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Finance Act was not applicable in that case. In the second there was no profit in any preceding year and therefore the fiction failed because it postulates that there should be undistributed profits of one or more years immediately preceding the previous year. In the third case also the Finance Act was inapplicable because the additional tax was not properly laid upon the total income and what was actually taxed was never a part of the total income of the previous year.

In our opinion the order of the High Court was erroneous. We therefore allow this appeal and set aside the judgment and order of the High Court with costs in this court and in the High Court.

Appeal allowed.

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December 13.

DIAMOND SUGAR MILLS LTD., AND ANOTHER

v.

THE STATE OF UTTAR PRADESH AND ANOTHER

(JAFER IMAM, J. L. KAPUR, K. C. DAS GUPTA, RAGHUBAR DAYAL and N. RAJAGOPALA AYYANGAR, JJ.)

Sugar Cane—Imposition of cess—Enactment taxing entry of cane into factory—Constitutionality of—"Local area", Connotation of—Constitution of India, Sch. VII, List II, Entry 52—U. P. Sugarcane Cess Act, 1956 (U. P. XXII of 1956), s. 3.

Entry 52 of List II of the Seventh Schedule to the Constitution empowered State Legislatures to make a law relating to "taxes on the entry of goods into a local area for consumption, use or sale therein". The U. P. Legislature passed the U. P. Sugarcane Cess Act, 1956, which authorised the State Government to impose a cess on the entry of cane into the premises of a factory for use, consumption or sale therein. The appellant contended that the premises of a factory was not a 'local area' within the meaning of Entry 52 and the Act was beyond the competence of the legislature.

Held, (per Imam, Kapur, Das Gupta and Raghubar Dayal, JJ.) that the impugned Act was beyond the competence of the legislature and was invalid. The premises of a factory was not a "local area" within the meaning of Entry 52. The proper meaning to be attached to the words "local area" in Entry 52 was an area administered by a local body like a municipality, a district board, a local board, a union board, a Panchayat or the like.

In re: the Central Provinces & Berar Act No. XIV of 1938, [1939] F.C.R. 18, *Navinchandra Mafatlal* v. *The Commissioner of Income-tax, Bombay City*, [1955] 1 S.C.R. 829, *State of Madras* v. *Gannon Dunkerley & Co., Ltd.*, [1959] S.C.R. 379 and *South Carolina* v. *United States*, (1905) 199 U. S. 437, referred to.

Emperor v. *Munnalal*, I.L.R. 1942 All. 302, disapproved.

Per Ayyangar, J.—The Act was invalid only in so far as it sought to levy a tax on cane entering a factory from within the same local area in which the factory was situate and was valid in other cases. It was permissible to read the Act so as to confine the tax to the limitations subject to which it could be constitutionally levied and to strike down that portion which outstepped the limitations.

In re Hindu Women's Rights to Property Act, 1937, [1941] F.C.R. 12 and *Blackwood* v. *Queen*, (1882) 8 A.C. 82, applied.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 35 of 1959.

Appeal from the judgment and decree dated October 29, 1956, of the Allahabad High Court in Writ Petition No. 327 of 1956.

H. N. Sanyal, Additional Solicitor-General of India, J. B. Dadachanji, S. N. Andley, Rameshwar Nath and *P. L. Vohra*, for the appellants.

G. C. Mathur and *C. P. Lal*, for the respondents.

1960, December 13. The Judgment of Imam, Kapur, Das Gupta and Dayal, JJ. was delivered by Das Gupta, J. Ayyangar, J. delivered a separate judgment.

Das Gupta J.

DAS GUPTA, J.—This appeal is against an order of the High Court of Judicature at Allahabad rejecting the appellants' application under Art. 226 of the Constitution. The first appellant is the Diamond Sugar Mills Ltd., a public limited company owning and operating a sugar factory at Pipraich in the District Gorakhpur, for the manufacture of sugar from

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sugarcane. The second appellant is the Director of the company. By this application the appellants challenged the imposition of cess on the entry of sugarcane into their factory. On February 24, 1956, when the application was made the U. P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (U. P. XXIV of 1953), was in force. Section 20 of this Act gave to the Governor of U. P. the power to impose by notification "a cess not exceeding 4 annas per maund on the entry of sugarcane into an area specified in such notification for consumption, use or sale therein". This Act it may be mentioned had taken the place of an earlier Act, the U. P. Sugar Factories Control Act, 1938, s. 29 of which authorised the Governor of U. P. to impose by a notification after consultation with the Sugar Control Board under the Act "a cess not exceeding 10 per cent of the minimum price, if any, fixed under s. 21 or 4 annas per maund whichever was higher on the entry of sugarcane into a local area specified in such notification for consumption, use or sale therein". Notifications were issued under this provision for different crushing seasons starting from 1938-39, the last notification issued thereunder being for the crushing season of 1952-53. These notifications set out a number of factories in a schedule and provided that during 1952-53 crushing season cess at a rate of three annas per maund shall be levied on the entry of all sugarcane into the local areas comprised in factories mentioned in the schedule for consumption, use or sale therein. Act No. XXIV of 1953 repealed the 1938 Act. The first notification under the provisions of s. 20 of the 1953 Act was in these terms:—

> "In exercise of the powers conferred by sub-section (1) of section 20 of Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953; (U. P. Act No. XXIV of 1953) the Governor is pleased to declare that during the 1954-55 crushing season, a cess at a rate of three annas per maund shall be levied on the entry of all sugar cane into the local areas comprised in the factories mentioned in the Schedule, for the consumption, use or sale therein".

Similar notifications were also issued on October 23, 1954, for the crushing season 1954-55 and on November 9, 1955, for the crushing season 1955-56. The appellants' factory was one of the factories mentioned in the schedule of all these notifications. On the date of the application, i.e., February 24, 1956, a sum of Rs. 2,59,644-9-0 was due from the first appellant and a further sum of Rs. 2,41,416-3-0 as liability on account of cess up to the end of January, 1956, also remained unpaid.

The appellant contended on various grounds that s. 20 of Act XXIV of 1953 was unconstitutional and invalid and prayed for the issue of appropriate writs directing the respondents the State of U. P. and the Collector of Gorakhpur not to levy and collect cess on account of the arrears of cess for the crushing season 1954-55 and in respect of the crushing season 1955-56 and successive crushing seasons and to withdraw the notifications dated October 23, 1954, and November 9, 1955, which have been mentioned above.

During the pendency of this application under Art. 226 before the Allahabad High Court the U. P. Legislature enacted the U. P. Sugarcane Cess Act, 1956 (U. P. XXII of 1956), repealing the 1953 Act. Section 3 of this Act as originally enacted was in these words:—

"The State Government may by notification in the official gazette impose a cess not exceeding four annas per maund on the entry of the cane into the premises of a factory for use, consumption or sale therein:

Provided that the State Government may likewise remit in whole or in part such cess in respect of cane used or to be used in factory for any limited purpose specified in the notification.

Explanation:—If the State Government, in the case of any factory situate outside Uttar Pradesh, so declare, any place in Uttar Pradesh set apart for the purchase of cane intended or required for use, consumption or sale in such factory shall be deemed to be the premises of the factory.

(2) The cess imposed under sub-section (1) shall

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be payable by the owner of the factory and shall be paid on such date and at such place as may be prescribed.

(3) Any arrear of cess not paid on the date prescribed under sub-section (2) shall carry interest at 6 per cent. per annum from such date to date of payment."

There is a later amendment by which the words "four annas" have been altered to "twenty-five naye paise" and the words "Gur, Rab or Khandsari Sugar Manufacturing Unit" have been added after the words "factory" in sub-section (1). These amendments are however not relevant for the purpose of this appeal.

Section 9 of this Act repealed s. 20 of the Sugar Cane (Regulation of Supply and Purchase) Act, 1953. Sub-sections 2 and 3 of s. 9 are important. They are in these words:—

"2. Without prejudice to the general application of section 24 of the U.P. General Clauses Act, 1904, every notification imposing cess issued and every assessment made (including the amount of cess collected) under or in pursuance of any such notification, shall be deemed a notification issued, assessment made and cess collected under this Act as if sections 2, 3 and 5 to 8 had been in force at all material dates.

3. Subject as provided in clause (1) of Article 20 of the Constitution every notification issued cess imposed and act or thing done or omitted between the 26th January, 1950, and the Appointed date in exercise or the purported exercise of a power under section 29 of the U. P. Sugar Factories Control Act, 1938, or of s. 20 of the U. P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, which would have been validly and properly issued, imposed, done or omitted if the said sections had been as section 3 of this Act, shall in law be deemed to be and to have been validly and properly imposed and done, any judgment, decree or order of any court notwithstanding."

The position after the enactment of the U. P.

Sugarcane Cess Act, 1956, was that the imposition and assessment of cess that had already been made under the 1953 Act would operate as if made under the 1956 Act. In view of this the first appellant, the Diamond Sugar Mills Ltd., prayed to the High Court for permission to raise the question of constitutionality and validity of the 1956 Act. It also prayed for the issue of a writ in the nature of mandamus directing the respondents not to levy cess upon the petitioners-appellants under this new Act, the U. P. Sugarcane Cess Act, 1956.

This application was allowed and the High Court considered the question whether s. 3 of the U. P. Sugarcane Cess Act, 1956, empowering the State Government to impose a cess not exceeding four annas per maund on the entry of the cane into the premises of a factory for the consumption, use or sale therein was a valid law.

The principal ground urged in support of the appellants' case was that the law as enacted in s. 3 was invalid and that it was beyond the legislative competence of the State Legislature. Several other grounds including one that the provisions of the section went beyond the permissible limits of delegated legislation were also raised. All the grounds were negatived by the High Court which accordingly rejected the appellants' petition. The High Court however gave a certificate under Article 132(1) and also under Art. 133(1)(c) of the Constitution and on the basis of that certificate the present appeal has been filed.

Of the several grounds urged before the High Court only two are urged before us in appeal. One is that the law was invalid, being beyond the legislative competence of the State legislature; the other is that in any case the provision giving the Governor power to levy any cess not exceeding 4 annas without providing for any guidance as to the fixation of the particular rate, amounted to excessive delegation, and was accordingly invalid. The answer to the question whether the impugned law was within or beyond the legislative competence of the State legislature depends on whether the law falls under Entry 52 of the State List—

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List II of the Seventh Schedule to the Constitution. It is quite clear that there is no other entry in either the State List or the Concurrent List under which the legislation could have been made. Entry 52 is in these words:—"Tax on the entry of goods into a local area for consumption, use or sale therein". Section 3 of the impugned Act which has already been set out provides for imposition of a cess on the entry of sugarcane into the premises of a factory for use, consumption or sale therein. Is the "premises of a factory" a local area within the meaning of the words used in Entry 52? If it is the legislation was clearly within the competence of the State legislature; if it is not, the law was beyond the State legislature's competence and must be struck down as invalid.

In considering the meaning of the words "local area" in entry 52 we have, on the one hand to bear in mind the salutary rule that words conferring the right of legislation should be interpreted liberally and the powers conferred should be given the widest amplitude; on the other hand we have to guard ourselves against extending the meaning of the words beyond their reasonable connotation, in an anxiety to preserve the power of the legislature. In *Re the Central Provinces & Berar Act No. XIV of 1938* (1) Sir Maurice Gwyer, C. J., observed:—

> "I conceive that a broad and liberal spirit should inspire those whose duty it is to interpret it; but I do not imply by this that they are free to stretch or pervert the language of the enactment in the interests of any legal or constitutional theory, or even for the purpose of correcting any supposed errors".

Again, in *Navinchandra Mafatlal* v. *The Commissioner of Income Tax, Bombay City* (2) Das, J. (as he then was) delivering the judgment of this Court observed:—

> ".....The cardinal rule of interpretation however, is that words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most

(1) [1939] F.C.R. 18, 37. (2) [1955] 1 S.C.R. 829.

liberal construction should be put upon the words so that the same may have effect in their widest amplitude."

Our task being to ascertain the limits of the powers granted by the Constitution, we cannot extend these limits by way of interpretation. But if there is any difficulty in ascertaining the limits, the difficulty must be resolved so far as possible in favour of the legislative body. The presumption in favour of constitutionality which was stressed by the learned counsel for the respondents does not take us beyond this.

On behalf of the appellants it has been urged that the word "local area" in its ordinary grammatical meaning is never used in respect of a single house or a single factory or a single plot of land. It is urged that in ordinary use the words "local area" always mean an area covering a specified region of the country as distinguished from the general area. While it may not be possible to say that the words "local area" have acquired a definite and precise meaning and the phrase may have different connotations in different contexts, it seems correct to say that it is seldom, if ever, used to denote a single house or a single factory. The phrase appears in several statutes, some passed by the Central Legislature and some by the Provincial or State Legislatures; but in many of these the words have been defined. These definitions being for the peculiar purpose of the particular statute cannot be applied to the interpretation of the words "local area" as used in the Constitution. Nor can we derive any assistance from the judicial interpretation of the words "local area" as used in the Code of Criminal Procedure or other Acts like Bengal Tenancy Act as these interpretations were made with reference to the scope of the legislation in which the phrase occurs. Researches into dictionaries and law lexicons are also of no avail as none of these give the meaning of the phrase "local area". What they say as regards the meaning of the word "local" offers no guidance except that it is clear that the word "local" has different meanings in different contexts.

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The etymological meaning of the word "local" is "relating to" or "pertaining to" a place. It may be first observed that whether or not the whole of the State can be a "local area", for the purpose of Entry 52, it is clear that to be a "local area" for this purpose must be an area within the State. On behalf of the respondents it is argued that "local area" in Entry 52 should therefore be taken to mean "any part of the State in any place therein". So, the argument runs, a single factory being a part of the State in a place in the State is a "local area". In other words, "local area" mean "any specified area inside the State". The obvious fallacy of this argument is that it draws no distinction between the word "area" standing by itself and the phrase "local area". If the Entry had been "entry of goods into any area of the State....." some area would be specified for the purpose of the law levying the cess on entry. If the Constitution-makers were empowering the State Legislatures to levy a cess on entry of goods into any specified area inside the state the proper words to use would have been "entry of goods into any area....." It would be meaningless and indeed incorrect to use the words they did use "entry of goods into a local area". The use of the words "local area" instead of the word "area" cannot but be due to the intention of the Constitution-makers to make sure that the power to make laws relating to levy on entry of goods would not extend to cases of entry of goods into any and every part of the state from outside that part but only to entry from outside into such portions of the state as satisfied the description of "local area". Something definite was sought to be expressed by the use of the word "local" before the word "area": The question is: what exactly was sought to be expressed?

In finding an answer to the question it is legitimate to turn to the previous history of constitutional legislation in the country on this subject of giving power to legislature to levy tax on the entry of goods. In the *State of Madras* v. *Gannon Dunkerley & Co., Ltd.* (1)

(1) [1959] S.C.R. 379.

this Court referred with approval to the statement of law in Halsbury's Laws of England, Vol. II, para. 157, p. 93, that the existing state of English law in 1867 is relevant for consideration in determining the meaning of the terms used in the British North America Act in conferring power and the extent of that power. This has necessarily to be so as in the words of Mr. Justice Brewer in *South Carolina* v. *United States* (1) "to determine the extent of the grants of power, we must, therefore, place ourselves in the position of the men who framed and adopted the Constitution, and inquire what they must have understood to be the meaning and scope of those grants."

Turning now to the previous legislative history we find that in the Government of India Act, 1935, Entry 49 of the Legislative List (List II of the 7th Schedule) was in the same words as Entry 52 of the Constitution except that instead of the words "taxes" as in Entry 52 of List II of the Constitution, Entry 49 List II of the Government of India Act, used the word "cess". In Government of India Act, 1915, the powers of the provincial legislatures were defined in s. 80A. Under clause (a) of the third sub-section of this section the local legislature of any province has with the previous sanction of the Governor-General power to make or take into consideration any law imposing or authorising the imposition of any new tax unless the tax was a tax scheduled as exempted from this provision by rules made under the Act.

The third of the Rules that were made in this matter under Notification No. 311/8 dated December 18, 1920, provided that the legislative council of a province may without the previous sanction of the Governor-General make and take into consideration any law imposing or authorising a local authority to impose for the purpose of such local authority any tax included in Schedule II of the Rules. Schedule II contained 11 items of which items 7 and 8 were in these words:—

7. An octroi
8. A terminal tax on goods imported into a local

(1) (1905) 199 U.S. 437.

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area in which an octroi was levied on or before 6th July, 1917.

Item 8 was slightly modified in the year 1924 by another notification as a result of which it stood thus: 8. A terminal tax on goods imported into or exported from a local area save where such tax is first imposed in a local area in which an octroi was levied on or before July 6, 1917. Octroi is an old and well known term describing a tax on the entry of goods into a town or a city or a similar area for consumption, sale or use therein. According to the Encyclopaedia Britannica octroi is an indirect or consumption tax levied by a local political unit, normally the commune or municipal authority, on certain categories of goods on their entry into its area. The Encyclopaedia Britannica describes the octroi tax system in France (abolished in 1949) and states that commodities were prescribed by law and were divided into six classes and for all the separate commodities within these six groups maximum rates of tariff were promulgated by presidential decree, specific rates being fixed for the three separate sorts of octroi area, established on the basis of population, namely, communes having (1) less than 10,000 inhabitants, (2) from 10,000 to 50,000 and (3) more than 50,000. While we are not concerned here with other features of the octroi tax system, it is important to note that the tax was with regard to the entry of goods into the areas of the communes which were local political units. According to the Shorter Oxford English Dictionary "commune" in France is a small territorial division governed by a maire and municipal council and is used to denote any similar division elsewhere.

The characteristic feature of an octroi tax then was that it was on the entry of goods into an area administered by a local body. Bearing in mind this characteristic of octroi duty we find on an examination of items 7 and 8 of the Schedule Rules mentioned above that under the Government of India Act, 1919, the local legislature of a Province could without the previous sanction of the Governor-General impose a

tax—octroi—for entry of goods into an area administered by a local body, that is, a local government authority and the area in respect of which such tax could be imposed was mentioned in item 8 as local area.

It is in the background of this history that we have to examine the use of the word "local area" in item 49 of List II of the Government of India Act, 1935. Here the word "octroi" has given place to the longer phrase "cesses on the entry of goods into a local area for consumption, use or sale therein."

It was with the knowledge of the previous history of the legislation that the Constitution-makers set about their task in preparing the lists in the seventh schedule. There can be little doubt therefore that in using the words "tax on the entry of goods into a local area for consumption, use or sale therein", they wanted to express by the words "local area" primarily area in respect of which an octroi was leviable under item 7 of the schedule tax rules, 1920—that is, the area administered by a local authority such as a municipality, a district Board, a local Board or a Union Board, a Panchayat or some body constituted under the law for the governance of the local affairs of any part of the State. Whether the entire area of the State, as an area administered by the State Government, was also intended to be included in the phrase "local area", we need not consider in the present case.

The only other part of the Constitution where the word "local area" appears is in Art. 277. That Article is in these words:—

> "Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district, or other local area may, notwithstanding that these taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law."

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There can be little doubt that "local area" in this Article has been used to indicate an area in respect of which there is an authority administering it.

While the scope of Article 277 is different from the scope of entry 52 so that no direct assistance can be obtained in the interpretation of the words "local area" in entry 52 from this meaning of the words in Art. 277 it is satisfactory to find that the meaning of "local area" in entry 52 which appears reasonable on a consideration of the legislative history of the matter is also appropriate to this phrase in its only other use in the Constitution.

Reliance was sought to be placed by the respondents on a decision of the Allahabad High Court in *Emperor* v. *Munnalal* (1) where the word "local area" as used in s. 29 of the U. P. Sugar Factories Control Act, 1938, fell to be considered. That section, as we have already mentioned, authorised the Governor of U. P. to impose by a notification, after consulting the Sugar Control Board under the Act, a cess on the entry of sugarcane into a local area specified in such notification for consumption, use or sale therein. The notifications which were issued under this provision set out a number of factories for the levy of a cess at the rate of three annas per maund on entry of all sugarcane into the local area comprised in the factories mentioned in the schedule for consumption, use or sale therein. Section 29 was clearly within the words of entry 49 of List II. The question that arose before the Court was whether the specification of certain factories as local areas was valid law. The learned Judge appears to have proceeded on the basis that the Governor had notified the area comprised in 74 factories as one "local area" and held that once this was done the entire area covered by all these factories should be considered as one statutory local area. It appears to us that the learned Judge was not right in thinking that the area comprised in 74 factories was notified as one local area. What appears to have been done was that the area of each factory was being notified as a local area for the purpose of the Act. Proceeding on

(1) I.L.R. 1942 All. 302.

the basis that the area comprised in the 74 factories was notified as one local area the learned Judge addressed himself to the question whether this entire area was a local area within the meaning of the Act. He appears to have accepted the contention that the word local area was used in the sense of an administrative unit, but, says he, the administration need not be political, it may be industrial and educational or it may take any other form of governmental activity. "I cannot see," the learned Judge observed, "why it is not open to the provincial government or the provincial legislature to make an industrial survey of the province and to divide up the entire province into industrial areas or factory areas or mill areas or in any other kind of areas, and each one of these areas may be notified and be treated as a local area. And once such areas come into exitence and remain in operation they can be regarded as local areas within the meaning of entry No. 49 of List II in which a cess may be levied".

Even if this view were correct it would be of no assistance to the respondents. It is no authority for the proposition that the area of one single factory is a local area within the meaning of entry 49. We think however that the view taken by the learned Judge is not correct.

It is true that when words and phrases previously interpreted by the courts are used by the Legislature in a later enactment replacing the previous statute, there is a presumption that the Legislature intended to convey by their use the same meaning which the courts had already given to them. This presumption can however only be used as an aid to the interpretation of the later statute and should not be considered to be conclusive. As Mr. Justice Frankfurter observed in *Federal Com. Commission* v. *Columbia B. System* (1) when considering this doctrine, the persuasion that lies behind the doctrine is merely one factor in the total effort to give fair meaning to language. The presumption will be strong where the words of the previous statute have received a settled meaning by a

(1) 311 U.S. 131.

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series of decisions in the different courts of the country; and particularly strong when such interpretation has been made or affirmed by the highest court in the land. We think it reasonable to say however that the presumption will naturally be much weaker when the interpretation was given in one solitary case and was not tested in appeal. After giving careful consideration to the view taken by the learned Judge of the Allahabad High Court in *Emperor* v. *Munnalal* (supra) about the meaning of the words "local area" and proper weight to the rule of interpretation mentioned above, we are of opinion that the Constitution-makers did not use the words "local area" in the meaning which the learned Judge attached to it. We are of opinion that the proper meaning to be attached to the words "local area" in Entry 52 of the Constitution, (when the area is a part of the State imposing the law) is an area administered by a local body like a municipality, a district board, a local board, a union board, a Panchayat or the like. The premises of a factory is therefore not a "local area".

It must therefore be held that s. 3 of the U. P. Sugarcane Cess Act, 1956, empowering the Governor to impose a cess on the entry of sugarcane into the premises of a factory did not fall within Entry 52 of the State List. As there is no other Entry in either State List or Concurrent List in which the impugned law could fall there is no escape from the conclusion that this law was beyond the legislative competence of the State Legislature. The law as enacted in s. 3 of the U. P. Sugarcane Cess Act, 1956, must therefore be struck down as invalid.

It may be mentioned that this is not a case where the law is in two parts and one part can be severed from the other and saved as valid while striking down the other portion which is invalid. Indeed, that was not even suggested by the learned counsel for the respondents. It is unnecessary for us to consider whether if s. 3 had instead of authorising levy of cess for entry of sugarcane into the premises of a factory for use, consumption or sale therein had authorised the imposition of a cess on entry of cane into a local area for

consumption, sale or use in a factory that would have been within Entry 52. It is sufficient to say that we cannot re-write the law for the purpose of saving a portion of it. Nor is it for the Court to offer any suggestion as to how the law should be drafted in order to keep it within the limits of legislative competence. As the law enacted by the Legislature stands there is no escape from the conclusion that this entire law must be struck down as invalid.

In view of this conclusion on the first ground raised on behalf of the appellant it is unnecessary to consider the other ground raised in the appeal that section 3 has gone beyond the permissible limits of delegated legislation.

As we have held that the impugned legislation was beyond the legislative competence of the State Legislature the appellants are entitled to the relief asked for. We accordingly allow the appeal, set aside the order passed by the High Court and order the issue of a writ directing that the respondents do forbear from levying and collecting cess from the appellants on account of arrears of cess for the crushing season 1954-55 and in respect of the crushing season 1955-56 and successive crushing seasons under the U. P. Sugarcane Cess Act, 1956.

The appellants will get their costs here and below.

Ayyangar J.

AYYANGAR, J.—I have had the privilege of perusing the judgment just now pronounced, but with the utmost respect regret my inability to agree with the order proposed.

The learned Judges of the High Court held that the impugned enactment was within the scope of Entry 52 of the State Legislative List in Schedule 7 to the Constitution, by placing reliance on the following passage in the Judgment of Das, J. in *Emperor* v. *Munna Lal* (1) where the learned Judge said:

> "Indeed I cannot see why it is not open to Provincial Government or Provincial Legislature to make an industrial survey of the Province and to divide up the entire province into industrial areas

(1) I.L.R. [1942] All. 302, 328.

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or factory areas or mill areas or in any other kind of areas, and each one of these areas may be notified and be treated as a local area. And once such areas come into existence and remain in operation they can be regarded as local areas within the meaning of Entry No. 45 of List II in which a cess may be levied."

In other words, the view which they favoured was to read the expression "local area" practically to mean any "area" entry into which was by the relevant fiscal statute, made the subject of taxation. In my opinion that is not a correct interpretation of the entry and I agree with my learned brethren that having regard to the historical material, which has been exhaustively set out and discussed in their judgment, the word "local area" can in the entry designate only a predetermined local unit—a unit demarcated by statutes pertaining to local self government and placed under the control and administration of a local authority such as a municipality, a cantonment, a district or a local board, an union or a panchayat etc. and not any region, place or building within the State which might be defined, described or demarcated by the State's taxing enactment as an area entry into which is made taxable.

But there my agreement stops and we diverge. In my opinion, this construction of the expression "local area" in entry 52 does not automatically result in the invalidity of the impugned enactment and of the levy under it, but the extent to which, if any the charging section exceeds the power conferred by the entry would depend on matters which have not been the subject of investigation, and it is this point that I shall elaborate in the rest of this judgment.

It is unnecessary for the purposes of this case and possibly even irrelevant, to determine the precise scope, content and incidents of an "octroi" duty—except that in the context in which it appeared in the Scheduled Taxes Rules framed under the Government of India Act, 1919, the expression signified a tax levied on entry into an area of an unit of local administration. It is unprofitable to canvass the question

whether a local authority empowered at that date to levy an 'octroi' might or might not lawfully confine the levy to entry for consumption alone, to use alone or for sale alone. But when that entry was refashioned and enacted as item 49 of the Provincial Legislative List under the Government of India Act, 1935 (in terms practically identical with Entry 52 in the State Legislative List under the Constitution), the matter was no longer left in doubt. The new item ran:

"Cesses on the entry of goods into a local area for consumption, use or sale therein".

In connection with the use of the words "for consumption, use or sale therein" in the item three matters deserve notice: (1) Where the entry into the "local area" was not for one of the purposes set out in it, viz., for consumption, use or sale therein, but the entry was, for instance in the course of transit or for warehousing during transit, the power was not available; in other words, a mere entry could not per se be made a taxable event. (2) It was sufficient if the entry was for any one of the three purposes; the use of the disjunctive 'or' making this clear. (3) The passage of goods from one portion of a local area to another portion in the same local area, would not enable a tax to be levied, but the entry has to be "into the local area", i.e., from outside the local area.

It is the second and the third of the above features that call for a more detailed examination in the context of the points requiring decision in the present case.

With this background I shall analyse the terms of s. 3(1) of the Act (United Provinces Act XXII of 1956) to ascertain where precisely the provision departs from the scope or content of entry 52. I will read that section which runs:

"3. (1). The State Government may by notification in the official gazette impose a cess not exceeding four annas per maund on the entry of the cane into the premises of a factory for use, consumption or sale therein:

Provided that the State Government may likewise remit in whole or in part such cess in respect

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of cane used or to be used in factory for any limited purpose specified in the notification.

Explanation:—If the State Government, in the case of any factory situate outside Uttar Pradesh, so declare, any place in Uttar Pradesh set apart for the purchase of cane intended or required for use, consumption or sale in such factory shall be deemed to be the premises of the factory."

Leaving the Explanation for the present, there are two matters which require advertence: (1) The first was the point emphasised by Mr. Sanyal for the appellant, that entry into the premises of a factory "for the purpose of consumption, use or sale therein" is fastened on as the taxable event treating the factory premises as if that were itself a "local area". (2) Apart from entry into factory premises for use, consumption or sale therein, entry of the cane into other places within the local area, i.e., into "unit for local administration" is not made the subject of tax levy.

The second of the above matters cannot invalidate the legislation, because a power to tax is merely enabling, and apart from any question of discrimination under Art. 14—which does not arise for consideration before us—the State is not bound to tax every entry of goods into "a local area". Again, the tax could undoubtedly be confined to entry of goods into a "local area" for consumption or use in particular modes; in other words, there could be no legal objection to the tax levy on the ground that it does not extend to entry of goods into "a local area" for every type of consumption or use.

In my judgment the real vice of the charging s. 3(1) lies not in that it confines the levy to cases where the entry is for purposes of consumption etc. in a factory but in equating the premises of a factory with "a local area" entry of goods into which, occasions the tax. Another way of expressing this same idea would be to say, that whereas under Entry 52 the movement of goods from within the same local area in which the factory is situated into the premises of the factory, could not be the subject of tax liability, because there

would in such cases be no entry of the goods "into a local area" under s. 3(1) of the Act, not merely is the movement of goods into the factory from outside the 'local area' in which the factory is situate made the subject of tax, but the words used are capable of imposing the tax even in those cases where the entry into the factory is from within the same local area.

What I have in mind may be thus illustrated: If factory A situated in Panchayat area B gets its supply of cane from outside the Panchayat area, the levy of the tax on the entry of the cane into the Panchayat area would clearly be covered by entry 52. The State is not bound to tax every entry of the cane into the the area but might confine the levy to the entry of the cane for the purpose of consumption in a factory. The tax might be levied and collected at the border of the Panchayat area but there is no legal obligation to do so, and the place at which the entry of the goods is checked and the duty realised is a matter of administrative machinery which does not touch on the validity of the tax imposition. It would thus not detract from the validity of the tax if by reason of convenience for effecting collection, the tax was levied at the stage of entry into the premises of a factory. So long, therefore, as the cane which enters a factory for the purpose of consumption therein comes from outside that local unit of administration in which the factory is situated, in my opinion it would be covered by the words of entry 52 and well within the legislative competence of the State Government. The language of s. 3, as it stands appears, however, also to extend to cases where the supply of cane to a factory is from within the same local unit of administration; in other words, where there is no entry of the cane into the local area as explained earlier. If this were the true position, the enactment cannot be invalidated as a whole. It would be valid to the extent to which the tax is levied on cane entering a factory for the purpose of consumption etc. therein from outside the local area, within which the factory premises are situated, and only invalid where it outsteps this limitation.

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The next question is whether this is a case where the valid and invalid portions are so inextricably interwoven as to leave the Court no option but to strike down the entire enactment as invalid as beyond the legislative competence of the State, or whether the charging provision could be so read down as to leave the valid portion to operate. In my opinion, what is involved in the case before us is not any problem of severance, but only of reading down. Before taking up this question for discussion two objections to the latter course have to be considered. The first is that this aspect of the matter was not argued before us by learned Counsel for the State as a ground for sustaining the validity of the legislation. In my judgment this is not an objection that should stand in the way of the Court giving effect to a view of the law if that should appear to be the correct one. In making this observation one has necessarily to take into account the fact that legislation in nearly this form, has been in force in the State for over twenty years, and though its vires was once questioned in 1942, that challenge was repelled and the tax levy was held valid and was being collected during all this period. The sugar-cane cess has been a prime source of State Revenue for this length of time and this Court should not pronounce such a legislation invalid unless it could not be sustained on any reasonable ground and to any extent.

The second ground of objection which has appealed to my learned brethren but with which, I regret, I cannot concur is that it would require a rewriting of the Act to sustain it.

Now if the first paragraph of sub-s. (1) of s. 3 had read:

> "The State Government may by notification in the official gazette impose a cess not exceeding four annas per maund on the entry of the cane into the premises of a factory (from outside the local area in which the factory premises were situate) for use, consumption or sale therein:" (The words in brackets added by me)

the levy would be entirely within entry 52 even according to my learned brethren. The question is whether the implication of these words would be a rewriting of the provision or whether it would be merely reading the existing provision so as to confine it to the powers conferred upon the State Legislature by the relevant legislative entry. In view of the strong opinion entertained by my learned brethren, I have given the matter the utmost consideration, but I feel that the words which I have suggested are a permissible mode of construction of a statute by which wide words of an enactment which would cover an event, contingency or matter within legislative power as well as matters not within it, are read as confined to those which the law making body had authority to enact. In my judgment the opinion of the Federal Court in *In re Hindu Women's Rights to Property Act, 1937* (1), affords a useful analogy to the present case. The enactment there impugned provided for the devolution or succession to "property" in general terms which would have included both agricultural as well as non-agricultural property, whereas the Central Legislature which enacted the law had no power to deal with succession to agricultural property. The contention urged before the Court was that by the use of the expression "property", the legislature had evinced an intention to deal with property of every type and that it would be rewriting the enactment and not carrying out the legislative intent if the reference to "property" in the statute were read as "property other than agricultural property". Dealing with this contention, Sir Maurice Gwyer, delivering the opinion of the Court said:

> "No doubt if the Act does affect agricultural land in the Governors' Provinces, it was beyond the competence of the Legislature to enact it: and whether or not it does so must depend upon the meaning which is to be given to the word "property" in the Act. If that word necessarily and inevitably comprises all forms of property, including agricultural land, then clearly the Act went beyond the powers

(1) [1941] F.C.R. 12.

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of the Legislature; but when a Legislature with limited and restricted powers makes use of a word of such wide and general import, the presumption must surely be that it is using it with reference to that kind of property with respect to which it is competent to legislate and to no other. The question is thus one of construction, and unless the Act is to be regarded as wholly meaningless and ineffective, the Court is bound to construe the word "property" as referring only to those forms of property with respect to which the Legislature which enacted the Act was competent to legislate; that is to say, property other than agricultural land. .....The Court does not seek to divide the Act into two parts, viz., the part which the Legislature was competent, and the part it was incompetent, to enact. It holds that, on the true construction of the Act and especially of the word "property" as used in it, no part of the Act was beyond the Legislature's powers."

The Court accordingly held that the Hindu Women's Rights to Property Act, 1937, applied to non-agricultural property and so was valid. In this connection it might be interesting to refer to the decision in *Blackwood* v. *Queen* (1) which Sir Maurice Gwyer, C.J., referred to with approval. That case related to the validity of a duty imposed by the Legislature of Victoria (Australia) on the personal estates of deceased person. The learned Chief Justice observed "The Judicial Committee construed the expression "personal estate" occurring in the statute to refer only to: "such personal estate as the colonial grant of probate conferred jurisdiction on the personal representatives to administer, whatever the domicile of the testator might be, that is to say, personal estate situate within the Colony, in respect of which alone the Supreme Court of Victoria had power to grant probate: Their Lordships thought that "in imposing a duty of this nature the Victorian Legislature also was contemplating the property which was under its own hand, and did not intend to levy a tax in respect of property

(1) [1882] 8 A.C. 82.

beyond its jurisdiction". And they held that "the general expressions which import the contrary ought to receive the qualification for which the appellant contends, and that the statement of personal property to be made by the executor under s. 7(2) of the Act should be confined to that property which the probate enables him to administer" (1).

To confine the tax to the limitations subject to which it could, under the Constitution, be levied is, in my opinion, not an improper method of construing the statute. The manner in which the word "property" was read down by the Federal Court in *In re Hindu Women's Rights to Property Act, 1937* (1) and the word "personal property", construed by the Privy Council in *Blackwood* v. *Queen* (2) make in my opinion less change in the text of the impugned provision than the addition of the words I have set out above, which after all are words implicit in the power conferred on the State Legislature. I would, therefore, hold that the charging section would be invalid and beyond the legislative competence of the State of Uttar Pradesh only in so far as it seeks to levy a tax on cane entering a factory from within the same local area in which the factory is situate and that in all other cases the tax is properly levied; and that the impugned section could and ought to be so read down.

The matter not having been considered from this aspect at earlier stages, we have necessarily no material before us for adjudicating upon whether tax levied or demanded from the appellant is due and if so to what extent. We have nothing before us to indicate as to how far the cane, the entry of which into the factory of the appellant is the subject of the impugned levy, has moved into the factory from outside the local unit in which the factory is situated or originated from within the same local area. I consider that without these matters being investigated it would not be possible to adjudicate upon the validity of the tax demanded from the appellants.

There is one matter to which it is necessary to

(1) Per Sir Maurice Gwyer, C. J. [1941] F.C.R. 12, 28.
(2) [1882] 8 A.C. 82.

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advert which I have reserved for later consideration, viz., the validity of the Explanation to s. 3(1) of the Act. It would be apparent that the Explanation was necessitated by the terms of sub-s. (1) of s. 3 which equated "factory premises" with "local areas", or rather rendering factory premises the sole local areas entry into which occasioned the tax. So far as the purchasing centres which are dealt with in the Explanation are concerned, the cane that moves into them from outside the "local area" where these centres are would clearly be covered by Entry 52, since the purpose of the movement into the centre is on the terms of the provision for effecting a sale therein. In other words, the same tests which I have discussed earlier in relation to entry into factory premises, would apply mutatis mutandis to these purchasing centres and in so far as a tax is levied on the movement of the cane from outside the local area the levy would be legal and in order. I would read down the Explanation in the same manner, as I have read down the main charging provision so as to confine the levy to entry from outside that "local area"—local area being understood in the sense already explained.

I would accordingly allow the appeal, and remand it to the High Court for investigating the material facts which I have mentioned earlier with a direction to pass judgment in accordance with the law as above explained.

BY COURT. In accordance with the opinion of the majority the appeal is allowed, the order passed by the High Court is set aside and a writ be issued directing that the respondents do forbear from levying and collecting cess from the appellants on account of arrears of cess for the crushing season 1954-55 and successive crushing seasons under the Uttar Pradesh Sugarcane Cess Act, 1956.

The appellants will get their costs here and below.

Appeal allowed.