

**(2008) 08 KL CK 0030**

**In the High Court Of Kerala**

**Case No :** O.P. No"s. 2411 of 1999 and 36075 of 2001 etc.

Simon T.A.

APPELLANT

Vs

The Tahsildar and Another

RESPONDENT

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**Date of Decision :** 05-08-2008

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19, 265, 301  
Kerala Building Tax Act, 1975 — Section 10, 11, 14, 15, 2

**Citation :** AIR 2008 Ker 245 : (2008) 3 ILR (Ker) 667 : (2008) 3 KLJ 209 :  
(2008) 3 KLT 826

**Hon'ble Judges :** H.L. Dattu, C.J.;A.K. Basheer, J

**Bench :** Division Bench

**Advocate :** Joseph Markos, Thomas Vellappally, P.B. Mohankumar and P.V. Elias,  
for the Appellant; Muhammed Rafiq, GP, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

H.L. Dattu, C.J.—The vires of Section 5(4) of the Kerala Building Tax Act, 1975 hereinafter for the sake of brevity referred to as Act, 1975, is called in question by the petitioners in these Original Petitions, on the ground, that, the sub-section is, arbitrary, excessive and violative of Article 14 of the Constitution of India.

2. The facts in O.P. No. 2411 of 1999 may be noticed for the purpose of disposal of these Original Petitions. The petitioner had completed the construction of a non-residential building in Survey No. 333, in Kumaranelloor Village, Wadakkumcherry. It had only a ground floor. After completion of the construction of the building, the revenue authorities had assigned Building Nos. VII/1060 to 1067. The competent authority under the Act has assessed the building and has levied tax in a sum of Rs. 12,000/- on a plinth area of 245.77 sq.mts. u/s 9(3) of the Act by an order passed on 27.8.1993. Subsequently, petitioner has made major improvement of the building by constructing two more floors to the building. That was in the year 1997. The competent authority under the Act, has passed fresh assessment order u/s 5(4) read with Section 9(3) of the Act and

has quantified the tax liability in a sum of Rs. 1,90,800/- on a plinth area of 801.962 sq.mts. and has issued fresh demand notice in a sum of Rs. 1,78,800/- after giving deduction to the tax already paid in a sum of Rs. 12,000/-.

3. The facts in the other cases also are more or less identical. Apart from questioning the correctness or otherwise of the assessment orders passed under the Act, the petitioner's prayer in the Original Petition is to declare, that Section 5(4) of the Act in so far it authorises the reassessment of buildings already completed and assessed under the Act as unconstitutional.

4. We have heard Sri. Joseph Markose, learned Senior Counsel, and Sri. Abdul Rahim for the petitioners and Sri. Mohammed Rafiq, learned Government Pleader for the State.

5. The learned Senior Counsel Sri. Joseph Markose would contend, that, the ground floor having been assessed to tax in the year 1993, it is not open to the respondent authority to reassess the same at revised rates, merely because an additional floor has been constructed; it is settled law that the completion of the building is the important date for quantification of tax under the Act; the intent of the Act is to levy tax on building, but not to assess the same building every time whenever there is an addition made to the building.

The learned Senior Counsel would further contend, the charging provisions of the Act is attracted on completion of the construction of the building and in the instant case, the ground floor having been constructed and assessed to tax in the year 1993, itself, it is not open to the assessing authority to assess the same again when any extension or addition is made to the building and that would amount to double taxation.

6. In so far as the vires of Sub-section (4) of Section 5 of the Act, the learned Senior Counsel would submit, Section 5(4) in so far as it authorises a reassessment of a building already completed and assessed to tax is unconstitutional, arbitrary and against the avowed intent of the legislature. It is further contended that Section 5(4) should not be read as permitting reassessment of a completed building. According to the learned Counsel, either the area already assessed should be deducted from the total plinth area of the building or credit should be given for tax on the area already assessed at the revised rates. Lastly, it is contended that, u/s 5(4) of the Act, which deals with buildings completed after the appointed date, the completed buildings is again assessed along with the additional construction. Therefore, Section 5(4) in so far as it authorises reassessment of buildings already completed/assessed is arbitrary, discriminatory and violative of Article 14 of the Constitution of India. Reliance is placed on the observations made in the case of Mahamood v. Tahsildar 2000(2) KLT 512, Kurian George v. Tahsildar 1995(2) KIT 457 and Gopalakrishnan v. Tahsildar 1995(2) KLT 37.

7. Sri. Abdul Rahim, learned Counsel for the petitioner in O.P. No. 10835/2003, while adopting the submissions made by learned Senior Counsel, Sri. Joseph

Markose, would further submit, that, the Act does not provide for re-opening, re-assessment or revision of the completed assessment under the Act and therefore, the assessing authority under the Act could not have assessed the same building which was already assessed to tax, merely because, the petitioner has made some addition to the completed building which has already been assessed to tax under the Act. The learned Counsel would further submit that the re-assessment of that portion of the building which is already assessed to tax under the Act is impermissible and if the same is provided in Sub-section (4) of Section 5 of the Act, the same is arbitrary and violative of Article 14 of the Constitution of India. It is further contended that the completion of the building is the taxable event and once the building is assessed to tax, the same portion of the building cannot be taken into consideration while calculating the total plinth area of the building and the same would amount to double taxation. Lastly, the learned Counsel would submit that, the provision in Section 5(4) of the Act, providing for deduction of tax already paid from the total tax payable on the combined plinth area is arbitrary and violative of Article 14 of the Constitution of India and against all canons of Tax Jurisprudence and therefore, violative of Article 265 of the Constitution of India.

8. Sri. Mohammed Rafiq, learned Government Advocate for the Revenue, while sustaining the impugned legislation would submit, that, the legal issues urged and argued by the learned Counsels for the petitioners is no more *res integra*, in view of the decision of the Full Bench of this Court in the case of *Sundari Bai Alias Radha Bai v. State of Kerala* 1978 KLT 931, which decision has been affirmed by the Apex Court in the case of *D.G. Gose and Co. (Agents) Pvt. Ltd. Vs. State of Kerala and Another*, .

9. The issue which arise for our consideration and decision is, whether Section 5(4) of the Kerala Building Tax Act is invalid on the ground, that, it is arbitrary, excessive and violative of Article 14 of the Constitution of India?

10. The title given to the Act is the Kerala Building Tax Act, 1975. It is claimed to be an Act to provide for the levy of tax on buildings. The preamble of the Act suggests, that, it is enacted because it was found expedient to provide for the levy of tax on buildings and luxury tax on certain residential buildings. The Act is made applicable to the whole of the State of Kerala and the Act is deemed to have come into force on the 1st day of April, 1973. Several amendments have been introduced in the Act, by Act 6 of 1981, Act 1 of 1991, Act 3 of 1992, Act 13 of 1993, Act 23 of 1996 and Act 23 of 1999. The Act defines the meaning of the expression "appointed day" to mean, such date as the Government may for the purpose of this Act, specify by notification in the Gazette. The Act 3 of 1992 published in the gazette dated 1.4.1992, is given effect to from 10.2.1992. Section 2(c) of the Act defines the "assessee" to mean, a person by whom building tax or any other sum of money is payable under the Act and includes every person in respect of whom any proceedings under the Act has been taken for the assessment of building tax payable by him. Section 2(c) defines

"building" to mean, a house, garage, or any other structure or part thereof, whether masonry, bricks," wood, metal or other material, but does not include any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass or thatched or thatch or a latrine which is not attached to the main structure. Section 2(h) defines "major repair or improvements" in respect of a building to mean, a repair or improvement as a result of which the plinth area of the building is increased. Section 2(k) defines the meaning of the expression "plinth area" to mean, the area included in the floor of building and where a building has more than one floor the aggregate area included in all the floors together. Proviso appended to sub-section may not be necessary to be noticed for the purpose of disposal of these Original Petitions.

11. Section 3 is an exemption clause and it provides exemption to certain buildings which are enumerated in the Section itself.

12. Section 5 of the Act is the charging provision. Sub-section (1) provides for levying building tax based on the plinth area at the rates specified in the Schedule on every building, the construction of which is completed or after the appointed day. In the section the word "charged" refers to imposition of tax on every building, the construction of which is completed on or after the appointed day, based on the plinth area of the building. The unit of taxation is the building. The base or the measure is the plinth are of the building. It may not be necessary to refer to Sub-section (2) and (3) of Section 5 of the Act, since they are not under challenge in these original petitions. Since the entire controversy revolves on the interpretation of Sub-section (4) of Section 5 of the Act, the same is extracted:

(4). Where the plinth are of the building, the construction of which is completed after the appointed day, is subsequently increased by new extensions or major repair or improvement, building tax shall be computed on the total plinth area of the building including that of the new extension or repair or improvement and credit shall be given to the tax already levied and collected, if any, in respect of the building before such extension or repair or improvement.

13. Sub-section (6) says that, the building tax is payable by the owner of the building. The explanation appended to the section says that for the purpose of the Act, the construction of a building shall be deemed to have been completed when it is ready for occupation or has been actually occupied, whichever is earlier.

14. Section 6 of the Act provides for determination of the plinth area of a building. The plinth area of a building for the purpose of the Act, is the plinth area of the building as specified in the plan and approved by the competent authority under the Act.

Section 7 of the Act provides for return of completion etc. of buildings, Section 8 of the Act provides for return after the due date and amendment of return, Section 9 of the Act provides for assessment of tax under the Act, Section 10 provides for notice of demand, Section 11 provides for appeals, Section 14

provides for revision by the State Government, Section 15 speaks of rectification of mistakes, Section 26 authorises the State Government to make rules for the purposes of the Act.

15. The rates of building tax prior to and after amendment has some relevance for the purpose of disposal of these original petitions. The rates are specified in the Schedule appended to the Act. They are as under:

After the amendment, the rates of building of building tax is as follows:

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-- Grama Panchayat Special Grade other than Special Grama Panchayat/ Plinth Area Grade Grama- Town Panchayat/ Municipal Panchayat Municipal Council Corporation (Rupees) (Rupees) (Rupees) -----

----- (1) (2) (3) (4) -----  
----- Residential

Buildings: Not exceeding 100 square metres Nil Nil Nil Above 100 square metres but not exceeding 150 square metres 750 1350 2025 Above 150 square metres but not exceeding 200 square metres 1500 2700 4050 Above 200 square metres but not exceeding 250 square metres 3000 5400 8100 Exceeding 250 square metres 3000 plus Rs. 600 Rs. 5400 plus Rs. 1200 8100 plus Rs. for every additional for every additional 1500 for 10 square metres 10 square metres every additi- onal 10 square metres

Other Buildings: Not exceeding 50 square metres Nil Nil Nil Above 50 square metres but not exceeding 75 square metres 750 1500 3000 Above 75 square metres but not exceeding 100 square metres 1125 2250 4500 Above 100 square metres but not exceeding 150 square metres 2250 4500 9000 Above 150 square metres but not exceeding 200 square metres 4500 9000 18000 Above 200 square metres but not exceeding 250 square metres 9000 18000 27000 Exceeding 250 square metres 9000 plus Rs. 900 Rs. 18000 plus Rs. 1800 27000 plus Rs. for every additional for every additional 2250 for every 10 square metres 10 square metres additional 10 square metres -----

Prior to the amendment, the rate of tax is as under:

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-- Special Grade Grama Panchayat/ Plinth Area Panchayat Municipalities Corporations (Rupees) (Rupees) (Rupees) -----

----- (1) (2) (3) (4) -----  
----- Residential

Buildings: Not exceeding 75 square metres Nil Nil Nil Above 75 square metres but not exceeding 100 square metres (i) In the case of buildings thatched by grass or leaves Nil Nil Nil (ii) In other cases 250 450 675 Above 100 square metres but not exceeding 150 square metres 500 900 1350 Above 150 square metres but not exceeding 200 square metres 1000 1800 2700 Above 200 square metres but not exceeding 250 square metres 2000 3600 5400 Exceeding 250

square metres 2000 plus Rs. 400 3600 plus Rs. 800 5400 plus Rs. 1000 for every additional for every additional for every additio- 10 square metres 10 square metres nal 10 square metres Other Buildings: Not exceeding 50 square metres 250 500 1000 Above 50 square metres but not exceeding 75 square metres 500 1000 2000 Above 75 square metres but not exceeding 100 square metres 750 1500 3000 Above 100 square metres but not exceeding 150 square metres 1500 3000 6000 Above 150 square metres but not exceeding 200 square metres 3000 6000 12000 Above 200 square metres but not exceeding 250 square metres 6000 12000 18000

Exceeding 250 square metres 2000 plus Rs. 400 3600 plus Rs. 800 5400 plus Rs. 1000 Exceeding 250 square metres 6000 plus Rs. 600 Rs. 12000 plus Rs. 18000 plus Rs. 1800 for every additional 1200 for every for every additional 10 square metres additional 10 10 square metres square metres -----

----- 16. The origin of the Act commences with Building Tax Act of 1961, which provided for imposition of building tax on uniform basis depending on the floorage or the plinth area of the building. This levy of tax was struck down by this Court and it has become final by the pronouncement of the Apex Court. The Act was replaced by the Kerala Building Tax Act, 1975. The said Act was questioned before this Court in the case of Sundari Bai Alias Radha Bai, on the ground that the same is violative of Articles 14 and 19 of the Constitution of India and also of Article 301 of the Constitution of India. Section 5 of the Act therein was the charging provision, which provides for levy of tax on the capital value of the building. Sub-section (4) of Section 5 of the Act, provided that where the capital value of the building which has already been taxed under the Act is increased by more than ten thousand rupees by new construction or additions or combination or as result of repairs or improvements, building tax shall be computed on the capital value of the building including that of the new constitutions or additions or combinations or as the case may be, of the building as to be repaired or improved and credit shall be given to the tax already levied.

17. The Full Bench of this Court, after a detailed discussion had upheld the constitutional validity of the Act. In the earlier legislation, which came up for consideration before this Court, the levy of building tax was on the construction of buildings completed on or after the 1st April, 1973, the capital value of which exceeds 20,000/- rupees. Section 5(4) therein was similar to the impugned section in these proceedings, except the mode/measure of levy is not changed from "capital value" of the building to the "plinth area" of the building. The entire Act and in particular the charging provisions is upheld by a Full Bench of this Court and the view expressed by this Court is also affirmed by the Apex Court. One of the observations made by the full bench of this Court in Radha Bai's case is, "the underlying basis of tax under the Act is on sound and well accepted principle of taxation. We are not satisfied that the tax can be objected to on the ground that it is excessive or oppressive or that it amounts a harsh and crushing burden on the camel's back".

18. Section 5 of the Act is the charging provision under the Act. The tax (building tax) under the Act is charged on every buildings, the construction of which is completed on or after the appointed day, based on the plinth area at the rates specified in the Schedule appended to the Act. The Apex Court while explaining the amplitude of Article 265 of the Constitution in *Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others*, , has stated "that the components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event, attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law".

19. In the present case, the charging provision under the Act, provides for all the components that requires for the purpose of levying building tax under the Act. The charge is on the building. It is the owner of the building who is liable to pay tax under the Act. The rate of tax is as prescribed in the Schedule appended to the Act and the measure or the value to which the rate will be applied for computing the tax liability is on the plinth area of the building, the construction of which is completed on or after the appointed day. Therefore, the charging provision has all the ingredients which enter into the concept of a tax,

20. The Act provides a machinery for quantification of the charge and for collection of tax assessed. In the Act, there are provisions for appeal and revision. The Act confers on the Government the power to make rules to carry out the purpose of the Act.

21. Now, let us analyse Section 5(4) of the Act, which is impugned in these petitions.

i. The building completed after the appointed date, that is, 10.2.1992, is assessed, tax levied and collected on the plinth area of the building.

ii. Subsequently, if the plinth area of the building is increased by new extensions, or major repairs, the building tax shall be computed on the total area of the building including that of the new extension or major improvement or major repair.

22. The rate of building tax was enhanced by Act 3 of 1992, with effect from 10.2.1992. Subsequently, by the Kerala Finance Act, 1996 (Act of 1996) the building tax is enhanced with effect from 29.7.1996. These rates are made applicable to such of those buildings which are completed on or after 10.2.1992. The Schedule provides the graded rate of tax depending on the plinth area of the residential and non-residential buildings. If the plinth area of the building is less than 100 sq.metres, whether it is situate in Grama Pahchayat area, Special Grade Grama Panchayat/Town Panchayat Municipal Council or in Municipal Corporation, the rate of tax is nil. However, if the plinth area exceeds 100

sq.metres but does not exceed 150 sq.metres depending on the location of the building, a particular rate of tax is made applicable, so on and so forth. That only means the rate of tax on the building both residential and non-residential would depend on the total plinth area of the building and its location. It is in the nature of the graded rate of tax depending on the total or aggregate plinth area of the building.

23. The petitioners and their learned Counsel's primary contention appears to be, once the building is assessed after its completion based on the plinth area of the building, and subsequently, even if major repair or improvement is made to the existing structure, what requires to be assessed is only the new repairs/extension/improvement, otherwise it would amount to assessing the building which was already assessed and this would amount to double taxation and secondly, re-assessment canvassed by the learned Counsel for the petitioner. The charging provision provides for levy of tax on the building based on the plinth area of the building. There may be a possibility that the plinth area of the building may not be varied by the owner of the building and in such cases question of payment of any further tax would not arise. But, if the owner of the building makes improvement, or extension or major repair and if by that improvement, the total plinth area of the building increases, the fresh assessment for the purpose of building tax requires to be made. Otherwise, it would be contrary to the charging provisions itself. The graded rate of tax is provided in the Schedule. The Schedule has been amended once by Act 3 of 1992 and for the second time by Act 23 of 1996. Each building requires to be assessed on the plinth area of the building. Let us take the case of a building in a Municipal Corporation area having a plinth area of above 100 sq.metres but not exceeding 150 sq.metres, the rate of tax provided in the Schedule is Rs. 2.025/-. If the plinth area remains stationary, then there is no difficulty. The assessee need not have to pay tax, even if there is revision of tax by amendment of the Schedule. We are told by the learned Counsels on both sides, once the building is assessed and tax collected, even if there is revision of tax, the same is not made applicable to a building the construction of which is completed after the appointed day and which has already been assessed to tax. The plinth area of the building cannot be expected to be stationary. Sometimes extension of the building may be required, because of change in the economic status of the owner of the building, he may effect major improvements of the building and thereby the plinth area of the building which was less than 150 sq.metres may go beyond 150 sq.metres and less than 200 sq.metres. The building requires to be assessed again, since the total plinth area is altered and the tax requires to be assessed at Rs. 4,050/-. It is contended that what is taxed u/s 5(4) of the Act twice on the same building and therefore, it is impermissible. This contention is not correct. Under the Act, tax is levied on the buildings. The plinth area of the building is adopted as a measure to fix the liability. Plinth area is the mode to find out the proper tax to be imposed on a building. It cannot be said that, the legislature has no competence to adopt such a measure. The provision discloses a permissible policy of taxation and therefore,



the same cannot be said as arbitrary basis.

24. In deciding the competency of the legislature, the courts look at the taxable event. The matter is not so simple and is often got confused with the basis adopted for taxation. The tax is on the building and taxable event is the completion of the building. In this respect, it is the law that the legislature may provide that any transaction or value of property etc. may be taken into account for the purpose of computation of rate of tax. In such cases, the court examines only whether the standard employed by the legislature maintains a nexus with the essential character of levy.

25. Regarding the charging section, a declaration by the legislature of the liability to pay tax is undoubtedly, the most essential feature of a taxing statute. The second feature of a taxing statute is, provisions for assessment of tax. The word "assessment" is a term of varying import. The word is sometimes used to mean the computation of the amount of tax and at other times to mean the whole procedure laid down for imposing the liability on the payee. The term "assessment" is used here in the latter sense and comprises the provisions relating to the subject matter of taxation, rate of tax, basis at which the quantum of tax is to be arrived at, the exemptions to be given for enforcing the tax liability. In testing the reasonableness of a taxing statute, the courts have given large freedom of action to the legislature in framing its own policy of taxation. The charging section in a taxing statute is essentially related to the legislative power conferred by the tax entries of the Legislative lists. Normally, the interpretation of these entries has nothing to do with the fundamental rights under Article 19 of the Constitution. But, in abnormal or non-traditional inclusion or exclusion may prove burdensome to an assessee so as to bring forth a challenge under Articles 14 and 19 of the Constitution.

26. Taxation laws are generally challenged under Part III of the Constitution, invoking Article 14 as offending the rule of equality before law, arbitrary, excessive etc. or under Article 19 as being unreasonable restriction on the right to carry on any trade, business or profession. The purpose in subjecting the taxing power to Article 14 is that State should try its best to distribute the burden of taxation evenly and equitably. Generally, the courts allow a wide latitude to legislative classification in statutes, the presumption being always in favour of its validity and the burden being on the person, who challenges, to show that such classification is unreasonable. The reason for the attitude is that where there is more than one basis of classification and the legislature selects one of them, a court would not be justified in interfering on the ground that the legislature ought to have adopted another basis which was more reasonable according to the court. Hence, courts interfere only in cases where the classification is capricious, arbitrary or clearly unjust.

27. We shall now proceed to examine the validity or otherwise of Section 5(4) of the Act read with the Schedule.

28. Section 5(1) of the Act is the charging provision. The charge is on all buildings, the construction of which is completed on or after the appointed day, viz. 10.2.1992, subject to the exemptions provided in the Act itself, based on the plinth area at the rate specified in the Schedule. The Schedule to the Act provides for levy of tax on the building on a graded scale depending on the total plinth area of the entire building owned by an assessee. In the alternative, it can be said that the plinth area of the entire building owned by an assessee is one "rating area". The legislature in the charging provision has carefully used the expression, the building is charged to tax based on the plinth area. That only means the imposition of tax is based on the plinth area and each building should be treated as a unit and each building depending on its total plinth area requires to be taxed. The legislative competence of the State to enact the legislation is not called in question in these petitions. Now what is being seriously questioned by the petitioners is Section 5(4) of the Act. To pronounce on the question of validity, it is necessary to know the true scope and effect the statute impugned. As observed in *Concordian Fire Insurance Co. v. People of the State of Illinois* (1933) 78 Law Ed. 1411 : 292 US 535, the validity of a statute often depends on how it is construed and applied. For the purpose of interpretation of taxing statute, we must bear in mind that in the case of fiscal statutes, the courts are extremely reluctant to hold the subject liable to tax by either extending the ordinary meaning of the words found in the statute or by supplying alleged omission. In *Craies on Statute Law*, it is said that, express and unambiguous language appears to be absolutely indispensable, in statutes passed for imposing a tax or charge. Sir Lancelot Sandeson, speaking for the Judicial Committee in AIR 1940 183 (Privy Council), quoted with approval a passage from the opinion of Lord Russell of Kilowen found in *Inland Revenue Commissioner v. Duke of Westminster* 1936 AC 1, which reads, "I confess that I view that disfavour the doctrine that in tax cases the subject is to be taxed, if in accordance with a court's view of what it considers the substance of transaction, the court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case". Therefore, we shall first take up the possible construction that could be placed on Section 5(4) of the Act. This section as we have analysed, would only provide for passing a new or fresh assessment order under the Act, whenever the assessee effects extension, major improvement, or repair to the existing building, thereby alters the total plinth area of the building. Since the assessment under the Act requires to be made on the total plinth area of the building, whenever there is change or alteration of the plinth area of the building, the assessing authority under the Act requires to make a fresh assessment order. This exercise cannot be said either reopening, re-assessment or revision of an earlier assessment. These concepts will come only if the assessing authority having completed the assessment once in respect of a building having a particular plinth area, attempts to pass yet another order on the very same building having the very same plinth area, and not in a case where the total plinth area of the building is altered because of extension, major

repair or improvement. Therefore, in our view, the premise on which submission is made by the learned Counsels for the petitioners that the building which has been assessed once cannot be reassessed etc. has no merit whatsoever. This provision is uniformly applied to all the buildings situated in a particular location, except those buildings which are statutorily exempted from levy and payment of building tax. Therefore, in our consideration view, Sub-section (4) of Section 5 of the Act is neither arbitrary, nor violative of Article 14 of the Constitution of India.

29. The learned Counsels would contend that the measure of tax is excessive. We will not dilate on this issue in length, in view of the what has been observed by the Full Bench of this Court in the case of Sundary Bai alias Radha Bai. We will only add, that, "taxes", as defined by Cooley in his Constitutional Limitations, "are burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes. The power to tax rests upon public necessity and it is inherent in every sovereignty. However absolute the right of an individual may be, it is still in the nature of that right, that, it must bear a portion of the public burdens and that portion must be determined by the legislature. This vital power may be abused; but the interest, wisdom, and justice of representative body and its relation with the constituents, furnish the only security where there is no express contract against unjust and excessive taxation, as well as against unwise legislation generally". As observed by one eminent Judge that, "it is unfit for the judicial department to inquire what degree of taxation is the legitimate use, and what degree may amount to the abuse of power". It is said that, the tax and equity are strangers. The view if best expressed by Lord Cairns in the case of Partington v. Attorney General (1869) 4 HL 100, who observed, "As I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be". On this issue, we conclude by saying, one cannot go by notions as to what is just and expedient in tax laws and equity, hardship and inconvenience is out of place in Tax laws.

30. The validity of the levy is also challenged on the ground that it amounts to double taxation, which we are told, is not permissible in law. We fail to understand how this submission could be made in the light of the clear language employed by the legislature in the sub-section. However, we add, that, the rule of interpretation that is settled is, that double taxation can be permitted only if the statute expressly provides for it, but it is not permitted by an interpretation of the statute. There is nothing in law, which says that double taxation cannot be provided in a taxing statute and if it is expressly provided, it is not Constitutionally invalid. We know no principle of law which interdicts double taxation. Therefore, there is no merit in this contention. At any rate, this is not the case of "double taxation". It is a case where fresh assessment is made in view of changed plinth area and the amounts collected by way of building tax is

refunded to the assessee.

31. Now, let us just refer to case laws relied on by the learned Counsels in support of their contention. The first case is the decision of the Apex Court in Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, . This decision is cited only to support their contention that, taxable event is that which is closely related to imposition. The other decisions which are cited before us, is the decision of this Court in the case of Kurian George v. Tahsildar 1995(2) KLT 457. In this case, the court has observed, that , the assessing authority has no jurisdiction to re-open assessment. In Gopalakrishnan v. Tahsildar 1995(2) KLT 37, this Court has stated that, there is no provision in the Act for re-opening of an order of assessment and substitute with a fresh order on a different basis. In Shoukathali v. Tahsildar 2000(2) KLT 512, this Court has stated, that, the assessment should be based on the rate as fixed on the date of completion of the building.

32. We cannot have any quarrel on the law stated by this Court. But, we hasten to add, that none of the decisions on which reliance is placed by the learned Counsel for the petitioners has anything to do with the issue we are asked to consider and decide.

33. In the result, all these Original Petitions fail and, accordingly, they are dismissed. Consequently, all pending civil miscellaneous petitions are also dismissed.