

(1957) 03 CAL CK 0018
In the Calcutta High Court
Case No : Matter No. 127 of 1954

Turf Properties Ltd.

APPELLANT

Vs

Corporation of Calcutta and Others

RESPONDENT

Date of Decision : 11-03-1957

Acts Referred:

Calcutta Municipal Act, 1951 — Section 165, 180, 188, 190(2)
Constitution of India, 1950 — Article 285
Government of India Act, 1935 — Section 154

Citation : AIR 1957 Cal 431 : 61 CWN 912

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Atul Gupta and Sanker Ghosh, for the Appellant; G.P. Kar and R.P. Ghosh, for the Respondent

Judgement

Sinha, J.—The facts in this case are briefly as follows:

There exists in the City of Calcutta a racecourse, in a part of the open space popularly known as the Maidan. The petitioner in this application is the Turf Properties Ltd., a company incorporated under the Indian Companies Act. It is the trustee of the Royal Calcutta Turf Club, and of its properties. The petitioner, as such trustee and for and on behalf of the Royal Calcutta Turf Club, took a lease of that part of the Maidan which forms part of the glacis of the Fort William as is enclosed and bounded by the roads known as Lower Circular Road, Jail Road (now known as Casuarina Avenue)" and Kidder-pore Road with the structures "standing thereon and the stands and enclosures. On 9-10-1933 a registered Indenture of lease was executed by the Secretary of State for India in Council in favour of the Turf Properties Ltd. A copy of the lease is annexed to the petition and marked with the letter "A". The lease came into effect from 1-1-1932 for a term of 30 years, upon a yearly rent of Rs. 20,000/- payable by quarterly instalments, such payments to be made to the Executive Engineer, First Calcutta Division, at Calcutta. The lease contained several covenants. There is a covenant that during the demise the lessee will-pay and discharge ail rates and

taxes, duties, charges, assessment and outgoings whatsoever, which are then, or may at any time thereafter, be assessed charged or imposed upon the demised lands buildings and erections then standing or to be erected at any time thereon. No additional buildings or erections could be put up without approval of the Secretary of State, to be signified through the Commissioner of Police, Calcutta or such other officer as may be appointed by him for that purpose. The lessee would not be allowed, to break up the surface of the land or lay any drains or pipes or alter or in any way affect the existing state, character, appearance and conditions of the drainage or make any alterations or additions to the stands, buildings, erection, fences, etc., without such consent. There was a covenant against assignment, transfer or under-letting. There are two covenants which require special mention and I will set them out :

"2 (X). And also will permit the Secretary of State and all or any of the Military Authorities of India and all officers under their command or direction at any time and from time to time during the said term hereby granted to enter upon the said land hereby demised or any part thereof with any number of troops and use or occupy the same for the training and exercise of such troops in such manner in all respects as in the opinion of him or them shall seem necessary or desirable and the Lessee shall have no claim for compensation against the Secretary of State of the said Military Authorities of India by reason of any damage to the said land or any part thereof which shall or may be caused by reason of such training of exercising of troops as aforesaid.""

"4 (II), If at any time during the term hereby granted the Secretary of State shall be desirous of resuming the land hereby demised or any part thereof for military purpose only but not otherwise and of such his desire shall give to the Lessee or leave on the premises or at the office or club house for the time being of the Royal Calcutta Turf Club in Calcutta notice in writing under the hand of one of the Secretaries to the Government of Bengal for the time being then and in such case this present lease and everything herein contained shall thereupon absolutely cease and determine but without prejudice to any claim by the Secretary of State against the Lessee in respect of any antecedent breach of any covenant or condition herein contained and the Lessee shall have no claim against the Secretary of State for damages or otherwise."

2. In paragraph 4 of the present petition, it is stated that the rights of the Secretary of State for India in the said lands were now vested in the Union of India and that since 26-1-1950 the Union of India has been and still is, owner of the said lands. This is not denied in the affidavit in opposition but reference has been made to the lease. This is an aspect of the matter to which I shall have to come back later on.

3. Since the issuing of this rule, the President of India has executed a fresh lease in favour of the petitioner as the trustee of the Royal Calcutta Turf Club, dated 29-11-1954, The lease is upon the footing that the land is now vested in the President and is for a period of thirty years from 1-1-1962. It contains similar

covenants as set out above.

4. Under Schedule I of the Calcutta Municipal Act, 1923, as also in Schedule I of the Calcutta Municipal Act, 1951 (hereinafter referred to as the "Act") as originally enacted, "Calcutta" has been defined. By an amendment this definition has been altered. In the pleadings, a point had been taken that no taxes can be levied because the race course is a part of "Port William" and so not within the municipal limits of "Calcutta." But in view of the amendment, neither party has pressed this point. On or about 27-5-1954 a notice was issued by the Corporation of Calcutta under Proviso (i) of Sub-section (1) of Section 188, Calcutta Municipal Act, 1951. Before I proceed to enumerate the contents of the notice, it will be necessary to set out this Proviso, which has been introduced in Section 188 by an amendment contained in Section 36 of the Calcutta Municipal (Amendment) Act, 1953 (Act XVII of 1953). The relevant part of Section 188 as it now stands, "is as follows :

"188. (1) Notwithstanding anything contained in Section 184, the Commissioner may at any time amend the assessment book for reasons to be recorded in writing-

(a) by inserting therein the name of any person whose name ought, in his opinion to be inserted or by striking out the name of any person whose name ought in his opinion, to be struck out;

(b) by inserting the description and particulars of any land or building which, in his opinion, is liable to the consolidated rate, together with the valuation thereof Or by striking out the description and particulars of any land or building which in his opinion, is not so liable;

(c)

(d)

Provided that-

(i) Not less than 15 days notice shall be given to every owner or occupier of the land or building or other person interested therein, of the day on which any amendment of the assessment book is intended to be made under this sub-section."

5. Any person on whom a notice of an amendment is served can file a written objection, to the Commissioner, at least three clear days before the date fixed in the notice for making the amendment. I will now come to the wordings of the notice. The notice purports to be issued by the Assessor to the Corporation of Calcutta by an order of the Commissioner. The relevant part of the notice runs as follows :

"To Messrs. Orr, Dignam & Co. on behalf of Messrs. The Royal Calcutta Turf Club.

The occupiers of the land and buildings comprising the Calcutta Race Course

which is proposed to be assessed under No. 3 Circular Road Lower. Sirs,

Under orders of the Commissioner, Corporation of Calcutta I hereby give you notice that in exercise of the powers conferred on him by Clauses (a) and (b) of Sub-section (1) of Section 188 of the Calcutta Municipal Act, 1951, the Commissioner proposes to amend the Assessment Book relating to Ward No. 54 by inserting therein the annual valuation, description and other particulars, as noted overleaf, in respect of the area bounded by Circular Road Lower, Jail Road (now known as Casuarina Avenue), Hospital Road and Kidderpore Road with effect from 1st May 1952 when the area came to be included within the jurisdiction of the Corporation of Calcutta.

You are requested to note that the aforesaid amendment is intended to be made by the Commissioner in the room of the Assessor, Corporation of Calcutta at the Central Municipal Office, on Thursday, the 17th June, 1954 at 2-30 p.m.

If you have any objection to the proposed amendment you may prefer the same under Sub-section (2) of Section 188 of the Calcutta Municipal Act, 1951, by written application to the Commissioner, to be delivered to him at the Central Municipal Office at least three clear days before the 17th June, 1954.

Statement showing details of the proposed valuation is enclosed for your information.

(1) (2) (3) (4) (5) (6) (7) (8) (9)

Premises No. Number of Storeys Description. Name of Owner. Name of Occupier. Annual valuation. Date from Which the valuation will take effect. Percentage of the rate Amount of each share of quarterly rate

3. Circular Road Lower III The Calcutta Race Course The Government of India. The Turf Properties Ltd. as Trustee for and on behalf of the Royal Calcutta Turf Club (Lessee) 11, Russell Street. Rs. 4,50,450/- 1-5-52 23 % (including ? as Howrah Bridge Tax) Rs. 13, 231/15/6"

6. The annual valuation has been calculated in the following way: The gross annual rent has been calculated at Rs. 5,00,500/-. Then 10 per cent, has been deducted, and the annual value has been assessed at Rs. 4,50,450/-. The original hearing was fixed for 17-6-1954 and this Was extended from time to time until finally the hearing was fixed for 12-8-1954. On 4-6-1954 upon receipt of the notice abovementioned, the petitioner's solicitor on its behalf sent in an objection. It was firstly contended that the Calcutta Race Course did not fall within the limits of the Corporation of Calcutta, because it fell within the boundaries of Fort William. It was next stated that the land belonged to the Union of India and that in view of Article 285 of the Constitution, the Calcutta Race Course could not be assessed with municipal rates and taxes. Subject to this objection it was stated that the properties would have to be valued, and two months" time was required to obtain a surveyor's report. On 26-7-1954 time was granted Until 12-8-1954. On 25-7-1954 a further notice was issued upon the

petitioner as follows:

"Special Notice u/s 180 of West Bengal Act XXXIII of 1951.

To the Occupier of Premises No. 3, Circular Road Lower.

Take notice that the above premises have been assessed at an annual value of Rs. 4,50,450/- and the said valuation is to remain in force for 6 years from the commencement of the 2nd quarter of 1954-55."

It was stated that the annual valuation was increased, due to the revaluation of the premises at an estimated annual rent, less statutory allowance for repairs. In accordance with this notice, the Race Course was assessed at an annual value stated above with effect from. 1-7-1954. Thus, Under the notice dated 27-5-1954 it was proposed to amend the assessment book with effect from 1-5-1952. Under the notice dated 25-7-1954 a valuation was fixed for 6 years from 1-7-1954. On 6-8-1954 the solicitor for the petitioner protested against the fixation of the annual value, although the notice dated 27-5-1954 had called upon the petitioners to prefer objection, which had been preferred and was pending decision. On 14-8-1954 a reply was given by the Corporation to the effect that the assessment which was made u/s 188 of the Act was to remain in force from 1-5-1952 until a fresh assessment had been made. u/s 172 (2) of the said Act, the assessment of all lands and buildings situated in Ward No. 64 had been revised and would come into force from 1-7-54. Accordingly, the assessment for the Calcutta Race Course had been revised and would remain in force for 6 years unless the petitioner took objection to it in accordance with law.

7. This Rule was issued on 2-9-1954 upon the respondents to show cause why an appropriate writ should not be issued directing the respondents to cancel or recall the notices of demand dated 27-5-1954 and 27-7-1954 and to forbear from assessing the Calcutta Race Course or demanding any taxes therefore and for other reliefs.

8. Section 180 of the Act lays down that in all cases in which land or building is for the first time valued, or in which the valuation of any land, etc., is increased u/s 172, the Commissioner must give special notice thereof to the owner and occupier. It is also necessary to refer to the provisions of Section 190 (2) which runs as follows :

"When any amendment has been made in the assessment book, such period shall, unless otherwise specially provided in this Act, or unless specified otherwise by the Commissioner in the case of an amendment u/s 188, be calculated--(a) from the commencement of the quarter next succeeding that in which the notice of objection was delivered u/s 181 or Section 183 (2) ; or

(b) If any such notice has been delivered then from the commencement of the quarter next succeeding that in which such amendment was made". (9) The points made by Mr. Atul Gupta appearing on behalf of the petitioner, may be summarised as follows :

(1) That the assessment, valuation, and the imposition of consolidated rates or any part thereof upon the petitioner, is invalid, because the premises with which the subject-matter of such assessment, valuation, or imposition of rates is concerned, belongs to the Union of India and is exempt from taxation under Article 285 of the Constitution.

(2) That while the hearing of the first notice was pending, no valuation or assessment could be made ex parte and in violation of the rules of natural justice.

(3) That in any event, no valuation or assessment could be made with retrospective operation.

10. I shall now deal with the first point, which is really the main point discussed before me. It will appear from the facts stated above that the notices were served by the respondent upon the petitioner upon the footing, that the Union of India was the owner, and that the petitioner was only an occupier. This application was filed and the Rule was issued upon that footing. In fact, as stated above, the petition contains a specific averment that the Union of India was the owner of the properties, which was not denied in the affidavit in opposition as originally filed. When the petition first came up before me for hearing, the respondents, apprehending some difficulty in the matter, asked for leave to amend their affidavit by introducing an averment that the lands had at all material times vested in the State of West Bengal and did not belong to the Union of India. Mr. Kar at that time urged that this amendment was asked for at that late stage, because it was intended to treat it as a pure question of law. Learned counsel realised that he would not be permitted at that stage to change his whole case and introduce new facts. He said that no new facts would be introduced or relied on. I allowed the amendment on that understanding. Also I directed the petitioner to give notice to the Union of India and the State of West Bengal, stating that if they wished to take part in this application they would be allowed to do so. The reason why I took this course is obvious. The decision in this case must largely depend upon the question as to whether the Union of India was the owner of the properties in question or the State of West Bengal. It was hoped that if notice was given to the two claimants, the matter might be cleared up. However, both the Union of India and the State of West Bengal appeared before me and submitted that they did not wish to take any part in the controversies contained herein, particularly because they were not made parties and would have no right to appeal. The petitioner has not made them parties, and in that view of the matter I realised the justice of the contention put forward on behalf of the Union and the State, and they went out of the picture. This however by no means makes my task easier. In the absence of the two competing owners it seems to be somewhat unreal to decide the title, which will not be binding on either of them. But in this application, since the point has been raised and discussed, I have to come to some decision upon such facts as are before me.

11. Article 285 of the Constitution lays down that the property of the Union shall,

save in so far as Parliament may by law otherwise provided, be exempt from all taxes imposed by a State or by any authority within the State. This corresponds to Section 154 of the Government of India Act, 1935. Under the Indian Independence (Rights, Property and Liabilities) Order 1947, land which immediately before the appointed day was vested in His Majesty for the purposes of the Province of West Bengal would vest thereafter for the purposes of that Province, otherwise it would vest in His Majesty for the purposes of the Dominion. Therefore, the question is as to whether on the appointed day the Race Course in Calcutta Was vested in His Majesty for the purposes of the Province of West Bengal or not. First of all, regard being had to the notice which was issued and the frame of the pleadings I do not think that the respondents should be permitted to take the stand that the Union of India is not the owner of the property. The impugned notices have been issued upon the footing that the Union of India is the owner. It further appears that the assessment has also been done on that footing. If now the Corporation wishes to take another stand, then it ought to withdraw the notices or issue fresh notice and to cancel the assessment and to make fresh assessment upon the footing that the owner is the State. Apart from that, the prima facie evidence is that the land was vested for the purposes of the federation and thereafter the Dominion of India, but never for the purposes of the Province of West Bengal. It is a part of the Maidan which is treated as a glacis of Port William. The covenants in the lease mentioned above show that it was primarily intended for military purposes, that is to say, as an adjunct to the Fort proper. Since in peace time it was not necessary to deploy the military in all parts of the Maidan, temporary or semi-permanent structures were allowed to be constructed in parts thereof for purposes of sports of all kinds. Thus we all know how different sporting clubs have been allocated portions of the Maidan, with leave to raise temporary structures. In the same way, the Race Course was allowed to be established, but with a condition that in case of military necessity, it must at once efface itself. The original lease and assignment do not show that it was being held for the purposes of the Province of Bengal or West Bengal, and the rent was made payable to the military authorities. As I have stated above, the notices were issued upon the footing that the Union of India was the owner and the assessments and valuations were made on that footing. If this is wrong, it is for the respondents to have averred in the first instance that there was evidence to show that the Union was not the owner, and in any event that the evidence was such as to raise a conflict which could not be resolved without the taking of further evidence. This the respondents have failed to do, and I must proceed on the footing, for purposes of this application, that the owner is the Union of India. Mr. Kar realising the difficulty in contending herein that the Union of India was not the owner, finally took his stand as follows: He says that Article 285 of the Constitution only prevents a tax being imposed upon the property of the Union, but does not prevent the Corporation from taxing the interest of the lessee, that is to say, the occupier of the property. In other words, he says that the consolidated rates are payable, half by the owner and half by the occupier. He says that the petitioner is

admittedly an occupier and all that the Corporation was doing was to make it liable for the occupier's share of taxes. It is therefore, not taxing the Union, but the lessee of the Union's property, and this he says is not prohibited by law. The first case he relies on is *Smith v. Vermillion Hills Rural Council*, (1916) a AC 569 (A). In this case, the appellant held from the Crown, two leases of lands situated in the province of Saskatchewan, u/s 125, British North America Act, 1867, no lands or property belonging to the Crown was subject to taxation. The Legislature of Saskatchewan passed some local Act and under this councils were constituted, empowered to impose a tax of restricted amount upon "every owner or occupant in the district for land owned or occupied by him". The appellant was assessed in respect of the land comprised in the two leases and the question was whether the assessment was valid. It was contended for the appellant that the tax was sought to be imposed on the land itself which belonged to the Crown. For the respondents, on the other hand, it was argued that all that was taxed was the interest of the appellant as a tenant of the land, and in the land itself. Viscount Haldane delivering the judgment of the Privy Council said as follows :

"The appellant was duly assessed In respect of the land comprised in the two leases, and the Question is whether the assessment was valid. It is contended for the appellant that the tax is sought to be imposed on the land itself, Which belongs to the Crown in right of Canada, and not on any individual who is interested in it. For the respondents, on the other hand, it is argued that all that is taxed is the interest of the appellant as a tenant of the land and not the land itself as owned by the Crown.

Their Lordships have arrived at the conclusion that the Supreme Court of Canada were right in affirming the judgment of the Supreme Court of Saskatchewan which adopted the letter of these contentions. Following their decision in the analogous case from Alberta..... The Supreme Court of Canada held that the taxing statute of Saskatchewan must be read, in accordance with a well-known principle, as not applying to the Crown or its lands. But they thought that there was no reason why it should not be treated as applying to an interest acquired by a private person under a lease from the Crown. The definitions of "land"", "owner", and "occupant" make it easy to interpret the expression "land" as excluding any interest which still remains in the Crown. Their Lordships agree with this reasoning. They are of opinion that, although the appellant is sought to be taxed in respect of his occupation of land the fee of which is in the Crown, the operation of the statute imposing the tax is limited to the appellant's own interest. . . ."

12. The next case cited is *City of Montreal v. Attorney-General for Canada* (1923) AC 136 (B). There also, a lessee of Crown lands was sought to be taxed under a particular statute in force in Canada. The statute in question laid down that the exemption with regard to Crown lands shall not apply either to -persons occupying for commerce or industrial purposes, buildings or lands belonging to His Majesty or to the Federal and Provincial Governments, "who shall be taxed as

if they were actual owners of such immovables and shall be held to pay the annual and special assessments, taxes and other municipal dues." It was held that there was no reason why the Provincial Legislature may not provide that in assessing the interest of the occupant of Crown land or of any other person in them, it shall be assessed according to his interest, and therefore the law was upheld. It was pointed out that the Crown property could not be taxed but what was being taxed was not Crown property but an interest of the occupant in it.

13. Before I proceed further it will be necessary to consider two Indian cases which have been cited. The first case is: Governor- Sukumar Bose Vs. Emperor, . The subject-matter of assessment in that case was premises No. 7 Gun-Foundry Road, Cossipore, generally known as the Cossipore Gun & Shell Factory.

14. Part III of the Government of India Act, 1935 came into operation on 1-4-1937, u/s 154 of the said Act, all property vested in His Majesty for purposes of the Government of the Federation was exempt from all taxes imposed by or under authority of the Province.

15. It was contended that buildings which have been put after 31-3-1937 could not be taxed by the Corporation of Calcutta, although it attempted to do so.

16. Section 154 of the Government of India Act, 1935 contained the Proviso that any property even though vested in His Majesty for purposes of the government of the Federation would be liable to a provincial tax if immediately before the commencement of Part III of the Government of India Act, 1935 it was liable or treated as liable to any such tax, and so long as that tax continued.

17. It was argued that the word "property" occurring in the main Section 154 as well as the Proviso did not mean either land or building as such, but referred to a particular premises which bore a specific number in the books of the Corporation constituting one unit of assessment. It was argued that the premises might be vacant land or there might be a building on it, but even if there was a building, the building and the land were assessed not separately but together as one unit, and that the premises being liable to tax before the relevant date, it did not matter whether buildings were constructed after that date, as they would come within the net of taxation by reason of the Proviso. Mukherjee. J. repelled that contention. It was held that the mode of assessment employed by the Calcutta Corporation was not a relevant factor in determining the meaning of the word "property" for purposes of Section 154 of the Government of India Act. A Corporation can adopt any method of assessment which it considers convenient, but that could not affect the meaning of the word "property" under the Government of India Act. The learned Judge says as follows :

"In our opinion, the word "property" in Section 154 of the Government of India Act need not be the entire unit of taxation adopted by a particular taxing statute, it may be a portion of the unit and the fact that in granting exemption to the particular property the ordinary method of assessment cannot be followed is perfectly immaterial We can even conceive of a case where the Federal

Government is not the owner of the land upon which it erects a building. Suppose the Government requisitions a plot of land belonging to a private person after April, 1937 under an Emergency Ordinance and builds a house upon it. The ownership of the land would remain in the private individual till it is permanently acquired, but the latter would not be the owner of the building which would belong exclusively to the Federal Government. Under the ordinary rules of assessment the land and the building would in such cases have to be valued together, and the entire tax probably would be thrown upon the owner of the land who would have the right to recover proportionate amount from the Government. But if the building is exempted from taxation under S. 154, Government of India Act, no difficulty would arise, and the only consequence would be that the land would still continue to be assessed as vacant land belonging to the private owner and the building erected by Government would be treated as non-existent and left completely out of account. The entire tax thus assessed would be borne by the private proprietor".

18. The circumstances anticipated in the above decision actually occurred in the next case to be cited -- Corporation of Calcutta v. Governors of St. Thomas' School, Calcutta 1949-11 FCR 363 : (AIR 1949 PC 121) (D).

19. In that case, the Governors of St. Thomas School were the owners of land and buildings, being premises No. 4 Diamond Harbour Road. In April 1942, the premises were requisitioned under the Defence of India Act for the purposes of the Government of the Federation. Thereafter, the Central Government constructed buildings at a cost of about three lakhs of rupees. The Calcutta Corporation enhanced the consolidated rates, taking those buildings into account for the purposes of valuation. It was held that this could not be done. It was contended on behalf of the Corporation that under the Calcutta Municipal Act a consolidated rate is imposed on buildings which include the subjacent land, both being valued together for the purposes of assessment. Thus, "property" in Section 154 of the Government of India Act must, refer to this unit of taxation and not treat buildings as separate from land. Kania C. J. said as follows :

"This reasoning also leads to the rejection of the second contention of the appellants. The contention is that as the unit of taxation is the area mentioned in the schedule to the agreement and as that unit was subject to taxation before April, 1937, the exemption in favour of the Crown given in Section 154 could not be availed of. Whether any particular property falls within the exemption provided in Section 154 of Government of India Act must depend on what is "property" within the meaning of that section and not on what is regarded as a unit for purposes of assessment under a local Municipal Act. The question is whether what is sought to be taxed is property and, if so, whether the same is vested in the Government, If the answer to both these is in the affirmative, the question is whether that property was liable to tax before April, 1937."

Article 285 of the Constitution corresponds to Section 154, Government of India Act. 1935 and contains a similar Proviso. In my opinion, however, the principles

laid down in the abovementioned cases cited before me do not actually solve the problem in this case. The two Canadian cases cited above, lay down that it is open to the Legislature of a Province to make provision for imposing a tax upon the interests of a lessee or occupier of Crown property. Where this is done, the Provincial Legislature would then be taxing, not the property of the Crown but that of the lessee or occupier of Crown property. The two Indian cases turn upon the definition of "property" in the Constitution Acts. It is well noted there that, the Corporation, under the Calcutta Municipal Act, does not value land and buildings in a premises separately for purposes of assessment of the consolidated rates. But this is only material when: considering as to what property was subject to exemption under the relative Provisions of the Constitution Acts. Thus, where Government was owner of a property, it did not matter if structures came into existence after those sections came into operation although the premises was in existence from before. Also it did not matter if a building was constructed by the Union on land which was not exempt. Whether it is building or land, the exemption has to operate, if it belongs to the Union.

20. In the present case, there is no question of assessing the land or building separately. The land and the building have been valued together as one municipal premises. The question that has been raised is as to whether under such circumstances it was permissible for the Corporation of Calcutta to tax the interests of the lessee, or the occupier, that is to say, its right to possess the municipal premises.

21. Mr. Gupta, appearing on behalf of the petitioner has rightly pointed out that the real issue to be decided is not whether under such circumstances the Corporation of Calcutta can claim to tax the interests of the lessee or occupier, but whether the State Legislature could impose such a tax and whether if it could do so has it in fact done anything of the kind. In other words, Mr. Gupta argues that it might be open to the State Legislature to make; an appropriate law whereby a tax is imposed on the interest of the lessee or occupier of lands belonging to the Union. He points out, however, that there is no such law in existence. At least it forms no part of the Calcutta Municipal Act, and, therefore, the Corporation of Calcutta cannot claim to tax the interests of the lessee or occupier of Union property.

22. In order to understand this argument it will be necessary to go through the provisions of the Calcutta Municipal Act a little more closely. The subject of taxation is contained in Part IV of the Calcutta Municipal Act, 1951. Section 165 gives power to the Corporation to impose consolidated rates. It provides that a graduated consolidated rate on the annual valuation determined under Chapter XI of the said Act may be imposed by the Corporation upon all lands and buildings in Calcutta for the purposes of the Act.

23. It is not that land or building can never be separately valued for specified purposes. For example, there might be such valuation for the purposes of granting exemptions u/s 167. We are, however, not concerned with a case of that

description. In this case, the demand is for payment of consolidated rates, and it is necessary to see how that rate is imposed under the existing law. As has been pointed out in the two Indian cases cited above, the consolidated rate, under the said Act, is not imposed separately on lands and buildings but is a rate which is imposed upon the property which is described as a "premises", and forms the unit of taxation. In order to impose the consolidated rate no distinction is made between the interests of the owner and those of the occupier or the lessee. In fact, in making the valuation and assessment, the Corporation does not concern itself with the fact that the owner of the land and the building may be different, or whether the owner is himself in possession or not. The unit, whether it consists of land or building, or whether it is in the possession of the owner or not, is valued and assessed as a whole. It is only after the valuation and assessment is complete that the Corporation takes any notice of the fact as to whether the owner is in occupation or not. The consolidated rate is then split into two parts, half being paid by the owner and half by the occupier. (See Sections 191 to 201).

24. The principles to be followed, therefore, may be summarised as follows :

(1) Under Article 285 of the Constitution of India, the property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State, unless it "comes within the circumstances specified in the proviso to that article.

(2) The corporation of Calcutta cannot, therefore, impose a tax on the "property" of the Union.

(3) What constitutes "property" of the Union will be a question of fact, and will not depend upon the way in which a municipality may choose to impose its rates and taxes.

(4) The State Legislature may, however, make an appropriate legislation levying a tax on the interests of a lessee or occupier of property belonging to the Union.

(5) There is a distinction between, levying a tax on the property of the Union and apportioning the payment between the owner and the occupier, and levying a tax directly on the interests of the lessee or occupier although it is an interest carved out of the property of the Union,

(6) The consolidated rate, as imposed under the Calcutta Municipal Act at present, is not imposed directly upon the interests of the occupier. The property is valued and assessed as a whole, irrespective of the fact as to who was the owner or the occupier, and then the liability is apportioned between the owner and the occupier. In effect, it is a tax on the "property, which must be taken to mean the property of the owner, but part of the tax is realised from the occupier.

25. Applying the principles adumbrated above, it follows that the law, as it stands at Present, does not enable the State Legislature or the Corporation of Calcutta to levy the consolidated rate or any part thereof upon the interest of the

lessee in the property known as the Race Course, belonging to the Union. Or to put it in another way, the State Legislature has not yet made an appropriate law enabling the Corporation to levy any part of the consolidated rates directly upon the lessee of a property belonging to the Union. What the Corporation has done and can do at present is to value and assess the property of the Union, and is trying to recover part of the Consolidated rate from the lessee of the property. This it cannot do, because it virtually amounts to levying a tax on property belonging to the Union,

26. I now come to point No. 2. On the face of the record it certainly seems peculiar that while a notice has been given and an objection pending, there should be a fresh assessment ex parte. It is stated before me, however, that there was no intention of making the assessment ex parte and that it is still open to the petitioner to prefer objections. It has also been pointed out that the first assessment was to be effective from 1-5-1952 that is to say, with retrospective effect. In other words, the assessment was to be from 1-5-1952 until a fresh assessment had been made. It is then stated that u/s 172 (2) of the Act, there has to be a fresh general valuation and this has been effected and it would come into force from 1-7-1954. It is further stated that notice has been served under S, 180 and as against the general valuation, the petitioner can prefer objections u/s 181. Strictly speaking, however, I do not see how Section 180 of the Act can be availed of in the manner in which it has been done. When the notice u/s 188 was given, it was stated that the property had already been valued. I shall in a moment discuss whether an assessment with retrospective effect is permissible, but since that assessment had been made, and was the subject-matter of objections. I do not see how the notice u/s 180 could be given, because it could no longer be said that the Premises was being valued for the first time. Then again, the previous valuation is not being increased, since it remains the same in respect of both the notices. In any event, there is no doubt that the procedure adopted has given rise to great confusion and the petitioner cannot be blamed for being confused by the serving of a second notice while his objection to the valuation was pending and was still undecided.

27. So far as Section 188 is concerned, I am of the opinion that it is not lawful for the Commissioner to make an assessment retrospectively. Mr. Kar relies on the provisions of Section 190(2), which have already been set out above. He argues that the words "unless specified otherwise by the Commissioner", mean that the assessment will be prospective unless the Commissioner makes it retrospective. I am unable to accept this interpretation. It is a well-known rule of interpretation that all laws are to be taken to be prospective unless it is clearly stated that they will have a retrospective operation. Especially, a statute which imposes a tax upon the citizen must be construed strictly, and cannot be held to be retrospective unless the wording of the statute is clear. In my opinion, the very vague words "unless specified otherwise by the Commissioner" do not mean that the Commissioner has power to make an assessment retrospectively. This provision may be explained in many ways. Section 190(2) lays down that unless

specified in the Act, or by the Commissioner, the period is to be calculated from a certain date specified therein. In other words, so far as the Commissioner is concerned, he may fix some other date. Why should his power be construed so as to include a power to be exercised retrospectively, when a plain meaning can be given, namely that he could exercise his Power prospectively. In other words, the period is to be calculated prospectively in the way mentioned, or in such other way as the Commissioner decides, but also prospectively.

28. Mr. Kar argues that power has been given in different statutes to reopen matters retrospectively; for example, u/s 34 of the Indian Income Tax Act, the assessment can be reopened as far back as eight years. It will be observed, however, that where such powers are granted to officials, there is always a limit imposed. It is unthinkable that the Legislature contemplated granting power to the Commissioner to reopen an assessment retrospectively without limit. If this is so, it is open to the Commissioner to reopen an assessment, say for the last hundred years. This, in my opinion, is an -absurd interpretation to be put upon the Act.

29. In view of the conclusions which I have reached with regard to the first point, my conclusions with regard to the second and third points are not of much importance, but I have indicated my views, in case it may become necessary, and for the guidance of the authorities concerned. Since it is not open to the Corporation to levy a tax upon the petitioner under the law as it stands, the rule must be made absolute and a writ in the nature of certiorari should issue setting aside and quashing the notices dated 27-5-1954 and 25-7-1854 in the petition mentioned, and/or the valuation and assessment contained therein and/or the Proceedings initiated thereby, and there will be a writ in the nature of mandamus directing the respondents not to give effect to the same and/or to demand from the petitioner taxes in respect of the premises mentioned in the petition, under the Calcutta Municipal Act. There will be no order as to costs.