of the capital value and not on the basis of the annual letting value of lands and buildings. The illegality will arise on account of the fact that the term "rate" as used in section 73, sub-section (1), clause (i), can mean only a tax on the annual letting value of lands and buildings and cannot take within its c a tax based on capital value. Now, the main point of distinction between *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, the relevant rule used the expression "rate" the House Tax Rules in the present case do not use any such expression. They use the wider term "tax" which may include a rate or not. Therefore whether the impugned house tax is a rate or a tax in the sense of non-rate tax, must depend upon the interpretation of the House Tax Rules. Mr. Nanavati's supports his connection that the impugned house tax is a rate by the following facts:

(1) the use of the word "rate" in rules 2 and 11 and Schedule E to the Rules:

(2) Rule 5:

- (3) section 75 (1), clause (iii) of the Boroughs Act;
- (4) the absence of any provision for assessment of the house tax in the rules; and
- (5) the fact that actually, the Municipality followed the procedure prescribed in sections 78 to 89 for assessing house tax on the rate-payers.

In our judgment, the first three facts do not support Mr. Nanavati's contention and the last two are inconclusive. A reference to rules 2, 11 and Schedule E shows that, the expression "rate" therein has not been used in the sense of a rate on lands and buildings, that is, a tax which is intended to be levied only on ratable value. The term "rate" is used at those three places in juxtaposition with the term is used "amount" and the context show that that term is used only to indicate the percentages at which tax on the higher slabs of capital value is required to be quantified. Rule 5 says that, the house tax shall be lieved and recovered as provided in the Act. In our judgment, there is no warrant for Mr.Nanavati's contention that, the reference is necessarily to the procedure prescribed by section 78 to 89 of the Boroughs Act. It is true that, the expression "levy" includes the process of assessment and quantification of a tax. But, having regard to the fact that the house tax was sanctioned for limited periods only in the beinging. the reference to the may as be well be to S. 77. In any case, the reference to the provisions of the Act for the purpose of recovery is entirely innocuous and cannot enables us to determine the true nature of the house tax. But, even if the assumption is correct that the reference to "levy" in rules 5 is a reference to the process of assessment laid down in sections 78 to 89, in our judgment, it is not conclusive. A taxing authority may levy a tax on capital made value and direct that the assessment be made in accordance with the rules laid down by the legislature in regard to the assessment of a rate. Section 75 (iii) enacts that, the rules shall specify "in the case of a rate on building or lands or both the basis for each class of valuation on which such rate is to be imposed, "Mr. Nanavati contends that, the provisions in Schedule E are based upon this clause (a) (iii) of section 75. In our judgment, this is beinging the question. Undoubtedly, it is true that, when a rate in buildings or lands is imposed, the rules must specify the basis as laid down in clause (iii) aforesaid. But that does not mean that when the tax is no capital value, the basis for each class of capital the value cannot also be provided for. There is a residuary clause (iv) in section 75(a) which says that al other matters which the State Government may requires to be specified should be specified by the rules. If the basis for a tax is capital valuation, then it is quite clear clause (iii) will have to be provided for in the rules. But the difference between the two will be that, when dealing with clause (iii) the basis will be the annual letting value, in other basis will be have to be capital valuation. Mr. Nanavati is right that the rules do not directly provide for the preparation of the assessment list and the procedure to be followed for the assessment of the house tax. But, in our judgment, he is not wholly right. There are indications in the rules themselves that, the executive authorities of the Municipality are required to c an c list. This is quite clear from rule 10 which

deals with mutation c in the case of disputed c. In our judgment, there is c force in the argument advanced on behalf of respondents that, probably, the executive authorities took their clue from rule 10 and adopted the procedure for the assessment of the house tax as laid down in sections 78 to 89. But, having regard to the fact that the rules specifically state that the basis of such capital value of lands and buildings, the assessment list has necessarily to be c on the basis of such capital value and not on the basis of c value. But, in our judgment, there is one indication in the rules themselves which clearly and unmistakably points that the house tax is not intended to be a rate but a tax in lands and c. It is well known and this fact has been noticed by their Lordships of the Supreme Court in *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, that a rate is a tax on beneficial occupation. It is a tax which is imposed on occupation and not on the property itself. Rules 10 and 12 unmistakably point that the impugned house tax in the present case is levied on buildings and lands and not on their beneficial occupation. It is true that the term "occupier" has been defined in the rules . but, the term has not been directly used anywhere in the rules, except that an indirect reference is made in rule 10 for the purpose of determining the name of the assesses in cases of disputed c. The history of the tax, which we have enumerated above also throws some light on this aspect of the matter. That history shows that, house tax is intended to be not merely a tax on lands and buildings hut is imposed also in lieu of the three other taxes, the increase in the rate of which taxes was struck down by the High Court of Bombay in the ground that the procedure laid down in certain mandatory sections of the quite Boroughs Act had not been followed. It is quite obvious that the Municipality was out to cut the "Gordian Knot" by imposing a single tax in lieu of all the four taxes the house tax, the general sanitary cess. Under be held that the circumstance, in our judgment, it cannot be held impugned house tax is a rate and that the present case directly comes within the ratio of the decision of their Lordships of the Supreme Court in *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, .

(11) Our aforesaid decision will obviate the necessity of considering the objections against the Validation Act and the Gujarat Municipalities Act. However, as the questions in regard to these matters were fully argued before us, we propose to record our decision thereon too. But, before we do so, we propose to decide the objection raised by petitioner on the ground of legislature competence of the State Legislature and the consequential incompetence in the Municipality to impose the house tax. It is quite obvious that, this question has, in any case, to be decided in the present petitions. It is true that it may not also arise for decision if he case is directly within the ratio of *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, and Validation Act and the Municipalities Act are held not to apply to the facts of the present case and the former will save the tax so that in any case, the legislative competence of the municipal authorities does required to be decided. It is not necessary undertake a decision on this subject separately in regard to all the three acts. The second

and the third submissions of Mr. Nanavati do take within their purview of legislative competence of the boroughs Municipality in regard to the house tax. Having regard to our decision on the first submission, it is quite clear that, the legislative competence on this score also will arise for consideration. Therefore, we propose consider the question of the legislative competence of the municipal authorities which imposed the house tax, and the legislative competence of the State Legislature which enacted the Validation Act and Municipalities Act together. With the above modification, therefore, we proceed to discuss the second and the third submissions of Mr. Nanavati together.

(12) We have already indicated that this question of legislative competence was decided by the High Court of Bombay in the case *Municipal Commissioner, the Municipal Corporation of the City of Ahmedabad Vs. Gordhandas Hargovandas and Others*, Learned counsel for respondents contend that this case is a binding precedent. The legislative competence of the Ahmedabad Municipality was considered with reference to the tax levied by rule 350A framed by that municipality in 1947. The extent of the authority of the Ahmedabad Municipality in 1947 was exactly the same as the extent of the authority of the Municipality in the present case in 1959 when it was governed by the Boroughs Act and in 1965 since when it is governed by the Municipalities Act. This ambit was co-extensive with the legislative competence of the Provincial Legislature in 1947 and that of the State Legislature in 1964 and 1965. When the Validation Act and the Municipalities Act were enacted by the State Legislature. However, the only difference is that in 1947, the source of the legislative competence of the State Legislature was Entry No. 42 in List II of Schedule VII to the Government of India Act, 1935, whereas the source of the similar power vesting in the State Legislature in the subsequent years mentioned above is Entry 49 in the State List to Schedule VII of the Constitution. However, there is no dispute the entries in the two constituent documents are identical the entry being "Taxes on lands and buildings" in *Gordhandas* case 55 Bom LR 1028 : (AIR 1954 Bom 188) the power of the Provincial Legislature was challenged on the ground that that power fell within the purview of Entry 55 of the Federal List in Schedule VII the Government of India Act. Mr. Nanavati's contention is that, a tax on capital value of lands and buildings falls within the purview of entry 86 in the Union List corresponds to entry 55 in the federal List aforesaid. Therefore, there is no dispute whatsoever that, the same questions which arise for determination in regard to the legislative competence of the State Legislature and the consequential competence of the Municipality in the present case, arose for decision by the Bombay High Court in *Gordhandas* case 55 Bom LR 1028 : (AIR 1954 Bom 188). As already indicated, in that case the Bombay High Court took the view that the imposition of the impugned tax levied by the rule 350A fell within the legislative entry 42 of List II of the schedule to the Government of India Act, 1935. Therefore, there is no doubt whatsoever that, the ratio of that case is a binding precedent to this Court and the matter is no longer *res integra*. However, Mr. Nanavati contends that, that decision is now rendered *effete* and is no longer

a binding precedent for a variety of reasons. Firstly, he contends that, even if it be assumed that the decision was a binding precedent at the time when it was given, it is no longer so now because the decision has been displaced by the decision of the Supreme Court in *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, . He contends that, the decision having been reversed, no part thereof can be of any binding authority. We are unable to agree with this submission. Their Lordships of the Supreme Court have definitely stated in their decision that, having regard to their decision on the interpretation of the term "rate" they do not propose to decide the question about the legislative competence of the Provincial Legislative and do not propose to express any opinion thereon. In the face of this, it is difficult to uphold the contention that the decision of the Bombay High Court on the question of the legislative competence has been overruled or displaced. Mr. Nanavati arise to justify this submission by propounding the principle that, when a decision of one Court is reversed in appeal by another Court, then, the decision of the appellate Court gets substituted to the decision of the other Court and the decision so reversed has no legal existence. We are unable to agree that any such principle is applicable for determining the binding nature of a decision of a Court. The principle, undoubtedly, applies vis-a-vis decrees of the higher and the lower Courts. It may apply to the decisions of the same two Courts on identical questions. But it is difficult to uphold the contention that any such principle is applicable in regard to a part of the judgment solemnly; pronounced by a Court which has not been overruled and kept expressly open by the appellate Court. The binding nature of a decision arises from the fact that the point of law raised and considered therein has been decided by the Court concerned, and it is obvious that so long as that decision remains intact, it is binding on all courts and tribunals which are subordinate or co-ordinate to the Court recording the decision. The second ground on which Mr. Nanavati contends that the decision is robbed of its binding nature, is that, the main reason given in the judgment for reaching the decision is reversed by the Supreme Court. In reaching the aforesaid decision Gajendragadkar J. As he then was, has also placed reliance upon the legislative history and practice on the topic of the tax known as rate. He has examined three Indian statutes and come to the conclusion that, in those statutes rate was levied on the capital value of lands and buildings. Mr. Nanavati contends, that the supreme Court has taken a diametrically opposite view in regard to this legislative history and practice. He draws our attention to the fact that the Supreme Court after considering the provisions of a number of Indian statutes including the three considered by Gajendragadkar J, has shown that the term "rate" or the context in which it was used, was always the reference to the annual letting value of lands and buildings and not their capital values. The learned advocate General suggests that this is not a correct reading of the judgment of Gajendragadkar J. he says that, in the passage referred to on pages 1035 and 1036 of the report (Bom LR): (at 99 193-194 of AIR) the learned Judge is not considering the legislative history and practice on the topic of rate, but he is considering the topic of municipal taxation and, therefore, there is no

conflict between the view expressed by Gajendragadkar J and that expressed by the Supreme Court. We are unable to agree without his refinement of the learned Advocate General. Whilst this is so, we are unable also to agree with the submission of Mr. Nanavati that the decision of the Bombay High Court is robbed of its binding nature because of the above flaw in its reasoning. In the first instance, Mr. Nanavati is not right in contending that the decision is mainly raised on the above legislative history and practice on the topic of rate. A perusal of the judgment of Gajendragadkar J shows that he reaches the conclusion about the legislative competence before he discusses the topic of the legislative history and topic and the conclusion is reached by him on the bases of eight reasons. It is after reaching the conclusion that the learned Judge proceeds to consider the legislative history and practice aforesaid. Therefore, Mr. Nanavati is not right in contending that the latter reason is the main reason for reaching the principal conclusion. A perusal of the judgment of Gajendragadkar J from pages 1031 to 1037 (of Bom LR): (at 99 190-194 of AIR) shows that, he reaches the conclusion about the legislative competence on the basis of an independent interpretation of entry 42, its wide amplitude and the true meaning of the words "capital value" used in entry 55. The learned Judge then considers a number of authorities , and then reaches his conclusion of the question of legislative competence. In addition to this, it is also important to notice that the legislative Judge records two more reasons after dealing with the topic of legislative history and practice in support of his principal conclusion. therefore, the question for consideration is whether it can be stated that a binding precedent loses its force because one of the reasons supporting the decision has been found to be erroneous by a higher tribunal. In our judgment, apart from a case where such a reason happens to be the sole reason it is difficult to uphold such a contention, specially when the decision is based not on one but on a series of reasons, and the reason which has been found to be faulty is only a buttressing reasons. In our judgment, therefore, Mr. Nanavati is not right in contending that the decision on the question of legislative competence recorded in the above Bombay case has lost its binding nature. In our judgment, the utmost that can be urged in a situation of this kind is to call upon the Court to consider whether the matter should or should not be referred to a larger Bench for considering the same question. In defence to the arguments which Mr. Nanavati urges that the decision on the question of legislative competence is erroneous, we do propose to consider that question also merits. But, we wish to make it absolutely clear that, we do not wish to , and cannot, consider those arguments for the purpose of holding that the above binding decision is erroneous. We do so with a view to consider whether the matter should or should not be referred to a larger Bench. However, for the reasons to be presently recorded, we have, independently of the above decision, come to the conclusion that the State Legislature and consequently, the Municipality, have legislative competence to impose a tax on lands and buildings on the basis of capital value and, therefore, the question of making a reference to a larger Bench does not arise.

(13) However, before we do this, we propose to indicate two more arguments which Mr. Nanavati advances in support of his proposition that the above decision is not binding. Firstly, Mr. Nanavati contends that, the above decision not is in conflict with the Full Bench decision reported in *Municipal Commissioner, the Municipal Corporation of the City of Ahmedabad Vs. Gordhandas Hargovandas and Others, Byramjee Jeejeebhoy v. Province of Bombay*. In that case, the Full Bench had to consider the vires of the urban immovable property tax. The contention which it was called upon to examine whether that tax was within the competence of the Provincial Legislature. The rival contentions were as follows. The appellant in that case contended that the tax fell under the Federal Legislative Entries Nos. 54 and 55 -income tax and a tax on the capital value of asset. All the three learned Judges constituting the Full Bench held that the tax fell within the purview of the Provincial Entry 42 and that the Federal Entries 54 and 55 were not attracted to the tax. *Beaumont C. J.*, after holding that the tax fell in the Provincial Entry, reached the conclusion that the tax was not a tax on income falling under federal entry No. 54. Thereafter, he considered the question whether the tax fell within federal entry No. 55. Mr. Nanavati in support of his argument relies upon the following passage in *Beaumont C. J. S.*, judgment recorded at page 69:

"If the tax is not a tax on income the further question remains whether it is tax on the capital value of the assets of the plaintiff within item 55. The Advocate-General submits that item 55 is directed only to a tax on the whole of the assets other than agricultural land of individuals and companies, and that it is directed to what is known as capital levy. An analysis of the language employed in items 54 and 55 respectively affords scope for this argument but whether the contention be sound or not in my opinion, it is impossible to say that this tax, although it is a tax on lands and buildings, is a tax on the capital value of the land and buildings it is imposed without any relation to the capital value except so far as such value can be ascertained by reference to rateable value."

Mr. Nanavati emphasizes the last two sentences where the learned Chief Justice emphasized the fact that the impugned urban property tax had no relation to capital value. In our judgment, however, that does not constitute the ratio of the case. What the learned Chief Justice was doing in the aforesaid passage was to consider the validity of an argument advanced by the learned Advocate General based on his submission that, in order to attract item 55 in the Federal list, the tax must be on the whole of the assets other than agricultural lands of individuals and companies. Whilst replying that argument the learned Chief Justice emphasized the factual part of the impugned urban property tax, namely, that it was not based on the capital value but on the annual letting value of buildings and lands. Therefore, in that case, the question as to the correct scope of the Federal Entry No. 55 did not directly arise for consideration. It would appear that *Broomfield J.* and *Kania J.* In the aforesaid case recorded definite conclusions as to whether, in order to attract entry 55, the tax should be on the whole of the assets of an individual or only on his partial assets. The case of Sir

Byramjee Jeejeebhoy, Kt. Vs. The Province of Bombay, is expressly referred to by Gajendragadkar J in his judgment and all the relevant passages have been considered in that case we are not convinced that Bombay case of Municipal Commissioner, the Municipal Corporation of the City of Ahmedabad Vs. Gordhandas Hargovandas and Others, is in any way in conflict with the case of Sir Byramjee Jeejeebhoy, Kt. Vs. The Province of Bombay, . Secondly, Mr. Nanavati contends that, Municipal Commissioner, the Municipal Corporation of the City of Ahmedabad Vs. Gordhandas Hargovandas and Others, is in any event in conflict with the decision of the Bombay High Court recorded in Col. Sir J.N. Duggan and Another Vs. The Commissioner of Income Tax, Bombay City, , J.M. Duggan v. commissioner of Income Tax. Bombay city. In that case, the validity of the imposition of capital gains tax imposed by the central Legislative was challenged. In that case, the Income Tax authorities justified the tax on the basis of entries Nos. 54 and 55 in the Federal List. Chagla C. J. Came to the conclusion that the tax fell in entry NO. 55, and Tendholkar J. Held that it fell in entry No. 54. Thus, the two learned Judges, whilst holding that the tax was within the competence of the Central Legislative, differed as to within which particular entry the tax fell Chagla C.J. also referred to entry 42 in the Provincial List. He observed that a tax on capital value of lands and buildings did not fall within the purview of that entry. It is on the latter observation that Mr. Nanavati relies. These observations have also been considered by Gajendragadkar J. In Municipal Commissioner, the Municipal Corporation of the City of Ahmedabad Vs. Gordhandas Hargovandas and Others, . The learned Judge has treated that observation as obiter and definitely disagreed with that observation with the great respect, we agree with this appreciation of the aforesaid observation. Apart from this, there are two very good reasons why the decision and the observations recorded by Chagla C. J. In Col. Sir J.N. Duggan and Another Vs. The Commissioner of Income Tax, Bombay City, cannot be regarded as binding authority. In the first instance, the self-same question arose for decision before their Lordships of the Supreme Court in an appeal from the decision recorded by the same Division Bench on the same day on which Col. Sir J.N. Duggan and Another Vs. The Commissioner of Income Tax, Bombay City, was decided. The case is reported in Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City, , Navinchandra Mafatlal v. Commissioner of Income Tax Bombay City, Chagla C.J. and Tendolkar J. Decided the latter case on the basis of their judgment in Col. Sir J.N. Duggan and Another Vs. The Commissioner of Income Tax, Bombay City, . The Supreme Court upheld the decision of Tendolkar J. That the capital gains tax fell within entry No. 54, and rejected the decision of Chagla C.J. that it fell within the purview of entry No. 55. Therefore, the decision of Chagla C.J. about the correct interpretation of entry Ho. 55 cannot be regarded as binding authority. In addition to this, in Gopal Mills case, already referred to , Chagla C. J. Himself approved of and followed the decision in Municipal Commissioner, the Municipal Corporation of the City of Ahmedabad Vs. Gordhandas Hargovandas and Others, . This is what the learned Chief Justice said at page 303:

"The first ground is that the tax on property being assessed on capital value was not within the competence of the State Legislature and therefore, not within the competence of the municipality to impose. The contention is that this is not a tax on property but on capital assets. This very contention was urged before a Division Bench of this Court in *Municipal Commissioner, the Municipal Corporation of the City of Ahmedabad Vs. Gordhandas Hargovandas and Others*, and that contention was rejected. That Division Bench pointed out, and with respect rightly, that the tax on capital value was a mode of imposing the tax and not the nature of the tax itself, and for that purpose they relied on the explanation to section 75 of the Municipal Boroughs Act, which explanation provides:

"In the case of lands the basis of valuation may be either capital or annual letting value."

This decision is binding on us, and apart from its being binding on use, we, with respect, agree with the view taken by the learned Judges."

Under the circumstances in our judgment there is no merit in the contention of Mr. Nanavati that the Bombay case of *Municipal Commissioner, the Municipal Corporation of the City of Ahmedabad Vs. Gordhandas Hargovandas and Others*, is in conflict with *Col. Sir J.N. Duggan and Another Vs. The Commissioner of Income Tax, Bombay City*,) .

(14) Before we conclude the above topic, we may mention that, Mr. Nanavati had urged that the minority decision recorded by Sarkar J. in *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, was not a binding authority. He based his contention upon articles 141 and 145 clauses (4) and (5) and rule No. 3 of Order XIII of the Supreme Court Rules. We are not called upon to decide this interesting question because, the learned counsel for respondents did not raise any such contention for our decision they conceded that the judgment of Sarkar J. was not a binding precedent. But they contend that being the judgment of a Judge of the highest Court in the country, it is of great persuasive value. Mr. Nanavati does not arise any objection to this line of reasoning.

(15) That brings us to the merits of the rival contention regarding the legislative competence of the State Legislature. Mr. Nanavati contends that, the house tax being on capital value of lands and buildings, falls under entry 86 of the Union List, whereas learned counsel for respondents contend that it falls under entry 49 of the State List. Mr. Nanavati prefaces his argument by reference to Article 246 he contends that the two rival entries must be construed in the light of the provisions of this Article. He emphasizes the phrase "subject to clauses (1) and (2)" used in clause (3) of Article 246 which confers exclusive power on State Legislature to make laws on matters enumerated in this State List therefore Mr. Nanavati's contention is that, the correct approach for interpreting the entries in the Union and the State List is that, a Union entry must be given its widest connotation and a State entry must not be permitted to enter into the Union

field, we have no hesitation in rejecting this contention of Mr. Nanavati. The contention, in our judgment, is not only opposed to the language of spirit of Art. 246, but it is also against principles well settled and recognised by the Supreme Court. Article 246 in our judgment, has nothing to do with the question of interpreting the Union or the State entries. That Article has been enacted with a view to fix the subject matters of legislation. The Articles fix the fields within which the Parliament and the State Legislature are to operate. The clause "Notwithstanding anything in clauses (2) and (3)" used in clause (1) and "Notwithstanding anything in clause (3)" used in clause (2) and "subject to clauses (1) and (2)" used in clause (3), have been introduced with a view to emphasize that in case there is any conflict in regard to the subject matters of legislation, that is, if there are matters which fall in both the Parliamentary and the State fields, then, (subject to the doctrine of pith and substance, enunciated by Courts of law), the State legislative authority must yield place to the Parliamentary legislative authority. Ours is a federal Constitution and it is now well recognised that both the Parliament and the State Legislatures have full, independent and plenary powers in their own fields. It is equally well recognised that, the first duty of a Court, when interpreting any entry in the respective List, is to interpret, that entry in its plain, natural and grammatical meaning and to read it in its fullest and widest amplitude. This is the first task which is to be performed. If, on interpreting the entries in the aforesaid manner, any conflict is found between the two sets of entries respectively falling in the two different Lists, then, an attempt must be made to reconcile the two entries, so as to make one consistent with the other. In attempting to do so, sometimes, the amplitude of the legislative power of the Parliament, and sometimes that of the State Legislatures, may have to be curtailed. In considering the question as to whether there is any such conflict in a given case, the impugned piece of legislation must be considered on the principle of pith and substance. If, after making an effort in the above direction, the Court finds that still a conflict persists in the legislative powers of the Parliament and the State Legislatures, then, Article 246 comes into operation and the power of the State Legislature must yield to the legislative power of the Parliament. We can not do better than quote a passage from the judgment of the Supreme Court reported in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, on this subject which, in our judgment, constitutes a landmark in interpreting rival entries and testing the validity of any impugned legislation:-

"The power to legislate is given to the appropriate Legislatures by Art. 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation: they demarcate the area over which the appropriate Legislatures can operate. It is also well settled that widest amplitude should be given to the language of the entire. But some of the entries in the different Lists or in the same Lists may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about harmony between them." We are bound to follow the above principles in

interpreting the two rival entries.

(16) The main attempt of Mr. Nanavati in making his submissions regarding the interpretation of the two rival entries is to bring out a conflict of legislative powers, if entry No. 49 is interpreted as conferring power to impose a tax on the capital value of lands and buildings. Mr. Nanavati contends that, the term "assets" includes lands and buildings, that, therefore, the Parliament has the power to impose a tax on the capital value of lands and buildings under entry 86 of the Union List. He contends that, therefore, if a State Legislature is also to be given the power of imposing a tax on the capital value of lands and buildings, both the Parliament and the State Legislatures will be operating in the same field and thus will arise a conflict between the legislative powers of the two sets of Legislatures. We are not in agreement with this submission of Mr. Nanavati for the reasons to be presently given. On the other hand, learned Advocate General lays emphasis upon the distinction between the expressions "the assets" and "lands and buildings". He especially emphasizes the use of the definite Article "the" before "assets" and before the words "capital value". and further relies upon the distinction made in some of the cases between the real or economic value of assets and their capital value.

(17) Turning first to entry 49 in the State List, with great respect, we agree with the opinion expressed by Gajendragadkar J. In *Municipal Commissioner, the Municipal Corporation of the City of Ahmedabad Vs. Gordhandas Hargovandas and Others*, that the entry prima facie is of the widest amplitude and that there are no words of limitation therein. Under the entry, the impost has been designated a tax and not a rate and the unit of taxation is lands and buildings and not assets. On the other hand the impost under entry 86 is on capital value of assets other than agricultural lands and not on assets. Contrasting the two entries, it is quite clear that, where as under entry 49, lands and buildings are units of taxation, under entry 86, the unit of taxation is the capital value of assets. Under entry 49 agricultural land can be the unit of taxation but, under entry 86, capital value of agricultural land cannot be such a unit. There is nothing in entry No. 49 which indicates that the tax is limited only to the ratable values, i.e., the annual letting values of lands and buildings. As Broomfield J has pointed out in the case of *Sir Byramjee Jeejeebhoy*, AIR 1940 Bom 65 at p. 70, under that entry, tax can be levied on a variety of bases - the extent of lands, floor areas, number of storeys etc. Therefore, whereas tax under entry 86 must necessarily be restricted to capital value, that tax under entry 49 can be on a variety of bases including capital value. The word "assets" in entry 86 may include lands and buildings, but, the latter do not exhaust assets which an individual can hold. The term "assets" may not have the same meaning as "lands and buildings" in all cases. Whereas, the term "assets" necessarily excludes charges on items thereof, "lands and buildings" do not necessarily do so. In other words, when we speak of the assets of an individual, we have in mind not merely the items of properties which he holds, but, also such items minus the liabilities the individual has to discharge thereon. The dictionary meanings of the term

"assets" are, "all the property of a person or a company which may be made liable for his or its debts" "any property or effect liable to be applied to discharge debts" and "useable or available property". Therefore, reading the two entries side by side, it is crystal-clear that, whereas, entry 49 entitles the State Legislature to levy an impost on lands and buildings, entry 86 entitles the Parliament to levy an impost, not only on lands and buildings as such, but after taking into account the liabilities which the individual has to pay before they can be taxable items. It is not necessary for us in the present case to resolve the difference of opinion expressed in some of the judicial decisions as to whether the term "assets" includes the totality of assets or only a portion thereof. In the view that we are taking of the true meanings of the two entries, it does not make any difference whether, the term "assets" includes all assets of an individual or only a portion thereof, though, prima facie, it appears to us that the view taken by Chagla C. J. In Col. Sir J.N. Duggan and Another Vs. The Commissioner of Income Tax, Bombay City, , that the expression "assets" can also include a portion thereof, appears to us to be the better view. Whilst construing the aforesaid two entries, we must bear in mind that the task that we are performing is to determine the extent of the legislative field of the concerned Legislatures and, that, the entries have been described in Article 246 as matters enumerated therein. Therefore, the entries describe or enumerate the subject matters of taxation. In determining this question, it is important to bear in mind that, the distinction which some of the decided cases have made between the measure of a tax or the machinery, by or through which a tax is to be collected, and the subject matter of taxation in construing the entries, the formal question is not of prime importance. The question of prime importance is to discover what the subject matter of an entry is. Viewing the two entries in the light of the above discussion, we have no doubt whatsoever that, broadly speaking, the subject-matter dealt with by entry 86 is a tax on capital value of assets, whereas the subject-matter dealt with by entry 49 is a tax on lands and buildings. Having regard to the meaning of the crucial words "assets" and "lands and buildings", and, having regard to the fact that, the Parliament's power of legislation in regard to assets is restricted only to their capital value whereas the States powers are not so restricted, we have no doubt whatsoever that, the identity of the two kinds of taxation can easily be distinguished in a given case. If the tax is on the available properties of an individual or a company then, the tax must be on capital value thereof, whereas, if the tax is on lands and buildings, it can be levied either on capital value or on rateable value or on any other basis Whereas, in the case of entry 86, capital value is itself the subject-matter, in the case of a tax on lands and buildings, capital value would be only one of the several measures which can be adopted for the purpose of levying the tax thereon. In that view of the matter, we are not in agreement with the contention of Mr. Nanavati that, a construction of the two entries reveals a conflict in the legislative fields. The fields appear to be separate and well-defined, What really Mr. Nanavati has in mind is not a conflict in the legislative fields. What he has really in mind is that, lands and buildings, may have to bear the burden of a tax

both under entry 86 and entry 49. Such would be the case if lands and buildings are totally unburdened. Then, they may have to bear the burden of a tax, not only under entry 86, but also under entry 49. But, the fact that such a thing can happen cannot change the real character or nature of the tax imposed under one or the other entry. Such is really the ratio of the decision of the Full Bench case in *Byramjee Jeejeebhoy*, AIR 1940 Bom 65, where an urban immovable property tax was held to be not Income Tax in spite of the fact that, the tax which was levied on the rateable value of property would be calculated in the same manner as Income Tax would be calculated from an individual in regard to the same property which would be subject to the payment of urban property tax. Therefore, the fact that, one and the same property may have to bear more than one burden under more than one entry, in our judgment, is no ground for cutting down the amplitude of any of the entries. If, in a given set of circumstances, the burden happens to be too heavy, it is for the Legislature imposing the taxation to consider whether to impose the tax or not, and if it finds that the burden is too heavy in what way to give relief. In our judgment, therefore, a study of the aforesaid two entries does not reveal any conflict in the fields thereof and, there is no necessity even to undertake the task of effecting any reconciliation, much less, is there any scope for the application of the principles laid down by the Constitution in Article 246. Having regard to the fact that, the impugned house tax definitely levies a tax on the basis of capital value of lands and buildings and that, such a tax is directly within the competence of the State Legislature, there is no necessity to consider the application of the doctrine of pith and substance in construing the impugned house tax, in view of the fact that it does not trespass or purport to trespass upon the legislative field delineated by entry 86.

(18) Before we end this discussion, we may not that *Gopal Mills Co. Ltd. Vs. The Broach Borough Municipality*, , has not only been approved by Sarkar J of the Supreme Court, but has also been followed by the two High Courts of Kerala and Orissa in *Mammad Keyi Vs. Wealth Tax Officer, Calicut*, and *Vysya Raju Badri Narayanamurthy Vs. Commissioner of Wealth Tax*, .

(19) In view of our aforesaid conclusion, we find that, the imposition of the house tax under the Boroughs Act and the continuance of such house tax under the Municipalities Act, being within the legislative competence of the State Legislature, will be within the legislative competence of the Municipality too. It is not disputed by Mr. Nanavati that, the Legislature, which has the power to impose a tax, has also the power to legislate for the validation of such a tax. On that principle, we must also record the finding that the Validation Act is also within the legislative competence of the State Legislature.

(20) That brings us to the fourth submission. However, before we discuss that submission, it will be convenient first to read and understand the Validation Act as a whole because, such an understanding will help us not only to dispose of the fourth submission, but the next group of four further submissions.

(21) The preamble of the Validation Act says that, the Act has been enacted "to

validate the imposition and collection of taxes or rates imposed by municipalities in certain cases." "Municipality" has been defined in clause (2) of section 2 as meaning, inter alia, a municipal borough. Clause (3) of section 2 defines "relevant municipal law" by reference to a number of statutes and says that, in relation to a municipal borough in the Bombay area of the State of Gujarat, it shall mean law, inter alia, in relation to the Boroughs Act. Then comes section 3 which contains the validating provisions. It consists of an exceptionally long sentence and deserves to be reproduced in full:

"Notwithstanding anything contained in any judgment, decree or order of a Court or Tribunal or any other authority, no tax or rate assessed or purporting to have been assessed by a municipality under the relevant municipal law or any rules made thereunder on the basis of the capital value of a building or land, as the case may be, or on the basis of a percentage of such capital value, and imposed, collected or recovered by the municipality at any time before the commencement of this Act shall be deemed to have been invalidity assessed, imposed, collected or recovered by reason of the assessment being based on the capital value of the percentage of the capital value, and not being based on the annual letting value, of the building or land, as the case may be, and the imposition, collection and recovery of the tax or rate so assessed and the provisions of the rules made under the relevant municipal law under which the tax or rate was so assessed shall be valid and shall be deemed always to have been valid and shall not be called in question merely on the ground that the assessment of the tax or rate on the basis of the capital value of the building or land, as the case may be, or on the basis of a percentage of such capital value was not authorised by law and accordingly any tax or rate, so assessed before the commencement of this Act and leviable for a period prior to such commencement but not collected or recovered before such commencement, may be collected and recovered in accordance with the relevant municipal law, and the rules made thereunder."

(22) For the sake of convenience, we propose to divide section 3 of the Validation Act into five parts. The first part is the non obstante clause. The second part ends with the words "and not being based on annual letting value of the building or land, as the case may be." The third part begins with "and the imposition, collection and recovery of the tax or rate so assessed" and ends with "shall be valid and shall be deemed always to have been valid". The fourth part begins thereafter and ends with "or on the basis of a percentage of such capital value was not authorised bylaw". And the fifth and the final part consists of the balance of the section. The non obstante clause is intended to enact that the section operates in spite of anything to the contrary decided by any judgment, decree or order of a Court or tribunal or any other authority. Subject to an indifferent argument advanced by Mr. Nanavati, presently to be mentioned, it is not disputed that, this non obstante clause takes within its purview the judgment of the Supreme Court delivered in Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad, . In other words, there is no dispute that, the Legislature intends that the validating section shall operate in spite of the

decision of the Supreme Court that the levy of a rate on the basis of capital value is bad and illegal. The other parts of the section deal with a number of concepts, all of which are to be found embodied in the chapters on taxation and recovery of municipal claims. The concepts mentioned are, (1) tax, (2) rate (3) rules, (4) imposition, (5) assessment, (6) collection, and (7) recovery, For the sake of brevity, we will describe the last four concepts as "levy" in this part of the judgment. All the last four party deal with tax or rate of a particular kind. Firstly, the tax or rate is one which is assessed or purporting to have been assessed by a municipality. Secondly, it must be a tax assessed under the relevant municipal law or any rules made thereunder. It cannot be disputed that, the latter two expressions will include the Boroughs Act and the House Tax Rules of the Broach Municipality. Thirdly, it must be a tax or rate assessed on the basis of capital value of a building or land, or on the basis of a percentage of such capital value. The provisions of section 3 apply to a tax or rate of the above kind. It cannot be disputed that, the impugned house tax would come within the purview of the kind of tax which section 3 deals with. The second part of this section embodies a negative fiction. It says, that, a tax or rate of the aforesaid kind, if levied before the commencement of the Validation Act shall not be deemed to have been invariably levied. The third part of the section is a positive enactment and also embodies a positive fiction. It says that, the rules and the levy shall be valid "and shall be deemed always to have been valid." The fourth part embodies a negative injunction. It enact that, such rules and the levy shall not be questioned on the ground that, the levy was on the basis of capital value of a building or land or on the basis of a percentage of such capital value. The fifth and the final part embodies a positive injunction. It says that, such a tax or rate, if not already collected or recovered before the commencement of the Validation Act, "may be collected and recovered in accordance with the relevant municipal law and the rules made thereunder."

(23) Now, Mr. Nanavati contends that, the whole section is bad, because, it violates Article 141 of the Constitution. This argument is based on the submission that the non obstante clause is invalid. Mr. Nanavati contends that, under Article 141, the law declared by the Supreme Court is binding on all Courts within the country. According to Mr. Nanavati, therefore, any law which is declared by the Supreme Court is sacrosanct and cannot be changed even by a legislative fiat. It is this argument of Mr. Nanavati which we have described above as indifferent. In our judgment, there is no merit in this contention. It is undoubtedly true that, decision on a point of law recorded in the judgment of the Supreme Court, is the law of the land and it is binding on all Courts in India. But, it is important to notice that, the law so declared is the ordinary law of the land and it is not constituent law. Article 141 expressly makes it binding on all Courts. It does not make it binding on Legislatures. The law so declared, being the ordinary law of the land, can be changed by the Legislatures acting within their respective fields. When a Legislature, for example, annuls a law declared by the Supreme Court, it performs a function which is assigned to it by the Constitution

and does not encroach in any way upon Article 141 or any other provision of the Constitution. It is quite clear that, the Supreme Court does not make a law by delivering a judgment. It only by a process of judicial interpretation or determination, declares what the law is. In the case of statute law, when the Supreme Court declares by interpretation what the true meaning of that statute is, it does not make any law for or on behalf of the Legislature, but it only interprets the legislative mind and declares what law the Legislature has ordained to be followed. Under the circumstances, in our judgment, there is no merit in the above contention of Mr. Nanavati that section 3 violates Article 141 of the Constitution.

(24) That brings us to the fourth submission of Mr. Nanavati. That submission is based on Article 265 of the Constitution. The Article prohibits the levy or collection of tax except "by authority of law." If the house tax is considered to be a rate, the, having regard to *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, , there cannot be any doubt that, the levy and collection of that, tax by the Municipality will be without authority of law. Therefore, till the date of the passing of the Validation Act, the levy of the house tax not being by authority of law, will be illegal. Mr. Nanavati says that therefore, all the processes which had been gone through by the Municipality upto the date of the commencement of the Validation Act were illegal - the processes of enactment of rules, imposition of tax, its assessment and collection and recovery of the amount thereof. He says that, this being the legal consequence arising out of a provision of the Constitution, it cannot be said that the authority of law, which was missing till then, is supplied by the Validation Act. Mr. Nanavati contends that in order that a tax may be validly levied, the tax gatherer must have authority of law at the time of the actual levy and, if that authority is missing at any of the stages of the aforesaid processes, the vice must attach to that stage for ever and cannot be removed even by a so veering Legislature. In other words, the contention of Mr. Nanavati is that, in regard to a tax, authority of law cannot be supplied retrospectively. Having regard to the analysis of section 3 which we have already given, there is no doubt whatsoever that this is exactly what the Validation Act does. Though the house tax was an illegal levy and could not have been collected earlier without breaking Article 265, section 3 permits the tax already levied to be retained, or such part of the tax as was not already recovered, to be recovered in future. In our judgment, there is no merit in the above contention of Mr. Nanavati. In *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, , their Lordships of the Supreme Court observed as follows in connection with the validity of section 2, of the Sales Tax Laws Validation Act, 1956.

". . . there is nothing express in Art. 286(2) imposing a restriction on the power of Parliament to enact a law with retrospective operation. The Sales Tax laws Validating Act cannot be held to be bad on the ground that it is retrospective in operation."

An argument under this head similar to the one advanced by Mr. Nanavati was advanced before their Lordships of the Supreme Court in *Mohammadbhai Khudabux Chhipa and Another Vs. The State of Gujarat and Another*, . Their Lordships rejected such an argument in the following words at page 1529:-

"We have not been able to understand this contention, for it is not disputed that the legislature has power to legislate retrospectively even with respect to taxation (see AIR 1956 SC 468) where Sales Tax Laws Validation Act, 1956, was held constitutionally valid."

The Supreme Court had, in an earlier case reported in *Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another*, , *Mohammad Hussain Gulam v. State of Bombay*, struck down a bye-law imposing a licence fee and the consequent levy. Thereafter, the Governor of Gujarat promulgated the Bombay and Saurashtra Agricultural Produce Markets (Gujarat Amendment and Validating Provisions) Ordinance I of 1961. One of the sections which was introduced by that Ordinance in the Bombay Agricultural Produce Markets Act XXII of 1939 was section 29B which validated, inter alia, the levy of the aforesaid licence. Their Lordships upheld the authority of law supplied by section 29B in regard to the impugned licence fee in the following words in *Mohammadbhai Khudabux Chhipa and Another Vs. The State of Gujarat and Another*, which occur immediately after the one which we have already quoted:

"Fees are also included within the taxing power of the legislature in the broadest sense. Article 31(1) therefore has no application in the present case and we have to look to Art. 265 which says that "no tax shall be levied or collected except by authority of law". Sub-section (3) of S. 29B is the law which retrospectively authorises the levy of licence fees collected in this case. Retrospective power of the legislature to make a law being there even in the case of taxation, we fail to see how the provisions of sub-section (3) of S. 29B which validate the levy and collection of Licence-fees can be held to be invalid under Art. 31(1)."

Mr. Nanavati tries to get over the effect of the decision in *Mohammadbhai Khudabux Chhipa and Another Vs. The State of Gujarat and Another*, on the ground that the observations of their lordships were based on a concession made at the Bar. However, in our judgment, the quotation which we have made from the latter part of the judgment does not leave any doubt that, in any case the latter passage represents the decision of their Lordships that, a tax can be validated retrospectively. In view of the above decision, in our judgment, there is no merit in the above contention of Mr. Nanavati that a tax cannot be retrospectively validated and even through so retrospectively validated, will continue to be hit by Article 265 in regard to the past levy and collection. Therefore, the fourth submission of Mr. Nanavati must be rejected.

(25) But, Mr. Nanavati contends that, even if the State Legislature has the power to authorise a levy and its collection retrospectively, in fact and in law, the same has not been actually done in the present case. The argument of Mr. Nanavati is

as follows: He contends that, the authority to levy a tax at all material times that is at the date when the house tax was levied and before the commencement of the Validation Act, was supplied to the Municipality by section 73 of the Act. He contends that, therefore, in order that the Municipality may have authority of law to retain the collections illegally levied, or to recover the amount of a tax illegally imposed, it is not merely enough to pass a Validation Act. He contends that, in order to supply the necessary authority of law, it is further necessary for the State Legislature to amend S. 73 suitably so as to confer authority on the Municipality retrospectively to levy the tax. In other words, according to Mr. Nanavati it is not enough for the State Legislature to validate past rules, past imposition of a tax, past assessment or past collection. According to him, such past acts, being illegal in their inception, would continue to be so in spite of the Validation Act, unless section 37 and the other sections relating to assessment, collection, etc., are suitably amended, to confer retrospective authority on the Municipality in regard to all the aforesaid past processes. Confining our attention for the present only to the past acts there is, in our judgment, no merit in that part of the contention of Mr. Nanavati. In fact, the point is also covered by the decision of the Supreme Court in *Mohammadbhai Khudabux Chhipa and Another Vs. The State of Gujarat and Another*, , their Lordships have observed as follows which, in our judgment, completely negatives the contention of Mr. Nanavati.:

"The contention on behalf of the petitioners is that these provisions are insufficient to validate the defects which were noticed in the earlier judgment of this Court inasmuch as the relevant provisions of the Act and the Rules have not been retrospectively amended. We see no force in this argument, for the provisions as they stand certainly validate the defects pointed out in the earlier judgment of this Court. It is true that the relevant sections and the Rules have not been retrospectively amended by the Ordinance, but this in our opinion was unnecessary. Retrospective amendment may be necessary when it is desired to change the law. But it seems that so far as S. 11 is concerned, the legislature did not intend that the control of the State Government over levy of fees should be done away with for the future also. Therefore, all that was necessary in that respect was to validate the past actions and this is specifically provided for by sub-ss. (2) and (3) of S. 29B."

Mr. Nanavati tries to get over the aforesaid observations by contending that, in the above case, though section 11 of the Marketing Act was not expressly amended, the effect of section 29B of the Amending Act was to amend impliedly section 11 of the original Act. In our judgment, there is no merit in this distinction. Their Lordships of the Supreme Court have not based their decision on any such distinction. They have definitely based their decision on the ground that, the original Act was not amended and they have definitely stated that it was not necessary to do so, because, what the Legislature intended was only to validate past acts.

(26) Mr. Nanavati, however, relies very strongly upon a decision of the Madhya

Pradesh High Court reported in AIR 1962 Madh Pra 342. Firm Dayalal Meghji and Co. V. State of Madhya Pradesh. Mr. Nanavati says that, his submission is directly supported by this decision of the Madhya Pradesh High Court. We do not agree. In our judgment, that case is clearly distinguishable from the facts of the present case and the facts obtaining in Mohammadbhais" Case AIR 1962 SC 1517 decided by the Supreme Court. Four notifications, Nos. 306 to 309 XVI-58, dated 30th December 1958 issued under the Minimum Wages Act, were struck down as invalid and inoperative by the Madhya Pradesh High Court in Anand Transport Co. (Private) Ltd. V. State of Madhya Pradesh, MP No. 150 of 1959 (MP), Corporation of the City of Narottamdas Harjiwandas Vs. P.B. Gowariker, Inspector, Minimum Wages, Assistant Labour Commissioner's Office and Others, . They were so struck down because, the revised rates of minimum wages fixed under the Minimum Wages Act, 1948, were not in accordance with section 5(1)(b) of the Minimum Wages Act, 1948 inasmuch as they did not specify any date for the receipt of representations, and also on the ground that they gave retrospective operation to the rates of minimum wages though the Minimum Wages Act did not authorise the issue of a notification with retrospective effect. In Narottamdas Harjiwandas Vs. P.B. Gowariker, Inspector, Minimum Wages, Assistant Labour Commissioner's Office and Others, , the notification was held to be invalid also on the additional ground that, the Advisory Board constituted by the Government was not validly constituted in conformity with the requirements of section 9 of the Minimum Wages Act. The Madhya Pradesh State Legislature there after enacted the Minimum Wages (Madhya Pradesh Amendment and Validation) Act, 1961 to validate the revised minimum rates. This validation was sought to be effected by the introduction inter alia of section 31A to the principal Minimum Wages Act. The Madhya Pradesh High Court held that this section 31A was ineffective to validate the revised rates. This section 31A was held not to be sufficient to validate the revised rates retrospectively. Before giving the reason for doing this, the Madhya Pradesh High Court set out what section 31A purported to do The High Court stated that that section attempted to validate the rates of minimum wages as from a past date. Then, it pointed out that, the Act fixing the minimum wage rates, which had been notified on 30th December 1958, was an executive Act of the Madhya Pradesh Government, purporting to be done u/s 3 of the principal Act, that is, the Minimum Wages Act, after following the procedure prescribed by that principal Act for fixing and revising minimum wages. It stated that this Act of fixing of minimum wages from the date mentioned in the notification dated 30th December 1958. Was declared to be invalid in the above cases on account of certain infirmities. After so pointing out the infirmities the High Court proceeded to give its reasons for holding that section 31A was insufficient to validate the past Act of the Madhya Pradesh Government in the following words. "The fixation of minimum wages under the notification dated the 30th December, 1958 was not any Act done under any State law. Therefore what S 31 A purports to do is to validate an invalid Act done under a Central Act and which was required to be done in conformity with the procedure laid down in S. 5 of the principal Act."

The Madhya Pradesh High Court thereafter posed a question for decision, and stated that the question which arose for decision before it was whether the State Legislature had the power to validate an Act done under a Central Act or a law made by Parliament? After so posing the question, the Madhya Pradesh High Court proceeded to answer it in the following way at page 347:

"Now, it is well settled that the power of validation by subsequent legislation of any defective law or Act done under any Act is subsidiary or ancillary to the power to deal with the particular subject specified in Lists I, II and III of the Seventh Schedule of the Constitution AIR 1941 16 (Federal Court) : AIR 1944 1 (Federal Court) ; and Mohammadbhai Khudabux Chhipa and Another Vs. The State of Gujarat and Another, . The power of validation is included in the power of legislation. It follows from this principle that an invalid Act under an Act can be validated by subsequent legislation of the authority which enacted the Act in the exercise of its legislative powers conferred by the entries in the Lists. The fixation of minimum wages notified on 30th December 1958 being an Act of the Government under the principal Act, which is a Central Act, the invalidity in that fixation could be validated only by Parliament."

Therefore, the ground on which the Madhya Pradesh High Court invalidated section 31A was not the ground that the principal Act, under which the executive or the legislative Act had been invalidly done, had not been amended, but it invalidated that Section on the ground that the Madhya Pradesh Legislature had no legislative authority to amend the Central Act under which the original notifications had been issued. In our judgment the two problems are entirely different. The problem before us does not involve the question of the competence of the Gujarat State Legislature to amend the Boroughs Act. That Legislature having the power to amend the Boroughs Act can always legitimately undertake the validation of any Act purporting to have been done under the Boroughs Act, but, subsequently found to be invalid for some reason. With respect, we agree with the ratio in *Firm Dayalal Meghji and Co. and Others Vs. State of Madhya Pradesh and Others*, . But, in our judgment, that ratio has nothing to do with the contention raised by Mr. Nanavati, and if that ratio were to be applied in the manner in which Mr. Nanavati does it, one would at once contravene the ratio laid down in *Mohammadbhai Khudabux Chhipa and Another Vs. The State of Gujarat and Another*, which, in our judgment, is clearly applicable to the facts of the present case.

(27) But, contends Mr. Nanavati, that the taxing authority in the previous years was the Municipality and the validating authority is the State of Bombay and, as the two taxing authorities are different, the principle laid down in *Firm Dayalal Meghji and Co. and Others Vs. State of Madhya Pradesh and Others*, must be applied. He contends that, if the taxing authority had been the State Legislature, then, it could have validated an invalid tax which had previously been imposed by itself. But that, in law, it is not possible for one taxing authority to validate an invalid tax levied by another taxing authority. He contends that, under the

Boroughs Act, the Provincial legislature had conferred an authority on the Municipality to levy a tax and, if an invalid tax happens to be levied by the Municipality, the only way in which that tax can be saved is by conferring retrospective authority on the municipality by suitably amending the Act itself and, in law, there is no other way of validating an invalid tax. The learned Advocate General repels this argument of Mr. Nanavati by contending that, the Municipality is a delegate of the State Legislature in the matter of taxation and that, if an Act of the delegate is found to be invalid, the principal has always an authority to validate the invalid Act of the delegate. Mr. Nanavati repels the above argument of the learned Advocate General by contending that the analogy of principal and delegate does not apply in the case of the aforesaid piece of legislation. He contends that, by enacting the Boroughs Act, the Provincial Legislature did not constitute the Municipality as its delegate in the matter of taxation, but, in law. What actually happened was that a definite authority was given or conferred by a sovereign Legislature upon a subordinate authority to legislate on the subject of taxation. In our judgment, there is some force in the argument of Mr. Nanavati, but, that is not sufficient to uphold his contention. In our judgment, even if the true legal position is that, the Legislature had conferred power on a local authority to levy a tax, thereby, the Provincial Legislature, and now the State Legislature, did not abrogate its power to tax the citizens in the same field. In our judgment, having regard to our Constitution, it cannot be denied that the State Legislature had the power to impose all or any of the taxes enumerated in section 73 of the Boroughs Act and has the power u/s 99 of the Municipalities Act. The State Legislature had that power at all the relevant times, that is, the times in regard to which the invalid tax was intended to be validated. That being the legal position, in our judgment, without any further intervention from the local authority, the State Legislature which had the undoubted power to impose the tax also had the power to validate a tax imposed by another authority but found to be invalid - which tax it could have itself imposed but which was imposed by another authority. In our judgment, there is nothing legally wrong in the Legislature taking the step for validating a tax which was invalid at its inception when imposed by another authority. That being the legal position, in our judgment, the challenge on the Validation Act on the ground mentioned in the fifth submission must be negated.

(28) The next three submissions, Nos. (6) to (8), may be taken up for discussion together. Alternatively, Mr. Nanavati contends that, even if we hold that the Validation Act is itself valid, then, at the most the Validation Act can validate the post levy upto the date of the commencement of the validation Act and supply authority to recover dues in future in respect of the past taxation, but that, that Validation Act cannot validate the invalid tax for the period subsequent to the commencement of the Validation Act and that, therefore, the Municipality did not have any authority in law to recover the house tax for the year 1964-65 and the proportionate tax for the period from 27th January 1964 to 31st March 1964.

The learned Advocate General repels this argument of Mr. Nanavati on a number of grounds. The first ground is that Mr. Nanavati is not right in contending that the Validation Act does not save the house tax for the future. The learned Advocate General submits that, if section 3 of the Validation Act is correctly read, it not only saves the house tax levied in the past upto the date of the commencement of the Validation Act, but, it saves the House Tax Rules for the future and, according to the learned Advocate General, the moment the House Tax Rules ensure for the future, the authority which the Municipality lacked on account of the decision in *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, would come to be conferred and, on account of the existence of the old but validated House Tax Rules, the Municipality would be in a position to levy the tax in future. Mr. Nanavati strongly resists this argument. According to him, the House Tax Rules are not saved for the future by section 3 of the Validation Act again with a view to scan its provisions from this limited aspect as to whether, the House Tax Rules are or are not saved for future. Now, Mr. Nanavati draws our attention to the fact that the first, the second and the fifth part of section 3 do not deal with the validation of the tax rules at all. The non-obstante clause obviously does not deal with that topic. The second part does mention the rules, but they are referred to only for the purpose of designating the tax or rate which is not to be deemed to have been invalidly assessed, imposed, collected or recovered. The fifth part obviously confers authority only of recollecting or recovering any tax or rate already assessed before the commencement, of the Validation Act. Mr. Nanavati's contention is that, these three parts are the most essential and important parts of the validating provision and, as none of them validates the tax rules, the intention of the Legislature must be taken to be not to validate the tax rules at all. In our judgment, it would be wrong to interpret the section in the above manner. In our judgment, all the five parts of the section are important. But, if more emphasis is to be given to any one part than the other then, in our judgment, the learned Advocate General is right that it is the third part which represents the kernel of the validating provision. It is this third part which positively enacts as to what is to be validated. The third part not only validates the previous imposition, collection and recovery of a tax or rate, but it also validates the rules made under the relevant municipal law. The fourth part emphasizes this further by stating that, such rules shall not be called in question on the ground that the assessment of the tax or rate was based on capital value of a building or land or on the basis of a percentage of such capital value. The fourth part validates the rules, not only up to date, but saves them also for the future. The fourth part definitely uses the future tense and says that, they shall not be called in question that is, in future. In the view of the matter, in our judgment the Validation Act not only saves the past imposition collection and recovery of the illegal tax or rate and authorises recovery of such a tax or rate imposed upto the date of the Validation Act for the future but, it also saves the taxation rules for all times. If the taxation rules are saved for future, then it is quite clear that, rule 2, which imposes the house tax is saved too and the house tax must be taken to have been imposed also for the

years subsequent to the date of the Validation Act. But, Mr. Nanavati contends that, even if the imposition is saved the assessment will not be saved at all. This contention of a Mr. Nanavati is based on the ground that section 3 of the Validation Act does not contain any words which would enable the Municipality to assess collect or recover the house tax in future. In our judgment, the learned Advocate General is right in contending that, if once the tax rules are saved, it is not necessary for the Legislature to provide for future assessment collection and recovery. The aforesaid three things would naturally follow from the fact that the tax rules are validated. If the rule is valid and the consequent imposition then, the Municipality would automatically acquire the power of assessing the buildings and lands to quantify the tax and would naturally have authority of law to collect and recover the same. A still alternative argument of Mr. Nanavati is that, even if this be so, the House Tax Rules will not survive the repeal of the Boroughs Act by the Municipalities Act. As already stated, the latter Act repeals the former Act. But, however, there is a saving clause enacted in sub-section (2) of section 279 of the Municipalities Act. The clause relevant for the present purposes is clause (vi), the relevant portion of which we have already reproduced in a previous part of this judgment. Mr. Nanavati's contention is that, this clause (vi) is not applicable to the facts of the present case. That clause (vi) in terms saves a tax and rules imposed and made and in force immediately before the commencement of the Municipalities Act. Consistent with his argument previously noted, Mr. Nanavati contends that, this clause can save only a valid tax and rules and not a tax or rules illegally imposed or made. Mr. Nanavati is right in reading clause (vi) in the aforesaid manner. But, once we reach the conclusion, as we have done, that the tax rules are rendered valid by the Validation Act. Then, that argument must necessarily fail. But, Mr. Nanavati has another arrow to his bow. He contends that, the Municipalities Act defines "earlier municipal law" to mean the enactments mentioned in section 2, clause (7) of the Municipalities Act and that, that clause does not include the Validation Act. Mr. Nanavati's contention is that, in the absence of the Validation Act being included in the municipalities Act, clause (vi) is ineffective to save anything contained in clause (vi) aforesaid. He contends that, the function of a saving clause is only to save that which is repealed and the Validation Act being not one of the Acts which is repealed by the Gujarat Municipalities Act, the saving clause cannot operate to save the Validation Act all. The learned Advocate General, however, draws our attention to the special language employed in clause (vi) aforesaid. He says that, though, at the commencement of sub-section (2) of section 279, the words used are "Notwithstanding the repeal of the said Acts" in clause (vi) when saving the tax and the rules and certain other matters the Legislature does not use the expression "earlier municipal law." On the definition of which Mr. Nanavati relies, but, uses the significant expression "in force immediately before the date of the commencement of this Act." Therefore, the argument of the learned Advocate General is that, in spite of the fact that the Validation Act has not been repealed, what clause (vi) saves is not merely the tax and the rules made by the earlier, that is, the repealed, laws, but it saves all

taxes and rules and other things which were in force before the date of the commencement of the Act. Therefore, the learned Advocate General contends that, in order to answer the poser set up by Mr. Nanavati, the prop question to ask is, are the impugned tax and the impugned house Tax Rules not laws in force on the date of the commencement of the Gujarat Municipalities Act? He says that, having regard to the fact that the Validation Act has not been repealed, it must be regarded as a law in force and, if the tax and the rules are saved by that enactment, then, the impugned tax and the rules must be regarded to be laws in force on the date of the commencement of the Municipalities Act and as such, they would be saved. In our judgment, there is considerable force in the argument of the learned Advocate General, and we have no hesitation in upholding the same. Therefore, the sixth, seventh and the eighth submissions of Mr. Nanavati must be rejected.

(29) However, before we part with the aforesaid three submissions, we may note one more argument which Mr. Nanavati advanced and which would have required consideration if we had held that the tax rules did not survive the validation Act. Mr. Nanavati's argument was that in any view of the matter, the impugned tax between 27th January 1964 and 31st of March 1964, would not be saved. This represents the seventh and a part of the eighth submissions of Mr. Nanavati. Mr. Nanavati's argument is that, the Validation Act came into force on 26th of January 1964 and the Municipalities Act came into force on 1st of January 1965. He contends that, if the tax rules do not ensure for the future then, the Municipality will not have a right to levy the tax after 27th of January 1964 and therefore, the levy of the tax from 27th January 1964 upto 31st March 1964 will be invalid and that,, even if clause (vi) of sub-section (2) of section 279 is construed as saving an illegal tax and confers authority on the Municipality to recover such a tax, it will not save the tax for the period between 27th January 1964 to 31st of December 1964, the date previous to the date on which the Municipalities Act came into operation. In our judgment on the aforesaid basis, the seventh submission of Mr. Nanavati will deserve to be rejected in any case, although in that contingency, a part of the eighth submission may have to be upheld in so far as it relates to the period from 1st April 1964 to 31st December 1964. From rule 3, it is quite clear that, the house tax is payable in advance once a year and falls due on the 1st of April of every year. Therefore, in regard to the tax for the year 1963-64, though the right to collect or recover the tax amount may arise only after the assessment list is completed and the house tax is quantified and demanded the liability for the whole year beginning from 1st April 1963 to 31st of March 1964 will have arisen on 1st April 1963. In that view of the matter though the right to collect or recover the house tax arose in the Municipality later, the liability of the tax-payer to pay the tax arose on 1st April 1963 for the whole of the period upto 31st March 1964, and the fact that the Validation Act expired on 27th of January 1964 would have no effect on the right to recover the tax for the proportionate period between 27th January 1964 to 31st March 1964. Under the House Tax Rules, the liability to pay the house tax

does not arise *de die in diem* but it arises only on the first day of the financial year and that liability to pay the tax is for the whole financial year. In that view of the matter, in our judgment, the seventh submission of Mr. Nanavati will have to be rejected in any case. However, it cannot be disputed that, if the House Tax Rules are not valid for the future, then there will be a hiatus for the period beginning from 1st April 1964 to 31st December 1964 and there will be no authority of law to recover the tax for the latter period.

(30) That brings us to the ninth and the last submission of Mr. Nanavati, Mr. Nanavati's contention is that petitioner, and its director and shareholder, petitioner No. 2 in the second petition, have the fundamental right to hold property and that, that fundamental right is subject to the right of the State to make any law imposing reasonable restrictions on the exercise of that fundamental right in public interest. He contends that the tax being confiscatory in its nature and incidence, must be held to be an unreasonable restriction and, consequently, must be held to be violative of this aforesaid fundamental right. Respondents resist the aforesaid contentions on a number of grounds. Firstly, they contend that, the fundamental right of petitioner No. 2 of the second petition is not in any way affected at all and he has no right to complain. They say that, the tax is imposed on petitioner and there is nothing in the rules or the relevant law which makes petitioner No. 2 of the second petition responsible for the payment of the bills issued against petitioner. They, therefore, contend that, if there is any one who can make a complaint in regard to the impugned bills, it is only petitioner. On that basis, respondents contend that, petitioner being a company is not a citizen for the purposes of Article 19 and that being so, petitioner has no fundamental right to hold any property and, therefore, even on the assumption that the tax is expropriatory, petitioner cannot make a grievance under Article 19 at all. In the second instance, respondents contend that, even if one proceeds on the assumption that petitioner has the aforesaid fundamental right and that the tax is expropriatory in nature and, therefore, void on the date it was enacted, that will not make the Validation Act void which was passed during the pendency of emergency. Respondents' contention is that, it is the latter Act which imposes the liability on petitioner to pay the amount of the tax as mentioned in the impugned bills and confers authority of law to recover the same and that, that law, in any case, cannot be challenged by virtue of the provisions contained in Article 358 during the pendency of the emergency. Still alternatively, respondents contend that the tax in question is not expropriatory and that, all the facts, on the basis of which that submission is made, are incorrect or are not admitted by respondents and that, in any case, the aforesaid part of the submission for which there is no legal or factual basis. In our judgment, the contentions of learned Advocate General that, no fundamental right of petitioner No. 2 of the second petition has been affected by the impugned bills and that petitioner has no fundamental right under Art. 19, are justified and the last submission of Mr. Nanavati deserves to be rejected, amongst others, on these grounds. The Supreme Court pointed out in *Tata*

Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others, , Tata Engineering and Locomotive Co. Ltd. v. State of Bihar, that, the effect of confine Article 19 to citizens as distinguished from persons to whom other Articles like 14 apply clearly must be that it is only citizens to whom the rights under Article 19 are guaranteed and that, if the Legislature intends that the benefit of Article 19 should be made available to corporations, it would not be difficult for it to adopt a proper measure in that behalf by enlarging the definition of "citizen" prescribed by the Citizenship Act passed by the Parliament by virtue of the powers conferred on it by Articles 10 and 11. It also pointed out that the fact that the Parliament had not chosen to make any such provision indicated that it was not the intention of the Parliament to treat corporations as citizens. Therefore, it is not disputed by Mr. Nanavati that, Article 19 is not applicable to a company like petitioner and petitioner, therefore, cannot move this Court for the protection of the fundamental right embodied in Article 19 which it in fact does not possess. In the same case, their Lordships also pointed out that, the identity of a company is entirely separate from that of shareholders and that, if the company does not possess a fundamental right, then, its shareholders cannot be allowed to file a petition under Article 32 on the ground that the company is nothing more than an association of share holders and members thereof. Petitioner No. 2 of the Second petition is a shareholder of the company. In our opinion, it does not make any difference that, in addition, he is a Director of petitioner company too in our judgment, a Director cannot stand on a better footing in regard to enforcement of a fundamental right on behalf of a company than its shareholder or a body of shareholders. Under the circumstances, we have no doubt whatsoever that, none of two petitioners has established a right to challenge the impugned taxation on the ground that its or his fundamental right embodied Article 19 has been violated. Mr. Nanavati, however, relies upon the distinction which was made by this Court in regard to this matter in the case of Arvind Mills Ltd. V. State of Gujarat, reported in (1966) 7 Guj LR 156 . In that case, it was held that, though a company has no fundamental right conferred by the Constitution on a citizen, a company can challenge a law as void if the law happens to violate the fundamental rights of the citizens. Mr. Nanavati, therefore, contends that, if the taxation in question violates the fundamental rights of citizens, then the law is void and as such can be challenged by petitioner on that ground. The above decision is binding on this Bench and the learned Advocate General does not dispute that proposition so far as this Court is concerned. But, it is quite obvious that, in order that the above decision may apply to the facts of the present case, it is not enough for petitioner to prove that the law is expropriatory if its own property. In order to succeed, petitioner must prove that, the law is expropriatory or confiscatory of a citizen's property. In our judgment, the learned Advocate General is right in submitting that, there are no pavements to that effect in any of the two petitions, In fact, in the affidavits filed in the present case, the version of petitioner is that the impugned taxation is confiscatory of its property right. No attempt has been made by petitioner to prove that the law is expropriatory or confiscatory of the citizens property rights.

Even assuming that there is some substance in what petitioner says that the law is confiscatory or expropriatory of its own property, it cannot be assumed that the law will have the same character as regards the citizens siding within the limits of the municipal borough of Broach. Under the aforesaid circumstances, in our judgment, the ninth submission of Mr. Nanavati deserves to be rejected. In addition to this, in our judgment, there is force in the argument advanced by the learned Advocate General that, having regard to the proclamation of emergency by the President. Article 358 also will stand in the way of petitioner during the period of the emergency. From the discussion of the previous submissions, it is quite and collection of the impugned tax is the Validation Act was passed during the existence of the emergency. Now, Article 358 enacts in specific terms that, while a proclamation of emergency is in operation, nothing in Article 19 shall restrict the power of the State to make any law which the State would but for the provisions contained in Part III, be competent to make. Mr. Nanavati has no effective answer to this part of Article 358. But, what Mr. Nanvati contends is that, though the law in the Validation Act may be unchangeable because of Article 358, the executive action is not protected and can be challenged. In our judgment, Mr. Nanavati is not right. The same Article 358 not only protects a law violative of Article 19 during the period of emergency, but it protects also any executive action, because, the Article also states in terms that, while a proclamation of emergency is in operation, nothing in Article 19 shall restrict the power if the State to take any executive action which the State would, but for the provisions contained in Part III, be competent to take. It is obvious that, after a tax is imposed, the executive must take some action to levy and collect there same. The authority to levy and collect is supplied in the present case by the Validation Act. Therefore, it is quite clear that, when the payment of the impugned tax was demanded from petitioner by the Municipality, it demanded the same under a law which had the protection of Article 358. Even though that executive action may be violative of Article 19., the action will be protected, because Article 358 protects the executive action may be violative of Article 19, the action will be protected, because Article 358 protects the executive action in the same manner as it protects the making of a law violative of Article 19. In addition to this, in our judgment, the learned Advocate General is also right in contending that, petitioner's contention that the impugned tax is, in fact, confiscatory in nature, is base don a number of assumptions and the materials which have been placed before this Court cannot entitle us to hold that the levy is, in fact, confiscatory. Mr. Nanavati's argument is this. He says that, a study of Schedule E of the Taxation Rules shows that, in the case of a property owner owing property beyond rupees four lacs, the incidence of the tax will be three per cent of the amount of the capital value. He contends that, Income from an immovable property may be calculated as four per cent of the investment made therein. Therefore, the condition is that, in that, regard to a property of High value the tax will be three per cent of the capital value thereof, whereas its Income would be four per cent. Therefore, the tax which will be levied will be about seventy-five per cent of the annual yield from such a property. He

contends that, this is exclusive of the other taxes which the property owner may have to pay. In any case, he contends that, even if the other taxes are not taken into account, a levy of seventy-five per cent of the annual return of a property must be regarded to be confiscatory in nature. Petitioner has relied upon certain averments made in the affidavit filed on its behalf in regard to some of the properties owned by it and taxed, Mr. Nanavati relies upon the case of Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, . In our judgment, the ratio in this case is not applicable to the facts of the present case in that case, the liability of tax in respect of a forest land which fetched an Income of Rs. 31,100/- per year without making any deductions for expenses of management came to about Rs. 54,000/-. On the face of it, such a tax will be confiscatory. Mr. Nanavati relies upon Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad, for taking four percent as the annual yield of an immovable property. It is true that their Lordships have indicated this to be the yield of an immovable property. However, in our judgment, their Lordships did not mean to lay down an invariable percentage yield. What an immovable property in a particular locality yields is mainly a question of fact and can be determined only on evidence produced in the case. In rent restriction cases, 83/4 percent of the capital value of a property is usually taken as the annual yield which a property owner can expect from his investment. This is so in the case of residential or business localities. The contention of respondents is that in the case of industrial properties, the yield is even more. In the present case, the affidavits filed on behalf of respondents show that, according to them, the yield expected in Broach is ten per cent of the capital value of a property. If the latter is taken as the correct figure of the annual yield of a property if the latter is taken as the correct figure of the annual yield of a property in Broach, then, the percentage of tax levied on industrial properties cannot be more than about, thirty per cent. The learned Advocate General says that, this is the ordinary percentage of municipal tax in almost every city of Gujarat the municipality of which takes care to carry out properly the duties and care to carry out properly the duties and functions assigned to it under the municipal law. Moreover, there is considerable force in the argument of the learned Advocate General that, the mere fact that the incidence of the tax happens to be seventy-five per cent of the annual value of a property by itself alone should not be regarded as confiscatory. Therefore, having regard to the aforesaid factors, on the facts of the present case. It cannot be held that petitioner has established that the tax in question was expropriatory or confiscatory. On the above grounds, we purpose to reject the ninth and the final submission of Mr. Nanavati also

(31) In view of our aforesaid conclusions, it is quite clear that the two petitions must be dismissed with costs. Rules discharged with costs. Costs quantified at Rs. 500/- in each petition in separate sets.

(32) Mr. Vin on behalf of petitioner prays for certificate in each petition under Article 132, clause (1) and Article 133, clause (1), sub-clause (c), learned counsel for respondents have no objection. Accordingly, we direct that, certificate

in each petition should issue under the aforesaid Articles. Mr. Vin also prays for the continuance of the injunction already granted to petitioners. However, we see no proper reason for doing this. Therefore, that prayer is rejected.

(33) Petitions dismissed.