

(1985) 04 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Writ Petition No's. 112, 142 and 254 of 1973

Smt. Parkasho Devi and Others

APPELLANT

Vs

Assessing Authority

RESPONDENT

Date of Decision : 01-04-1985

Acts Referred:

Constitution of India, 1950 — Article 14

Jammu and Kashmir Urban Immovable Property Tax Act, 1962 — Section 3(1), 4

Citation : AIR 1986 J&K 42

Hon'ble Judges : M.L. Bhat, J;M.A. Shah, J;K.K. Gupta, J

Bench : Full Bench

Advocate : J.M. Mahajan and M.M. Mahajan, for the Appellant; S.D. Sharma, Chief Govt. Advocate and Subhash Dutt, for the Respondent

Judgement

Bhat, J.—A common question of law is involved in these three writ petitions, therefore, all these three petitions are being decided by this

common judgment.

2. When these petitions came up before a Division Bench of this Court for hearing on 15-11-1979, the Division Bench was of the opinion that the

question involved in the writ petitions was of a considerable importance and a decision on it would be of far reaching implications, therefore, for an

authoritative pronouncement the matter was referred to the Full Bench for consideration.

3. In these writ petitions the Jammu and Kashmir Urban Immovable Property Tax Act, 1962, hereinafter to be referred to as the Act, is prayed to

be declared ultra vires of the Constitution. Challenge in the writ petitions in this behalf is made in respect of Section 3(1) of the Act. which is the

charging section. It is submitted that Section 3(1) of the Act is ultra vires of the

Article 14 of the Constitution as it gives uncanalised, unlimited and arbitrary powers to the Government to pick and choose any land and building and levy tax on it. This being the main section in the Act, which is not severable from the other provisions of the Act, and other provisions are not independent of this section, therefore the whole Act is ultra vires of the Constitution, it will be profitable to reproduce Section 3(1) of the Act here : --

(1) There shall be charged, levied and paid an annual tax on such building and lands situated in the rating area shown in the schedule to this Act as may be specified by the Government by notification in the Govt. Gazette, at such rate not exceeding twentyfive per centum of the annual value of such building and lands, as the Govt. may determine in respect of each such rating area.

It is submitted by the learned counsel for the petitioners that the words ""tax on such buildings and lands"" occurring in the section gives unguided powers to the Government to levy annual tax on any building or land at their sweet will in the rating area. No guidelines have been given to the Government as to in what manner they will choose the buildings and lands for purposes of levying tax and the authority given to the Government in this regard is arbitrary, unguided and uncanalised, therefore, it is violative of Article 14 of the Constitution. The power of the Government to fix rate of tax in respect of a particular rating area is not challenged. Challenge is restricted only to the power given the Government to specify the lands and buildings at their discretion in the rating area which may be taxed.

4. In all the three writ petitions Assessing Authority under the Act appears to have issued notices to the writ petitioners for payment of tax. The notices are also impugned in these petitions. However, we are concerned only with the question of vires of Section 3(1) of the Act which has been referred by the Division Bench to this Bench.

5. Learned counsel for the petitioners have drawn our attention to the various authorities with a view to show that power given to the Govt. u/s 3(1) of the Act was arbitrary and there was no guideline for its exercise. We will discuss these authorities a little later. It is necessary first to give the scheme of the Act briefly.

6. The Act was made applicable to the State of Jammu and Kashmir with effect from 21-7-1962. Section 3(1) of the Act is the charging section.

Schedule mentioned in this section is in respect of the rating area, which indicates various towns in the State of Jammu and Kashmir to which the

Act has been made applicable. The schedule has undergone a change in terms of SRO 117 and some more towns have been added to it. Section

4 of the Act pertains to exemptions, it excludes certain properties from the purview of the Act. Sub-section (2) of Section 4 empowers the

Government to exempt in whole or in part from payment of tax any person or class of persons or any property or description of property for such

period as it may think fit. Section 5 pertains to ascertainment of annual value. It lays down the method for estimating gross annual rent for purposes

of ascertaining annual value on which the building is to be taxed. Section 6 empowers the Government to appoint assessing authorities. Section 7

pertains to preparation of valuation list which is to be prepared in accordance with the Rules framed under the Act for every rating area. The

valuation lists are prepared in such a manner with the interval between the dates on which one valuation list and the next succeeding list respectively

come into force shall be a period of five years. The Government has the power to reduce the interval period and divide the rating area into parts

for purposes of preparation of valuation lists. The draft valuation list in terms of Section 8 is to be published and objections are to be received in

the manner provided in the said section and within the time fixed therein. Section 9 provides amendment of current valuation list.

The power of amendment is given to the Government. Section 10 gives the aggrieved person right to file appeal, revision against the order of the

Assessing Authority. Section 11 provides levy of tax in accordance with the valuation list notwithstanding the pendency of appeal with respect to

the said list. Section 12 provides payment of tax quarterly or on such dates as may be prescribed. Section 13 empowers the Govt. to appoint

person or persons for collection of tax. Section 14 pertains to recovery of tax from tenants and power of extension in payment of tax. Section 15

prescribes penalties for non-payment of tax. Tax levied is recoverable as land revenue in terms of Section 16. Ss. 17 and 18 empower the

Assessing Authority to ask for filing of returns. Section 19 provides penalty for non-filing of returns. Section 19A empowers the Commissioner and

the Appellate Authority to take evidence on oath. Section 20 is the saving clause as regards valuation list. By virtue of Section 21 authorities under

the Act are to be deemed to be public servants. Section 22 excludes the jurisdiction of the civil Courts in matters which are required to be gone

into under this Act. Section 22A is indemnity section and Section 23 empowers the Government to frame rules. Section 23A empowers the

Commissioner to issue instructions which are not inconsistent with the Act or the Rules framed thereunder for purposes of carrying out the

provisions of the Act. Section 24 and 25 are validation sections.

7. We have given the brief outline of the Act in order to appreciate as to whether the charging section is to be read in harmony with the other

sections or it is repugnant to the other sections of the Act and what is the effect of its non-severability with the other provisions of Act.

8. Let us now revert to the authorities which were cited at the bar by the learned counsel for the parties in support of their rival contentions.

9. Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another, is an authority in which vires of Section 150

of Delhi Municipal Corporation Act was challenged and the Supreme Court held that the provisions contained in the Delhi Municipal Corporation

Act does not suffer from vice of excessive delegation and was held valid. Section 150 of the Delhi Municipal Corporation Act conferred power on

the Corporation to levy any of the optional taxes by prescribing the maximum rates of tax to be levied; to fix class or classes of persons or the

description or descriptions of articles and properties to be taxed and to lay down the system of assessment and exemptions, if any, to be granted.

It was held by the Supreme Court that the power conferred on the Corporation was not unguided and would not amount to excessive delegation.

It was also held that the circumstances provide a guideline to the Corporation in carrying out duties imposed upon it. The first circumstance was

that the delegation has been made to an elected body responsible to the people including those who pay taxes. Another circumstance was the

purpose of the Act. The Corporation was to discharge certain functions and for that it must find money by taxation. Yet another circumstance was

provision as regards adoption of budget estimates each year. Limit of taxation would not exceed the needs of the Corporation as shown in the

budget to be prepared under the provisions of the Act. Another circumstance was that maximum rates of taxes fixed by the Corporation at its

meetings are required to be submitted to the Government for its sanction and without its sanction there can be no imposition of tax. The most

important guideline was that the legislature has made the Government the watch-dog to control the actions of the Corporation in the matter of fixing

rates and other incidents of taxing and that is also a check for fixing reasonable rate of tax. Proceeding further their Lordships have laid down that it

is open to the legislature to give power to the other authorities to fix rates under proper guidance, control and safeguard. Pandit Banarsi Das

Bhanot Vs. The State of Madhya Pradesh and Others, to the effect ""now the authorities are clear that it is not unconstitutional for the legislature to

leave it to the executive to determine details relating to the working of taxation laws such as the selection of persons on whom the tax is to be laid,

the rates at which it is to be charged in respect of different classes of goods and the like"" has also been considered by the Supreme Court in this

authority. In short it was laid down that conferring unqualified powers to fix rate without any guidance, control or safeguard to the Govt. is not

proper. Section 150 of the Delhi Municipal Corporation Act was therefore, held to be intra vires as in their Lordships' opinion there were sufficient

guidelines provided in the Act and it did not suffer from unqualified power.

10. In *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, it was held that the Constitution confers power and imposes a duty

on the legislature to make laws. This function obviously cannot be abdicated in favour of another. But in view of the multifarious activities of a

welfare State it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the

working out of details to the executive or any other agency but the legislature has to provide guidelines and extent of executive authority to carry

out the details. It cannot confer arbitrary power on the executive and the executive cannot overstep the limits of delegation.

11. In *Corporation of Calcutta and Another Vs. Liberty Cinema*, is an authority about the Calcutta Municipal Act. It lays down that a statute has

to be read so as to make it valid, and if possible, an interpretation leading to a contrary position should be avoided. Their Lordships were

considering the increase of fees from Rs. 400/- to Rs. 6000/- per year on a cinema house. The increase in the fees was delegated to the executive

and in that context it was held that the fixation of the rates of taxes is not of the essence of legislative power of taxation. The fixation of rates of taxes may be legitimately left by a statute to a non-legislative authority, for there is no distinction in principle between delegation of power to fix rates of taxes to be charged on different classes of goods and power to fix rates simpliciter, if power to fix rates in some cases can be delegated then equally the power to fix rates generally can be delegated.

12. In *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, their Lordships were considering the constitutional validity of

Travancore-Cochin Land Tax Act, 1955 as amended by Act 10 of 1957. Certain provisions of the said Act were held to be confiscatory,

discriminatory and bad on account of imposition of unreasonable restriction on holding property. In his dissenting judgment, A. K. Sarkar J. held

the Act to be valid except Section 7 thereof which was a section providing exemption and was held to be severable. It was held by majority view

that the taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14 of the Constitution. The said

Act after scrutiny was held to impose a liability on land-holders to pay tax because procedure to be adopted would not require a notice to be given

to the proposed assessee; secondly there was no procedure for rectification of mistake committed by the Assessing Authority; thirdly, there was

no procedure for obtaining opinion of a superior civil Court on question of law as was generally found in all taxing statutes; and fourthly, no duty

was cast on the Assessing Authority to act judicially in the matter of assessment proceedings nor was there any right of appeal provided to such

assessee as may feel aggrieved by the order of the assessment.

13. In *Orient Weaving Mills (P) Ltd. Vs. The Union of India (UOI)*, is an authority in which Rule 8(1) of the Central Excise Rules of 1944 was

examined by the Supreme Court. Under the said Rules Government was empowered to exempt partly or wholly any excisable goods. It was held

that the power of exemption was neither uncontrolled, nor unguided. Exemption was granted on cotton fabrics produced on power looms by the

weavers of co-operative societies. The classification was held good by the Supreme Court on the ground that goods produced in big

establishments and similar goods produced by small power loom weavers in the

mofussil, who are usually ignorant, illiterate and poor and suffer

from handicaps to which big establishments are not subject, are two distinct classes, therefore, the exemption made in their favour was good.

14. In *Sitaram Bishambhar v. State of U. P.* AIR 1972 SC 1168 : (1972 TLR 1861) the Supreme Court examined Section 3D(1) of U. P. Sales

Tax Act and it was held that the said section cannot be said to be violative of Article 14 of the Constitution merely because it provides that in the

case of purchase made by a registered dealer through the agency of a licenced dealer the registered dealer would be deemed to be the first

purchaser whereas in every case of a first other purchase made through the agency of a dealer the dealer who is the agent would be deemed to be

the first purchaser. This classification was held to be valid. Government's power to levy tax on goods other than foodgrains at a rate not exceeding

5 paise in a rupee was not held to be bad and did not suffer from the vice of excessive delegation.

15. In *The State of Punjab and Another Vs. Khan Chand*, various provisions of East Punjab Movable Property (Requisitioning) Act came to

be scrutinized by the Supreme Court. The majority view in this judgment was that Section 2 and other provisions of the said Act were violative of

Arts. 14 and 19 of the Constitution. The Act was held to confer uncontrolled power on the State Government and officers authorised by it to

requisition any movable property. No guidelines had been laid down regarding object or the purpose for which it becomes necessary or expedient

to requisition movable property. It was not required to specify the purpose for which the property was to be requisitioned. No contingency or any

reason for requisitioning the property was given in the Act. Therefore, their Lordships declared that the Act had given uncontrolled power to the

State Govt. to divest a citizen of his property which divesting could be justified only if it is in accordance with the procedure established by law.

16. In *Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others*, is an authority in which validity of notification under C. P. and

Berar Sales Tax Act was impugned. It was held that there is nothing wrong if the legislature leaves to the executive to determine details relating to

the working of the taxation laws such as selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of

different classes of goods, and the like. The notification empowering the State to carry out the purpose of the impugned Act was held to be valid.

In subsequent authorities of the Supreme Court this authority was considered. I have pointed out in the earlier part of this judgment that this

authority came to be commented upon in *Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another*, .

17. *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Others*, is an authority in which delegation of

legislative powers to subordinate authorities u/s 8(2)(b) of Central Sales Tax Act was held to be valid and not bad on account of vice of excessive

delegation.

18. In *Hiralal Rattanlal Vs. State of U.P. and Another etc. etc.*, some provisions of U. P. Sales Tax Act came to be considered by the Supreme

Court. Section 3D of the said Act provides delegation of certain functions to the Government. Power was given to the executive to select for

special treatment dealers dealing in certain class of goods and the Supreme Court held that in the very nature of things it was impossible for the

legislature to enumerate the goods. Therefore, the selection of the goods for sales and purchase tax could be made by the executive.

19. In *M.M. Ipoh v. Commr. of Income Tax* AIR 1960 SC 317, constitutional validity of Section 3 of the Income Tax Act 1922 was considered

by the Supreme Court. Option was given to the I.T.O. to select the association of persons or individual members thereof for the purpose of

assessing to tax the income of the association. The power so conferred on the I.T.O. was held not to contravene Article 14 of the Constitution nor

was it unguided.

20. Learned counsel for the petitioners during arguments also referred to some provisions of the Income Tax Act, Wealth-tax Act and Estate Duty

Act with a view to showing that Section 3(1) of the Act is unguided and vests arbitrary powers in the executive. Section 4 of the Income Tax Act,

1961 is the charging section and Section 10 thereof deals with the exemptions. Section 3 of the Wealth-tax Act is the charging section and Section

5 is dealing with exemptions. Similarly Section 5 is the charging section in the Estate Duty Act and Section 33 pertains to exemptions. An attempt

was also made to canvass that in none of these Acts discretion was given to the

executive to pick and choose the person and property for purposes of taxation. There should have been a guidance to the executive as to which property would be taxable in the rating area. It could also lay down that all properties in the rating area were liable to be taxed but the words "such buildings and lands" gives a lever to the executive to exercise the power in an arbitrary manner at their own whim. We are conscious that Section 3(1) of the Act is not happily worded. Because of the loose drafting of Section 3(1) of the Act the point raised by the learned counsel for the petitioners has become debatable.

21. As to whether Section 3(1) of the Act can be declared ultra vires of the Constitution on account of loose drafting is to be seen in the light of the guidelines laid down in the aforesaid authorities which we have cited in this judgment. Before we come to this aspect of the case, it is necessary to examine the extent of delegation and to what extent delegation can be made for carrying out the purpose of the legislation. So far as the powers of the legislature are concerned, there is no dispute about it. Legislature has the power to enact the law for levying tax in the rating area on immovable property. This position stands concluded by some Division Bench authorities of this Court. In Mubarak Shah Naqashbandi v. State of Jammu and Kashmir, AIR 1968 J&K 105, a Division Bench of this Court held that the charging Section 3(1) of the Act is not covered by entry 82 of List I and it clearly falls within the residuary field of the State and the State Legislature was fully competent to enact the Act as would be evident even from entry 49 of the State List in the Seventh Sch. to the Constitution. The State of Jammu and Kashmir has plenary residuary powers to legislate on matters which are not allotted to Union Parliament. In Ghulam Hussain v. State of J&K, 1974 KLJ 293 : (1974 TLR 1814) the Act was held to be valid. The validity of the said Act was considered in the light of the Articles 280 and 281 of the Constitution. The point canvassed in the said judgment was that in view of the recommendations of the Finance Commissioner which were to be laid before the House of Parliament in the manner required under Article 281, the said recommendation had acquired the force of law and therefore it had deprived the States of the power to levy tax on lands and buildings. This contention was repelled by the Division Bench of this Court relying on a Supreme Court authority viz. The

Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc., and it was held that the enactment

relating to taxation of lands and buildings is not beyond the competence of the State Legislature. Therefore, it is to be held that the legislature has

the power to impose a tax on buildings and lands situated in the rating area. Essential legislative function i.e. the power to decide that a building or

land is to be taxed in a rating area cannot be delegated to the executive. Under the Constitution this function is to be discharged by the legislature

which has plenary powers within its allotted field. There can be no abdication of this power in favour of the executive because legislature cannot

give authority to the executive in respect of topics or matters entrusted by the Constitution to the legislature. Power to make subsidiary or ancillary

legislation may however, be entrusted to another body of its choice provided there are guidelines for the delegate in this behalf. Entrustment of

power without guidelines to a delegate would amount to excessive delegation. The taxation statutes are not exceptions to these rules.

22. An authority of the executive who is given power under a statute is undoubtedly the instrument of the State in the area in which it is supposed to

function. It has to discharge its functions within the permissible limits, consistent with the scheme of the statute. Modalities about the rate, persons

and the properties to be taxed can be safely entrusted to a delegate provided the delegate is not given unguided and uncanalised powers so as to

make the purpose and aim of the statute redundant or so as to render the statute punitive in character. Legislature has full powers to make

delegation to executive for purposes of carrying out the provisions of the Statute. The guidelines for carrying out the purpose of the Act are to be

gathered from the statute itself, by the attending circumstances and by taking into consideration other provisions of the statute as a whole. The

function of the legislature to levy tax on buildings and lands is by itself a guideline in some cases. The charging section i.e. Section 3(1) of the Act is

to be read along with Section 4 which grants exemptions and other provisions of the Act where an owner is required to file returns and an

aggrieved person has a right of appeal and revision. Charging section cannot be read in isolation. "On such buildings and lands" occurring in the

said section, in our opinion, has proximity with buildings and lands in the rating area which are not covered by Section 4 of the Act. The expression

such buildings and lands"" has to be read in relation to rate of taxation, kind of buildings which are to be taxed and the annual rent of a building

which makes the building taxable. It would have been proper if legislature would have said that tax shall be payable by an owner in respect of

buildings and lands which come within the purview of the Act instead of using the expression ""such buildings and lands."" The expression ""such

buildings and lands"" is to be read in relation to such buildings and lands annual value whereof is made or prescribed to be taxable. Annual Value of

land or building is determinative for bringing it within the purview of charging section or exemption section. To make it more clear, suppose annual

value of a building or land does not exceed the limit of annual value which is taxable in a rating area it will not be taxed and will fall within

exemption clause. Section 3(1) does not confer authority of any executive functionary to levy tax on such property. The object of the Act which is

sought to be achieved by the charging section is that immovable property in the nature of buildings and lands, annual value whereof exceeds a

particular limit is required to be taxed at a rate which should not exceed 25% of the annual value. The discretion conferred on the Government to

levy or collect tax on lands and buildings in the rating area is subject to the provisions of Section 4 of the Act. Obviously an authority or the

Government cannot under the charging section levy and collect tax on all buildings and lands in the rating area notwithstanding annual value of the

property. It is the annual value which is the basis for levying tax on lands and buildings. Some buildings and lands in the rating area, annual value

whereof is below the limit fixed by the statute or by the Government, will not fall within the expression ""on such buildings and lands"" occurring in

Section 3(1) of the Act. The apprehension of the petitioners that it gives the Government arbitrary power of pick and choose any buildings and

land in the rating area for levy of tax does not appear to be sound because only those buildings and lands can be taxed the annual value whereof is

according to the prescribed limit. So the expression ""on such buildings and lands"" has relation with the annual value of such buildings and lands and

it cannot be read in a manner which would divorce it from the context. As to the annual value which may be prescribed by the Govt. from time to

time for bringing a building or land within the mischief of the charging section, the power of the Government is not disputed. So in the rating area

only such buildings and lands are to be taxed for which annual value is prescribed by the Government. It is pertinent to mention that the State's power to prescribe annual value for purposes of taxation is conceded by the learned counsel for the petitioners. Therefore, in this context one has to understand the expression ""on such buildings and lands"" occurring in Section 3(1) of the Act. No choice is given to the Government to levy tax on such buildings which are exempted u/s 4 of the Act. So in the rating area it is such buildings and lands to which Section 4 would not apply which are to be taxed.

23. For this purpose it is pertinent to refer to other provisions of the Act. In every rating area a valuation list is to be prepared. The draft valuation list is to be published. It is subject to amendment and an aggrieved person has a right of appeal or revision also. Once the valuation list is prepared and it is amended or it is set right in appeal or revision, the authority under the Act has no discretion to levy tax on such buildings and land which are not taxable. We have in the earlier part of this judgment given a brief resume of the scheme of the Act to show that the Act is replete with self contained procedure and if the valuation list is prepared in respect of buildings and lands, and if it conforms to the limit fixed by the Act or under the Act, then Section 3(1) shall become operative subject to the condition that rate of tax shall not exceed 25% of annual value of the land or building. For fixing rating areas power is given to the State to frame the schedule which power is also conceded. But in the rating area all property owners cannot be taxed in respect of buildings and lands unless such buildings and lands have an annual value which is prescribed and fixed. May be there are buildings in the rating area annual whereof is not up to the limit prescribed by the Government, obviously such buildings and lands may not be taxed. It will be only such buildings and lands whose annual value comes up to the level of the prescribed limit which will be taxed.

Therefore, the contention of the learned counsel for the petitioners that ""such buildings and lands"" has given arbitrary powers to the State is unfounded and appears to be fallacious also.

24. The charging section is not unguided and uncanalised, though we have conceded that this section is not happily worded but that by itself cannot make it ultra vires of Article 14 of the Constitution. There are sufficient

guidelines. The first guideline which we have noticed in the statute is that it is subject to Section 4 which grants exemptions. It cannot be operative in respect of the properties which are exempted u/s 4 of the Act. Second guideline is exemptions are provided for the lands and buildings from the purview of the Act and those exemptions are mandatory in nature and no authority can levy tax on a building or land which is exempted from such levy. One of the exemptions is on the basis of limit fixed in regard to annual value of the buildings and land. The charging section would come into play only when the annual value of the land or buildings is above the prescribed limit which has been made taxable.

25. Yet another guideline is found in Section 7 of the Act which empowers the authorities to make a valuation list of buildings and lands in the rating area and in terms of Section 8 prescribes its publication. The list is also liable to be amended on certain conditions and aggrieved party has a right of appeal and revision against the list. The charging section is dependant on these sections. Tax cannot be levied at random on all buildings and lands irrespective of their value etc. etc. It is the annual value which makes a building or land taxable for which a valuation list has got to be prepared and then published and if not amended, the same can be corrected in appeal or revision also. These guidelines would not allow an authority to pick and choose a building or land for purposes of taxation as has been suggested by the learned counsel for the petitioners.

26. In the rating area after the valuation list is prepared and published, the owners are required to file returns also and the appellate authority has the power to take evidence and go into the correctness or otherwise of the returns. Therefore, it cannot be countenanced that uncanalised authority is granted to the authorities under the charging section. Charging section as already indicated has not to be divorced from the context. One of the principles of interpretation of statute is that there is presumption in favour of correctness of an enactment, if a provision of enactment is challenged as being invalid, its legislative intent, the object and the purpose for which the provision was enacted is to be gathered from the other provisions of the statute and a provision in a statute is to be construed in a manner which will render other provisions workable or in other words its reading must not be such which renders other provisions of the statute as redundant.

27. In the words of Justice Hidayatullah and Ramaswami, JJ. consideration of safeguards is not the only approach to test the permissible limit of delegation. While the provisions which have been characterised as safeguard (found necessary) are desirable, the proper test to apply is not the existence of safeguards but whether the legislative will to impose the tax is adequately expressed so as to bind those who have to pay the tax. This requires an examination of the policy and provisions of the Act with a view to determine whether the legislative will is fully expressed. In the instant case legislative will to levy tax on such buildings and lands in the rating area, annual value whereof is above a particular limit, is fully demonstrated in Section 3(1) of the Act. Its modalities of collection and levying on the basis of annual value is left to the executive authorities which could be done and the delegation for this purpose cannot be termed to be excessive in any manner or the approach of the legislature in this regard cannot be said to be unguided. The use of arbitrary power while taking a building for purposes of levying or collection of tax is eliminated because there are sufficient safeguards which we have indicated above.

28. Learned counsel for the petitioners have not spelled out in any of these petitions as to in what manner Article 14 of the Constitution has been infringed by the words of Section 3(1) of the Act. Article 14 of the Constitution enjoins upon the State not to deny to any person equality before the law or equal protection of law within the territory of India. In a cryptic manner it is stated in each petition that the charging section is ultra vires of Article 14 of the Constitution, as it gives unbridled and unlimited and arbitrary powers to the Government to pick and choose any building or land and levy tax on it. We have in depth stated as to how a tax is levied and collected and the question of pick and choose cannot be made in view of the safeguards given in the Act. A fiscal statute is to be construed strictly. If two constructions on a provision of the statute can be placed, one in favour of the revenue and the other in favour of the assessee, it is the rule that the construction which favours assessee is to be adopted. But in the present case the charging section is not capable of two constructions, it is to be construed on its own language and only one construction is possible.

The construction which is to be placed on the language of the charging section is

that in the rating area only such buildings and lands are to be taxed annual valuation whereof conforms to limit fixed under the Act for purpose of making it taxable. No other meaning can be given to the language of the said section even though it is not happily worded. It is to be read in relation to the rating area and in relation to the other provisions of the Act which grant exemptions and which make it obligatory for the authorities to prepare and publish a valuation list of buildings and land in the rating area. Therefore, taxing a building arbitrarily is not possible and submissions in this regard appear to be imaginary.

29. Our answer to the reference, therefore, is that Section 3(1) of the Act is intra vires of the Constitution and is not ultra vires of Article 14 of the Constitution. The said section is constitutionally valid and cannot be struck down. As a consequence of this the statute is held valid.

30. There are some other points raised in the writ petitions pertaining to Sections 7 and 9 of the Act. Therefore, the petitions be placed before the available Division Bench for hearing in respect of those matters which are not the subject matter of reference and which we have not dealt with.