ANANT MILLS CO. LTD. A

v.

STATE OF GUJARAT & ORS.

January 21, 1975

[A. N. RAY, C.J., P. JAGANMOHAN REDDY, H. R. KHANNA AND P. K. GOSWAMI, JJ.] B

Constitution of India, 1950, *Art.* 14—*Treating pending cases as a class different from decided cases, if a permissible classification.*

Constitution of India, 1950, *Art.* 14—*Duty of the person challenging a provision of the Act as discriminatory—Constitutional validity, if could be decided on the basis of supposed existence of certain facts by raising a presumption.*

Bombay Provincial Municipal Corporations Act (Bombay Act 59 of 1949) as amended by Gujarat Acts No. 8 of 1968 and No. 5 of 1970, Sections 129 C *and 137—Conservancy tax for different categories of properties—Tax, if should be related only to the expense for conservancy service for that particular category.*

Bombay Provincial Municipal Corporations Act (Bombay Act 59 of 1949) as amended by Gujarat Act Nos. 8 of 1968 and No. 5 of 1970, proviso to section 129(b)—Corporation to determine different rates for different classes of properties—Proviso, if suffers from the vice of excessive delegation of legislative power. D

Bombay Provincial Municipal Corporations Act (Bombay Act 59 of 1949) as amended by Gujarat Acts No. 8 of 1968 and No. 5 of 1970, Section 406(2)(e) rule 42 of Taxation Rules—Appeal against a tax or rateable value—Deposit of amount claimed condition precedent to entertaining appeal—Appellate judge empowered to remove undue hardship to appellant—Requirement of deposit, if nullifies right of appeal—Provision if makes invidious distinction.

Constitution of India, 1950, *Entry* 49, *List II*, *Schedule VII*—"*Land*", *if* E *includes underground strata.*

The assessment of properties to property tax in Ahmedabad was made under the Bombay Provincial Municipal Corporations Act by making entries in the assessment books in accordance with the procedure prescribed in the Taxation Rules set out in Chapter VIII of Schedule A of the Corporations Act. A separate section of the assessment book was prepared by the Commissioner of the Corporation for each official year in respect of the assessment of property tax F on certain kinds of properties like textile mills, factories and buildings of University. These properties were classified as special properties. There was some increase in the rateable value fixed by the Commissioner for the year 1964-65 and 1965-66. The Commissioner also made initial entries in assessment book in respect of those properties for the year 1966-67. A number of writ petitions under Art. 32 of the Constitution were filed in this Court challenging the validity of the assessments for the years 1964-65 and 1965-66 as well as initial entries for the year 1966-67. The Supreme Court in the judgment *New Manek Spinning & Weaving Mills Co. Ltd. & Ors.* v. *Municipal Corporation of* G *City of Ahmedabad & Ors.* [1967] 2 S.C.R. 69, allowed the writ petitions and held the relevant entries in the assessment books to be invalid. Rules 7(2) and (3) were also held to be invalid on account of excessive delegation of powers by the legislature. The taxation on the basis of floor area as adopted by the Corporation was held to violate Art. 14 of the Constitution.

When the Corporation initiated steps to make fresh assessment for the years 1964-65, 1965-66 and 1966-67, it was unable to do so in view of the decision of the High Court in the case of *Ahmedabad Municipality* v. *Keshavlal* 6 G.L.R. H 228 wherein it was held that the Corporation had no power to assess and levy property tax for any official year after that year had ended. In order to get over this difficulty, the legislature enacted Gujarat Act 8 of 1968. New Sec. 152A

A and new rules 7 and 21B were inserted. When notices were served on the petitioners to furnish return of the particulars, the petitioners filed petitions in the High Court challenging the validity of those notices. Those petitions were allowed by the High Court as per judgment dated July 3, 1969 on the ground that the demand for certain particulars contained in the notices was beyond the scope of r. 8(1). In the appeal filed by the Corporation against the judgment dated 3rd July, 1969, the Supreme Court, in its judgment in *Municipal Corporation of the City of Ahmedabad, etc.* v. *New Sherock Spg. & Wvg. Co. Ltd. etc.* [1971] 1 S.C.R. 288, held that, as the assessments were not in accordance with
B law, the Corporation was not entitled to retain that amount. The Court also struck down sub-section (3) of s. 152-A which gave power to the Corporation to refuse to refund the amount illegally collected despite the order of the Court.

For the official year 1967-68 the Corporation determined the rate of conservancy tax to be 3 per cent and a special rate of 9 per cent for the large premises like textile mills and factories. The petitioners preferred appeals
C against the order of the Deputy Commissioner determining the amount of property tax to the Chief Judge of the Court of Small Causes, Ahmedabad. The Chief Judge was, however, precluded from hearing those appeals since the amount of tax was not deposited by the petitioners as required by s. 406 (2)(e) of the Corporations Act. The petitioners thereafter filed petitions in the High Court challenging the validity of the assessments made by the Deputy Municipal Commissioner for the official years 1966-67, 1967-68 and 1968-69. Those writ petitions were allowed by the Gujarat High Court as per judgment dated October 27, 1969. The ordinance dated December 23, 1969, was replaced by
D Gujarat Act No. 5 of 1970 which came into effect from March 31, 1970. This Act brought about material changes in the Corporations Act.

The High Court held (i) Section 2(IA) Clause (i) is valid so far as it is applicable to the official year 1969-70 but it is null and void in so far as it applies to the official years from the commencement of the Corporations Act upto and including the official year 1968-69, on account of infraction or Art. 14; (ii) Section 406(2)(e) and s. 411(bb) are null and void as being in contraven-
E tion of Art. 14; Rule 42 of the Taxation Rules is also ultra vires and void in so far as it provides that if an appeal is preferred or entertained against the tax, warrant shall not issue for the recovery of the amount of tax; and (iii) The Resolutions passed by the Corporation for the official year 1967-68, 1968-69, 1969-70 and 1970-71 to the extent to which they fix the rate of conservancy tax at 9 per cent *inter alia* in respect of textile mills and factories belonging to the petitioners are ultra vires the proviso to s. 129(b) and the rate of conservancy tax applicable in respect of these textile mills and factories must, therefore, be taken to be the general rate of 3 per cent. The High
F Court upheld the constitutional validity of proviso (e) to s. 2(IA) clause (ii) and sections 49, 129(b), 406(2)(e) and 411(bb) of the Act and s. 13(1) and 13(2) of the Act 5 of 1970.

Civil Appeals Nos. 489 to 513 and 752 to 755 of 1973 have been filed in this Court by the petitioners before the High Court against the Judgment of that Court in so far as the Court had upheld the constitutional validity of the impugned provisions. Civil Appeals Nos. 643 to 684 of 1973 have been
G filed by the Municipal Corporation of the City of Ahmedabad and others against the above judgment in so far as the High Court has struck down the impugned provisions and the Resolutions. Civil Appeals No. 389 to 430 of 1974 have been filed by the State of Gujarat against the judgment in so far as the High Court has struck down the impugned provisions. Writ Petitions Nos. 51, 60 to 73, 87 to 91, 197, 492 to 503, 533, 534 and 583 of 1972 as also writ petitions Nos. 1866 to 1877 and 2046 of 1973 which have been filed by the Aryodaya Spg. & Wvg. Mills Co. Ltd. and other parties involve substantially the same question which arises in appeals, though some of these writ petitions relate
H to the subsequent period of 1971-72. Writ Petition No. 74 of 1972 filed by the Ahmedabad Electricity Co. Ltd. involves an additional point regarding its liability to pay property tax which has been levied on the ground that it occupies land below the surface for underground cables.

Reversing the decision of the High Court,

HELD : (i) As the affidavit filed on behalf of the respondents discloses that the factual position as it existed before the promulgation of Ordinance 6 of 1969 was that the provisions of the Bombay Rent Act were not taken into account in determining the rateable value, there would be no escape from the conclusion that no differential treatment has been meted out to pending cases in clause (i) of s. 2(1A). There is a presumption of the constitutional validity of a statutory provision. In case any party assails the validity of any provision on the ground that it is violative of Art. 14 of the Constitution, it is for that party to make the necessary averments and adduce material to show discrimination violative of Art. 14. No averments were made in the petitions before the High Court by the petitioners that the assessments before the coming into force of Ordinance 6 of 1969 had been made by taking into account the rent restriction provisions of the Bombay Rent Act. It is extremely hazardous to decide the question of constitutional validity of a provision on the basis of the supposed existence of certain facts by raising a presumption. It is very clear that the High Court has acted on an incorrect assumption. [236G-237E]

Assessment Committee of the Metropolitan Borough of Poplar v. *Roberts* [1922] 2 A.C. 93, *Gulam Ahmed Rogey* v. *Bombay Municipality* A.I.R. 1951 Bom. 320 and *The Corporation of Calcutta* v. *Sm. Padma Devi and Ors.* [1962] 3 S.C.R. 49, referred to

(ii) Classification by treating decided cases as belonging to one category and pending cases as belonging to another category is reasonable and not *per se* offensive to Art 14 of the Constitution. [238H-239A]

Ram Krishna Dalmia v. *Shri Justice S. R. Tandolkar,* [1959] S.C.R. 279, *Khandige Shah Bhav* v. *Agricultural Income-tax Officer,* [1963] 3 S.C.R. 809, *Rao Shiv Bahadur Singh* v. *State of Vindhya Pradesh* [1953] S.C.R. 1188, 1197, *Hathisingh Manufacturing Co. Ltd.* v. *Union of India* [1960] 3 S.C.R. 528 and *Jain Bros. and Ors.* v. *The Union of India & Ors.* [1970] 3 S.C.R. 253, referred to.

(iii) The scheme of the Corporation Act appears to be that in the case of premises used solely for public purposes and not intended to be used for purposes of profit or in the case of premises intended to be used for residential or charitable or religious purposes in respect of which conservancy tax is payable by the Government, the rate of conservancy tax should be lower compared to the rate of general conservancy tax. What is required by s. 129 is that before determining the rates of conservancy tax for different categories of properties the Corporation should find out the total expense it would have to incur for the various purposes mentioned in clause (b) of that section. After having ascertained the total expense it would be permissible to the Corporation to fix different rates of conservancy tax for various categories of properties. It is not essential except in cases mentioned in sub-sections (2) and (3) of s. 137 that the rate of conservancy tax for a particular category of properties should be such as would be related only to the expense for conservancy service for that particular category of properties. Clause (b) of s. 129 also takes into account the expense required for efficiently maintaining and repairing the municipal drains and for finding out the total expenditure for conservancy service. The High Court was, therefore, in error in striking down the resolution passed by the Corporation. [242E-F; 244F-H; 245B-C]

(iv) The "opinion of Corporation" mentioned in clause (b) of section 129 is formed after budget estimates are prepared in accordance with Ss. 95, 96 and 100 of the Corporations Act. The entire procedure provides built-in-safeguards and lays down adequate guidelines in the matter of taxation. It cannot, therefore, be said that the legislature has not prescribed any guiding principle for the Corporation for determining the rates of conservancy tax. [245F-G, H-246A]

(v) The bar created by s. 406(2)(e) to the entertainment of the appeal by a person who has not deposited the amount of tax due from him and who is not

A able to show to the appellate judge that the deposit of the amount would cause him undue hardship arises out of his own omission and default. A disability or disadvantage arising out of a party's own default or omission cannot be taken to be tantamount to the creation of two classes offensive to Art. 14 of the Constitution, especially when that disability or disadvantage operates upon all persons who make the default or omission. Section 406(2)(e) is constitutionally valid and, in as much as the validity of s. 411(bb) and r. 42 hinges on the validity of sec. 406(2)(e) all the three provisions are constitutionally valid. [247D-248C, F-G]

B

Hannah Cohen, Ex. of Sol. Cohen, Deceased, and David E. Cohen, Intervener, Petitioners & Anr., v. *Beneficial Loan Corporation & Ors.* 337 U.S. 539, referred to.

(vi) There can be no doubt that land in entry 49 of List II would include underground strata . The word "land" has also been defined in clause (30) of s. 2 of the Corporations Act to include land which is being built upon or is
C built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street. This definition is of inclusive nature and does not exclude from its ambit the underground strata of the land. The petitioner-company is in occupation of the land wherein underground supply line is laid. [249E-F; 250D-E]

D *Electric Telegraph Co.* v. *Salford Overseers,* [1855] 11 Ex. 181, 186, *Mysore Aldermen and Councillors of the City of Westminster Ors.* v. *The Southern Railway Company, The Railway Assessment Authority and W. H. Smith & Son, Limited & Ors.* 1936 A.C. 511, *The Assessment Committee of Holywell Union & Anr.* v. *Halkyn District Mines Drainage Col,* [1895] A.C. 117 *Rex.* v. *Chelsea Waterworks Company,* 5 B. & Ad. 156 and *Reg* v. *West Middlesex Waterworks,* 1 E. & E. at p. 720, referred to.

E CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 752 to 755, 489 to 513, 643 to 684 of 1973 & 389 to 430 of 1974.

From the Judgment and order dated the 4th December, 1972 of the Gujarat High Court in Spl. Civil Appeals. Nos. 233, 239-241, 339, 488, 1634, 1635 and 1636 of 1971, and

F *Writ Petitions Nos.* 51, 60 *to* 74, 87 *to* 91, 157, 492 *to* 503, 533-534 *and* 583 *of* 1972 *and* 1866 *to* 1877 *&* 2040 *of* 1973.

Y. M. Tarkunde (In C. As. Nos. 752, 489, 643, 389 and W.P. Nos. 51 and 74/72), *C. T. Daru* and *Ravinder Narain, P. C. Bhartari, K. M. Desai* and *K. J. John,* for the petitioners, (In all the W.Ps.) and Appellants (In C.As. Nos. 489-513, 752-755/73) and respondent No.
G 1 (C.As. Nos. 643-47, 650-654, 658-664, 667-671, 674, 678, 679 and 681-684/73).

F. S. Nariman, Additional Solicitor General of India, *S. B. Vakil* and *I. N. Shroff,* for appellants (In C.As. Nos. 643-684/73) and for respondent No. 3 (In all the W.Ps.) for respondents Nos. 2-4 (In C.As. Nos. 489-497) respondent Nos. 1-4 (In C.As. Nos. 498-511) respon-
H dent Nos. 2-5 (In C.As. Nos. 512-513) respondent No. 2-4 (In C.A. No. 752) respondent Nos. 1-4 (In C.A. Nos. 753-754) respondent Nos. 2-5 (In C.A. No. 755) and for respondent Nos. 1-3 (In C.As. Nos. 389-430/74).

M. C. Bhandare and *M. N. Shroff*, for the appellants (In C.As. Nos. 389-430) respondent No. 7. (In C.A. No. 389-497, 512-513) respondent No. 5 (In C.As. Nos. 498-510) respondent No. 2. (In C.A. Nos. 643-678, 681-684) respondent No. 3 (In C.As. Nos. 679-680) respondent No. 1 (In C.As. Nos. 752-755) respondent No. 5 (In C.As. Nos. 753) respondent No. 6 (In C.A. No. 754) and respondent No. 4 (In all the W.Ps.) A

C. S. S. Rao, for respondent No. 5 (In C.A. No. 752/73). B

R. H. Dhebar and *B. V. Desai*, for respondent No. 4. (In C.As. Nos. 417-418/74) and In C.As. No. 656-657 of 1973).

The Judgment of the Court was delivered by

KHANNA, J.—Questions relating to the constitutional validity of the different provisions of the Bombay Provincial Municipal Corporations Act (Bombay Act 59 of 1949) (hereinafter referred to as the Corporations Act) as amended by Gujarat Acts No. 8 of 1968 and No. 5 of 1970 arise for determination in these appeals and the connected writ petitions. The Corporations Act was enacted by the Bombay legislature in December 1949 for the establishment of municipal corporations in the cities of Ahmedabad and Poona. It was applied to Ahmedabad on July 1, 1950. C D

The assessment of properties to property tax in Ahmedabad was made under the Corporations Act by making entries in the assessment books in accordance with the procedure prescribed in the Taxation Rules set out in Chapter VIII of Schedule A of the Corporations Act. A separate section of the assessment book was prepared by the Commissioner of the Corporation for each official year in respect of the assessment of property tax on certain kinds of properties like textile mills, factories and buildings of university. These properties were classified as special properties. The rateable value of properties included in the Special Property Section was previously determined on a flat rate for every 100 sq. ft. of the floor area. In arriving at the figure of the rateable value, the plants and machinery situate upon lands and buildings were also taken into account as provided in clauses (2) and (3) of rule 7 of the Taxation Rules. There was some increase in the rateable value fixed by the Commissioner for the years 1964-65 and 1965-66. The Commissioner also made initial entries in assessment book in respect of those properties for the year 1966-67. A number of writ petitions under article 32 of the Constitution were filed in this Court challenging the validity of the assessments for the years 1964-65 and 1965-66 as well as the initial entries for the year 1966-67. Those writ petitions were disposed of by this Court by a judgment delivered on February 21, 1967 and reported as *New Manek Chok Spinning & Weaving Mills Co. Ltd. & Ors.* v. *Municipal Corporation of the City of Ahmedabad & Ors.*(1) This Court allowed the writ petitions and held the relevant entries in the assessment books to be invalid. It was held in that case that the State Legislature had no competence under entry 49 of the State List in the Seventh Schedule to the Constitution to make a law for taxing plant and machinery. Rule 7(2) was held to be beyond the legislative competence of the State. Rules 7(2) and E F G H

(1) [1967] 2 S.C.R. 679.

A (3) were also held to be invalid on account of excessive delegation of powers by the legislature. Under those rules the specification of the classes of machinery for the purpose of taxation was to be made by the Commissioner with the approval of the Corporation irrespective of the question as to where they were to be found. This Court found that it depended upon the arbitrary will of the Commissioner as to what machinery he would specify and what he would not and that he B was the only person who could examine this question as there was no right of appeal. Dealing with the method of levy of tax on the basis of floor area, this Court observed that it was against the provisions of the Act and the rules made thereunder and that it had not been shown that conditions prerequisite for determination of the annual value on that basis had existed at the relevant time. The above method of taxation on the basis of floor area, it was held, was violative of article 14 C of the Constitution as it would in the absence of classification of factories on any rational basis give rise to inequalities.

Although the Supreme Court directed the Corporation to prepare fresh assessment lists relating to properties in the Special Property Section for the official years 1964-65, 1965-66 and 1966-67, the Corporation was unable to do so in view of the decision of the High Court in the case of *Ahmedabad Municipality* v. *Keshavlal*(1) wherein it was D held that the Corporation had no power to assess and levy property tax for any official year after that year had ended. The legislature in order to get over this difficulty enacted Gujarat Act 8 of 1968 and by this amending Act inserted *inter alia* new section 152A in the Corporations Act. The new section conferred power on the Corporation to assess or re-assess property taxes if the original assessment was affected by a decree or order of a court on either of the grounds on which the E Supreme Court had set aside the assessment for the official years 1964-65, 1965-66 and 1966-67 in *New Manek Chowk Mills* case (supra). The amending Act also substituted new rule 7 for the old rule which contained the offending clauses (2) and (3). Rule 21B was also inserted by the amending Act and the said rule permitted the Municipal Commissioner to make fresh valuation of properties after the expiry of the official year if preparation or completion of the assessment before F the expiry of the official year were or would be affected on account of any order of a court. After the amending Act had come into force. the Corporation initiated proceedings for re-assessment of lands and buildings of the petitioners to property tax for the official years 1964-65, 1965-66 and 1966-67. When notices were served on the petitioners to furnish return of the particulars, the petitioners filed petitions in the High Court challenging the validity of those notices. Those G petitions were allowed by the High Court as per judgment dated July 3, 1969 on the ground that the demand for certain particulars contained in the notices was beyond the scope of rule 8(1). The contention of the petitioners in those petitions that no assessment could be made after the expiry of the official year was repelled and it was held that the Corporation had the power under section 152A to re-assess lands and buildings of the petitioners to property tax for the official years H 1964-65, 1965-66 and 1966-67 notwithstanding the expiration of those

(1) 6 G.L.R. 228.

years. The High Court also held that the new section did not stand in the way of the petitioners getting refund of the property tax already paid. Appeal was filed in this Court against the above judgment by the Corporation. A

The Ahmedabad Corporation, it may be stated, used to pass a resolution under section 99 of the Corporations Act determining the rate at which property tax would be levied for the particular official year. So far as conservancy tax was concerned, the rate determined by the Corporation was 3 per cent. A special rate of conservancy tax of 7½ per cent was, however, fixed by the Corporation for the official year up to 1966-67 for hotels, clubs, stables, theatres or cinemas or other large premises including mills and factories registered under the Factories Act and where fifty or more workmen were employed in manufacture for all the shifts. For the official year 1967-68 the Corporation determined the rate of conservancy tax to be 3 per cent and a special rate of 9 per cent for the large premises mentioned above. The rate of general tax for ordinary property was fixed on a graduated scale but on properties used by textile mills the rate was uniform at 30 per cent. The powers of the Commissioner under the Taxation Rules were entrusted to the Deputy Municipal Commissioner by virtue of an office order issued under section 49(1). The Deputy Commissioner thereafter determined the rateable value of the lands and buildings of the petitioners. The petitioners preferred appeals against the order of the Deputy Commissioner determining the amount of property tax to the Chief Judge of the Court of Small Causes Ahmedabad. The Chief Judge was, however, precluded from hearing those appeals since the amount of tax was not deposited by the petitioners as required by section 406(2)(e) of the Corporation Act. The petitioners thereafter filed petitions in the High Court challenging the validity of the assessments made by the Deputy Municipal Commissioner for the official years 1966-67, 1967-68 and 1968-69. Those writ petitions were allowed by the Gujarat High Court as per judgment dated October 27, 1969. It was held that section 49 of the Corporation Act did not contemplate delegation of judicial or quasi-judicial powers by the Municipal Commissioner under taxation rule 18 and that disposal of complaints by the Deputy Commissioner was not permissible. The High Court also declared section 406(2)(e) violative of article 14. Part of rule 42 which related to distress or attachment for default in payment of tax was also struck down on the ground that it could not stand independently of section 406(2)(e). The fixation of special rate of 9 per cent for conservancy tax in respect of large premises including mills and factories was also held to be illegal and void. B C D E F G

The official year 1969-70 having in the meantime commenced, the Municipal Commissioner adopted under taxation rule 21 the entries of the official year 1968-69 as the entries for the official year 1969-70. Complaints were then filed by the petitioners against the amount of rateable value entered in the assessment books. During the pendency of those complaints, the Governor of Gujarat promulgated Ordinance No. 6 of 1969 on December 23, 1969. The ordinance was replaced by Gujarat Act No. 5 of 1970 which came into force with effect from March 31, 1970. The ordinance amended the definition of rateable H

A value as well as section 49 with retrospective effect. It also contained certain validating provisions. Gujarat Act 5 of 1970 was on the line of Ordinance No. 6 of 1969, except in the matter of definition of rateable value. A number of petitions in the meantime were filed to challenge the validity of the provisions of Ordinance No. 6 of 1969 and those of Act 5 of 1970.

For the official year 1970-71, the valuation was made in accordance with Gujarat Act 5 of 1970. A number of writ petitions were filed before the Gujarat High Court challenging the provisions of Gujarat Act 5 of 1970 as well as the valuation for the year 1970-71.

In the meantime, on April 17, 1970 appeal filed by the Corporation against judgment dated July 3, 1969 of Gujarat High Court was C dismissed by this Court. The decision of this Court was given in *Municipal Corporation of the City of Ahmedabad, etc.* v. *New Shorock Spg. & Wvg. Co. Ltd. etc.*(1). It was held by this Court that under section 152A before the Corporation can retain an amount collected as property tax, there must be assessment according to law. As the impugned assessments were not in accordance with law, the Corporation was not entitled to retain that amount. This Court also struck D down sub section (3) of section 152A which had been added by Ordinance 6 of 1969 and which gave power to the Corporation to refuse to refund the amount illegally collected despite the order of the court.

It may be stated that the dispute with which we are concerned in the present appeals and writ petitions relates to assessment to property tax of large premises like textile mills, and factories. One writ petition E relates to an electricity company.

Before setting out the findings of the High Court and dealing with the questions which arise for determination in the appeals and writ petitions before us, we consider it appropriate to refer to some of the relevant provisions. Section 127(1) of the Corporations Act requires the Corporation to impose *inter alia* property taxes, "Property taxes", F according to section 129, shall comprise (a) water tax, (b) conservancy tax, and (c) a general tax. Clause (b) and the relevant part of clause (c) of that section read as under :

> "For the purpose of sub-section (1) of Section 127 property taxes shall comprise the following taxes which shall, subject to the exceptions, limitations and conditions hereinG after provided, be levied on buildings and lands in the City :—
>
> (a) .....
>
> (b) a conservancy tax at such percentage of their rateable value as will in the opinion of the Corporation suffice to provide for the collection, removal and disposal, by municipal agency, of all excrementitious and polluted matter from privies, urinals and cess-pools and H for efficiently maintaining and repairing the municipal drains constructed or used for the receipition or

(1) [1971] 1 S.C.R. 288.

conveyance of such matter, subject however to the provisos that the minimum amount of such tax to be levied in respect of any one separate holding of land or of any one building or of any one portion of a building which is let as a separate holding shall be eight annas per mensem and that the amount of such tax to be levied in respect of any hotel, club or other large premises may be specially fixed under section 137;

(c) a general tax of not less than twelve per cent. of their rateable value, which may be levied, if the Corporation so determines, on a graduated scale :

Provided .....

Accordng to section 99 the Corporation shall, on or before the twentieth day of February, after considering the Standing Committee's proposals in this behalf., determine *inter alia* subject to limitations and conditions prescribed in Chapter XI, the rates at which municipal taxes referred to in sub section (1) of section 127 shall be levied in the next ensuing official year. "Official year" has been defined in section 2(44) to mean the year commencing on the first day of April. Section 137 reads as under :

"(1) The Commissioner may, whenever he thinks fit, fix the conservancy tax to be paid in respect of any hotel, club, stable or other large premises at such special rate as shall be generally approved by the Standing Committee in this behalf, whether the service in respect of which such tax is leviable be performed by human labour or by substituted means or appliances.

(2) In the case of premises used solely for public purposes and not used or intended to be used for purposes of profit or for residential or charitable or religious purposes in respect of which the conservancy tax is payable by the Government the Commissioner shall fix the said tax at a special rate approved as aforesaid.

(3) In any such case the amount of the conservancy tax shall be fixed with reference to the cost or probable cost of the collection, removal and disposal, by the agency of municipal conservancy staff, of excrementitious and polluted matter from the premises."

Section 150 relates to supplementary taxation. Clause (1) of section 49 enables a Deputy Municipal Commissioner, subject to the orders of the Commissioner, to exercise such of the powers and perform such of the duties of the Commissioner as the Commissioner shall from time to time depute to him. Section 406 deals with appeals. According to clause (1) of section 406, subject to the provisions hereinafter contained, appeals against any rateable value or tax fixed or charged under the Act shall be heard and determined by the Judge. "Judge" has been defined in clause (29) (as amended by Act 8 of

A 1968) of section 2 to mean in the city of Ahmedabad the Chief Judge of the Court of Small Causes. Clause (e) of sub section (2) of section 406 states that no appeal shall be heard against a tax, or in the case of an appeal made against a rateable value after a bill for any property tax assessed upon such value has been presented to the appellant, unless the amount claimed from the appellant has been deposited by him with the Commissioner. Section 411 (as amended by B Act 8 of 1968) makes provision for appeal to the High Court from a decision of the Judge in an appeal in certain contingencies. Clause (54) of section 2 defines "rateable value" to mean the value of any building or land fixed in accordance with the provisions of the Act and the rules for the purpose of assessment to property taxes. According to section 453, the rules in the schedule as amended from time to time shall be deemed to be part of the Act. Chapter VIII of the C schedule contains the Taxation Rules. According to clause (1) of rule 7, in order to fix the rateable value of any building or land assessable to a property-tax there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expeted to let from year to year a sum equal to ten per cent of the said annual rent, and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever. Clauses (2) and D (3) of that rule need not be set out as they were struck down by this Court in the case of *New Manak Chowk Mills* (supra). Rule 9 relates to the keeping of an assessment book in which shall be entered *inter alia* every year the rateable value of buildings and lands in the city of Ahmedabad determined in accordance with the provisions of the Act and the rules as also the names of persons primarily liable for the payment of property taxes, if any, leviable on each such building or land. Clause (1) of rule 42 reads as under :

F

> "(1) If the person on whom a notice of demand has been served under rule 41 does not within fifteen days from such service pay the sum demanded or shows sufficient cause for non-payment of the same to the satisfaction of the Commissioner and if no appeal is preferred against the said tax, as F hereinafter provided, such sum, with all costs of the recovery, may be levied under a warrant in Form H or to the like effect, to be issued by the Commissioner, by distress and sale of the moveable property of the defaulter or the attachment and sale of the immovable property of the defaulter or, if the defaulter be the occupier of any premises in respect of which a property-tax is due, by distress and sale of any moveable property found on the said premises or, if the tax G be due in respect of any vehicle, boat or animal by distress and sale of such vehicle, boat or animal in whomsoever's ownership, possession or control, the same may be."

We may now set out the material changes brought out in the Corporations Act by Gujarat Act No. 5 of 1970. Sections 2, 4, 6, 7, 10, 11, 12 and 13 of (2) of the amending Act read as under :

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> "2. In the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as 'the principal Act'), in section 2,—

(1) before clause (1) the following clause shall be, and shall be deemed always to have been, inserted, namely :—

'(1A) 'annual letting value' means,—

(i) in relation to any period prior to 1st April, 1970, the annual rent for which any building or land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might, if the Bombay Rents, Hotel and Lodging House Rates Control Act, 1974 were not in force, reasonably be expected to let from year to year with reference to its use :

(ii) in relation to any other period, the annual rent for which any building or land or premises, exclusive of furniture or machinery contained or situate there in or thereon, might reasonably be expected to let from year to year with reference to its use;

and shall include all payments made or agreed to be made to the owner by a person (other than the owner) occupying the building or land or premises on account of occupation, taxes, insurance or other charges incidental thereto :

Provided that, for the purpose of sub clause (ii),—

(a) in respect of any building or land or premises the standard rent of which has been fixed under section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the annual rent thereof shall not exceed the annual amount of the standard rent so fixed;

(b) in the case of any land of a class not ordinarily let, the annual rent of which cannot in the opinion of the Commissoner be easily estimated, the annual rent shall be deemed to be six per cent of the estimated market value of the land at the time of assessment;

(c) in the case of any building of a class not ordinarily let, or in the case of any industrial or other premises of a class not ordinarily let, or in the case of a class of such premises the building or buildings in which are not ordinarily let, if the annual rent thereof cannot in the opinion of the Commissioner be easily estimated, the annual rent shall be deemed to be six per cent of the total of the estimated market value, at the time of the assessment, of the land on which such building or buildings stand or, as the case may be, of the land which is comprised in such premises, and the estimated cost, at the time of the assessment, of erecting the building, or as the case may be, the building or buildings comprised in such premises;'

A (2) for clause (54), the following shall be, and shall be deemed always to have been, substituted, namely :—

'(54) 'rateable value' means the value of any building or land fixed, whether with reference to any given premises or otherwise, in accordance with the provisions of this Act and the rules for the purpose of assessment to property taxes;'

B 4. In section 49 of the principal Act, in sub-section (1),—

(1) for the words 'such of the duties of the Commissioner' the words 'such of the duties of the Commissioner, including powers and duties of a judicial or *quasi*-judicial nature,' shall be, and shall be deemed always to have been, substituted;

C (2) after the first proviso, the following further proviso shall be, and shall be deemed always to have been, added, namely :—

'Provided further that nothing in this sub-section shall be deemed to empower the Commissioner to issue any order regulating the exercise of powers or performance of duties of a judicial or *quasi*-judicial nature deputed by him.'

D 6. In section 129 of the principal Act, to clause (b), the following proviso shall be, and shall be deemed always to have been, added, namely :—

'Provided that when determining under section 99 or section 150 the rate at which conservancy tax shall be levied for any official year or part of an official year, the Corporation may determine different rates for different classes of properties.'

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7. In section 137 of the principal Act, to sub-section (1) the following proviso shall be added, namely :—

'Provided that if the Corporation shall have determined for any official year any different rate of conservancy tax for any class of properties to which any of the properties referred to in this sub-section belongs, the Commissioner shall not, without the previous approval of the Corporation, fix, for such official year or part thereof, the conservancy tax to be paid in respect of any property beloging to such class for which such different rate may have been determined by the Corporation, at any other different rate under this sub-section.'

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10. In section 406 of the principal Act, in sub-section (2),—

(1) for the words 'shall be heard' the words 'shall be entertained' shall be substituted; and

(2) the following proviso shall be added after clause (e), namely :—

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'Provided that where in any particular case the Judge is of opinion that the deposit of the amount by the appellant

will cause undue hardship to him, the Judge may in his discretion dispense with such deposit or part thereof, either unconditionally or subject to such conditions as he may deem fit.'

11. In section 411 of the principal Act, after clause (a), the following clause shall be inserted, namely :—

"(bb) from any order of the Judge under the proviso to sub-section (2) of section 406; and;"

12. In Schedule A to the principal Act, in Chapter VIII,—

(i) in sub-rule (3) of rule 7, for the words annual rent for which such building, land or premises might reasonably be expected to let from year to year a sum equal to ten per cent of the said annual rent' the words 'annual letting value of such building, land or premises a sum equal to ten per cent of such annual letting value' shall be, and shall be deemed always to have been substituted; and

(ii) in sub rule (1) of rule 42, for the words is preferred' the words 'is preferred or entertained' shall be substituted.

13. Notwithstanding anything contained in any judgment, decree or order of any court or tribunal or any other authority,—

(1) .....

(2) no determination of any special or different rate of conservancy tax by a Municipal Corporation constituted by or under the principal Act in respect of any hotel, club, stable, industrial premises or other large premises in exercise or purported exercise of its powers under any of the provisions of the principal Act, at any time before the commencement of the said Ordinance, shall be deemed to have been invalidly made by reason of the Corporation having no power to determine such rate at the time when such determination was made; and any such determination shall be deemed to be valid and shall be deemed always to have been validly made under the provisions of the principal Act as amended by this Act as if this Act had been in force at the time when such determination was made; and no such determination of different or special rate of conservancy tax, or any entry of tax made in any assessment book pursuant thereto, or any levy of such tax or bill or notice of demand or distress or attachment issued or executed for collection of such tax, shall be called in question in any court or before any tribunal or authority merely on the ground that the Corporation had no power or authority to determine such different or special rate of conservancy tax in respect of any hotel, club, stable, industrial premises or other large premises or on any ground consequential thereto."

A The High Court after protracted hearing which we are given to understand lasted for 21 days besides 4 days for judgment while partly allowing the petitions filed before it under article 226 of the Constitution made the followng declaration :

"(i) Section 2(1A) clause (i) is valid so far as it is applicable to the official year 1969-70 but it is null and B void in so far as it applies to the official years from the commencement of the Corporations Act upto and including the official year 1968-69, on account of infraction of article 14.

(ii) Proviso (c) to section 2(1A) clause (ii) is not violative of article 14 and is constitutionally valid.

(iii) Section 49 does not suffer from the vice of un- C reasonableness and is constitutionally valid and so also is section 13(1) of Gujarat Act 5 of 1970.

(iv) The proviso to section 129(b) is not violative of article 14 nor does it suffer from the vice of excessive delegation of legislative power.

(v) Section 13(2) of Gujarat Act 5 of 1970 is not D violative of article 14 or article 19(1)(f) and cannot be challenged as constitutionally invalid.

(vi) Section 406(2)(e) and section 411(bb) are null and void as being in contravention of article 14 : Rule 42 of the Taxation Rules is also ultra vires and void in so far as it provides that if an appeal is preferred or entertained against the tax, warrant shall not issue for the recovery of E the amount of tax.

(viii) The Resolutions passed by the Corporation for the official years 1967-68, 1968-69, 1969-70 and 1970-71 to the extent to which they fix the rate of conservancy tax at 9 per cent inter alia in respect of textile mills and factories belonging to the petitioners are ultra vires the proviso to F section 129(b) and the rate of conservancy tax applicable in respect of these textile mills and factories must, therefore be taken to be the general rate of 3 per cent."

Civil appeals Nos. 489 to 513 and 752 to 755 of 1973 have been filed in this Court by the petitioners before the High Court against the judgment of that court in so far as the court has upheld the constitutional validity of the impugned provisions. Civil appeals Nos. 643 G to 684 of 1973 have been filed by the Municipal Corporation of the City of Ahmedabad and others against the above judgment in so far as the High Court has struck down the impugned provisions and the Resolutions. Civil appeals No. 389 to 430 of 1974 have been filed by the State of Gujarat against the judgment in so far as the High Court has struck down the impugned provisions. Writ petitions Nos. H 51, 60 to 73, 87 to 91, 157, 492 to 503, 533, 534 and 583 of 1972 as also writ petitions Nos. 1866 to 1877 and 2046 of 1973 which have been filed by the Aryodaya Spg. & Wvg. Mills Co. Ltd. and other parties involve substantially the same question which arises in

appeals, though some of these writ petitions relate to the subsequent period of 1971-72. Writ petition No. 74 of 1972 filed by the Ahmedabad Electricity Co, Ltd. involves an additional point regarding its liability to pay property tax which has been levied on the ground that it occupies land below the surface for underground cables. This judgment would dispose of all the appeals and writ petitions.

The first important question which arises for determination is whether clause (i) of section 2(1A) is violative of article 14. According to this clause, "annual letting value" means in relation to any period prior to 1st April, 1970 the annual rent for which any building or land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might, if the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 were not in force, reasonably be expected to let from year to year with reference to its use. According to the petitioners, the operation of this clause affected only the assessment proceedings pending on December 23, 1969 when Ordinance 6 of 1969 (which was subsequently replaced by Act 5 of 1970) came into force and did not affect the assessments which were final and completed before that date. The said provision was thus said to create an arbitrary and irrational classification which had no reasonable nexus with the object of levying the tax. As against the above, the following four contentions were advanced on behalf of the Corporation :

(1) There is no discrimination in the matter of completed assessments and pending assessment because the prior law did not require valuation to be restricted to standard rent. The impugned provision is merely declaratory of previous state of law.

(2) There is no discrimination in the matter of completed assessments and pending assessments because as a matter of fact valuation assessments finalised before December 23, 1972 were in disregard of the provisions of the Rent Act.

(3) Pending cases constitute a class by themselves and any law which makes a distinction between decided cases and pending cases is not violative of article 14 of the Constitution as the above distinction is based upon rational classification.

(4) In any case so far as the year 1969-70 is concerned, there is no discrimination or violation of article 14.

The High Court rejected the first three contentions urged on behalf of the Corporation but accepted the fourt contention. Accordingly, it held that clause (i) of section 2(1A) was valid in so far as it was applicable to the official year 1969-70 but was null and void in so far as it applied to the previous years on account of the infraction of article 14.

Regarding clause (c) of the proviso to sub-clause (2) of clause (1A) of section 2 of the Act, the High Court held that it is only if

A the annual rent having regard to the provisions of the Bombay Rent Act cannot be easily estimated that the Commissioner can adopt the basis of the valuation set out in proviso to clause (c). Mr. Tarkunde learned counsel for the petitioners has not pressed the attack on the constitutional validity of clause (c) because, according to him, it is not known as to which property would be covered by that clauses as B construed by the High Court.

Likewise, so far as the constitutional validity of section 49 of the Act is concerned, the attack has not been pressed on behalf of the petitioner-appellants. Mr. Tarkunde has also pointed out that despite the decision of this Court in *Manek Chowk Spg. & Wvg. Mills* case (supra) in making assessments attempts are being made by the Corporation to include some structures which constitute plant and C machinery as part of building. The learned counsel, however, concedes that this would be question of fact depending upon each case. He accordingly states that his clients would if necessary agitate the matter in appeal.

It has been argued before us by the Additional Solicitor General, Mr. Vakil and Mr. Bhandare on behalf of the Corporation as well as D the State Government that the High Court was in error in holding that clause (i) of section 2(1A) was violative of article 14 in respect of the years prior to the official year 1969-70. As against that, Mr. Tarkunde on behalf of the petitioners (the word "petitioners" would cover not only the petitioners in this Court but also those who were the petitioners in the High Court) has supported the finding of the High Court in this respect. Mr. Tarkunde in his own turn has E assailed the finding of the High Court in so far as it has held that clause (i) of section 2(1A) is not violative of article 14 in respect of the year 1969-70. After hearing the learned counsel for the parties we find considerable force in the submission made on behalf of the Corporation and the State Government.

The first question which arises for consideration in the above con- F text is whether there is any discrimination in relation to the assessments for the period prior to April 1, 1970 between pending cases and the cases in which assessment had already been completed. So far as this aspect is concerned, we find that in the case of *Assessment Committee of the Metropolitan Borough of Poplar* v. *Hoberts*(1) the House of Lords held by majority that in arriving at the valuation for the purposes of the Valuation (Metropolis) Act, 1969, of a heredita- G ment to which the Increase of Rent and Mortgage interest (Restriction) Act 1920 applies, the maximum gross value to be assigned to that hereditament is not limited to the standard rent of the hereditament together with the additions thereto permitted by the latter Act. It was further held that the above mentioned Act of 1920 is not to be taken into account in determining the valuation for rating purposes of the hereditaments to which it applies. Following the above decision H of the House of Lords a Division Bench of the Bombay High Court held in the case of *Gulam Ahmed Rogay* v. *Bombay Municipality*(1)

(1) [1922] 2 A.C. 93.

that in arriving at the rateable value for purposes of section 154(1) of the City of Bombay Municipal Act, 1888 of property to which the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 applies the maximum value to be assigned to the property is not to be limited to the maximum standard rent of the property together with additions thereto permitted by the latter Act. Similar question thereafter arose in the case of *The Corporation of Calcutta* v. *Sm. Padma Debi & Ors*(2). This Court in that case was concerned with the provisions of section 127(a) of the Calcutta Municipal Act, according to which the annual rental value of land and the annual value of any building erected for letting purposes or ordinarily let, shall be deemed to be the gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year, less, in the case of a building, an allowance of ten per cent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross rent. It was held by this Court that on a fair reading of the above provision the rental value cannot be fixed higher than the standard rent under the Rent Control Act. It was further held that the words "gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year" imply that the rent which the landlord might realise if the house was let is the basis for fixing the annual value of the building. The criterion is the rent realisable by the landlord and not the value of the holding in the hands of the tenent. The value of the property to the owner is the standard in making the assessment. The Corporation, it was accordingly concluded, had no power to fix the annual value of the premises higher than the standard rent.

It was argued on behalf of the Corporation before the High Court that no averment had been made by the petitioners in the petitions that the assessments which had been completed before the coming into force of Ordinance 6 of 1969 were made having regard to the provisions of the Bombay Rent Act and that in the absence of such averments no case of discrimination could be said to have been made by the petitioners. The High Court rejected this contention because in its opinion it would be reasonable to presume that the assessments were made keeping in view the rent restriction provisions of the Bombay Rent Act. We are unable to agree with the above approach of the High Court.

There is a presumption of the constitutional validity of a statutory provision. In case any party assails the validity of any provision on the ground that it is violative of article 14 of the Constitution, it is for that party to make the necessary averments and adduce material to show discrimination violative of article 14. No averments were made in the petitions before the High Court by the petitioners that the assessments before the coming into force of Ordinance 6 of 1969 had been made by taking into account the rent restriction provisions of the Bombay Rent Act. Paragraph 2B and some other paragraphs of peti-

(1) AIR 1951 Bombay 320.
(2) [1962] 3 SCR 49.

A tion No. 233 of 1970 before the High Court, to which our attention was invited by Mr. Tarkunde, also do not contain that averment. No material on this factual aspect was in the circumstances produced either on behalf of the petitioners or the Corporation. The High Court, as already observed, decided the matter merely on the basis of a presumption. It is, in our opinion, extremely hazardous to decide the question of the constitutional validity of a provision on the basis of the B supposed existence of certain facts by raising a presumption. The facts about the supposed existence of which presumption was raised by the High Court were of such a nature that a definite averment could have been made in respect of them and concrete material could have been produced in support of their existence or non-existence. Presumptions are resorted to when the matter does not admit of direct proof or when there is some practical difficulty to produce evidence to C prove a particular fact. When, however, the fact to be established is of such a nature that direct evidence about its existence or non-existence would be available, the proper course is to have the direct evidence rather than to decide the matter by resort to presumption. A pronouncement about the constitutional validity of a statutory provision affects not only the parties before the Court, but all other parties who may be affected by the impugned provision. There would, therefore, be inherent risk in striking down an impugned provision without D having the complete factual data and full material before the court. It was therefore, in our opinion, essential for the High Court to ascertain and find out the correct factual position before recording a finding that the impugned provision is violative of article 14. The fact that the High Court acted on an incorrect assumption is also borne out by the material which has been adduced before us in the writ petitions E filed under article 32 of the Constitution.

In the affidavit of Jayantilal Maneklal Shah, Assessor and Collector of the Corporation, filed on behalf of the respondents in these petitions, the factual position has been brought out at length. According to the affidavit, after the Corporation had been constituted with effect from July 1, 1950 the Commissioner kept for every official year an assess- F ment book as contemplated by rule 9 of the Taxation Rules. The rateable value of lands and buildings in Special Property Section were first determined by the municipal valuers on Contractor's Theory in accordance with the methods prevailing under the English law of rating. The owners of lands and buildings which were valued on Contractor's Theory filed appeals. During the pendency of the appeals, the authorities concerned agreed to refer the question of determination of the rateable values to the arbitration of the arbitrators, one appoint- G ed by the Corporation and the other appointed by the taxpayers. On disagreement between the two arbitrators the matter was referred in 1953 to Shri H. V. Divetia, a former Judge of the High Court of Judicature at Bombay as umpire. Shri Divetia held that flat rate floor area method which was being adopted by the Municipal Corporation of the city of Bombay in similar cases was the proper method. The municipal authorities consequently adopted that method. The award H of Shri Divetia was effective only till the official year 1954-55, but its application was extended by agreement between the parties up to the year 1958-59. The municipal authorities continued to value the lands

and buildings aforesaid on the flat rate floor area method for the year 1959-60 and and onwards to prevent any dispute being raised. The affidavit further shows that notwithstanding the decision in *Padma Debi's* case (supra) the Corporation continued as before to value the properties included in the Special Property Section on the flat rate floor area method. Both the valuers as well as the persons liable to pay property taxes were not conscious of any impact of rent restriction for the purposes of property taxes. The Collector has denied that in determining the rateable value the Municipal Commissioner had been taking into account the standard rent of the building or land or was following the principle that the rent restricted by law was the measure of the true rent of the building.

There is no material before us to show that the factual position is in any way different from that brought out in the affidavit of the Assessor and Collector of the Corporation. Mr. Tarkunde has referred to three orders dated March 22, 1969 of the Deputy Municipal Commissioner whereby the rateable value as initially fixed was reduced on complaint filed by the ratepayer. It would appear from the orders that in reducing the rateable value the Deputy Municipal Commissioner took into account the rental value. The above three orders, in our opinion, can hardly be of any help to the petitioners because there is nothing to show that the Deputy Municipal Commissioner while making those orders took into account the standard rent and the restrictions placed on the increase in rent by the Bombay Rent Act.

Mr. Tarkunde then urges that the material which has been placed before this Court regarding the factual position was not before the High Court and as such this Court should not disturb the finding of the High Court on the constitutional validity of clause (i) of section 2(1A). We are unable to accede to this submission. The validity of the above clause has also been assailed in the writ petitions filed before us and in deciding those writ petitions, we cannot refuse to take into account the material which has been placed before us. As that material discloses that the factual position as it existed before the promulgation of Ordinance 6 of 1969 was that the provisions of the Bombay Rent Act were not taken into account in determining the rateable value, there would be no escape from the conclusion that no differential treatment has been meted out to pending cases in clause (i). It is plain that the impugned provision cannot be held to be violative of article 14 in the appeals filed against the judgment of the High Court and constitutionally valid in the writ petitions. As the High Court decided the matter without having the full and complete data before it and as such data is available to us, the contention that we should not take that data into account, in our opinion, is wholly untenable. We would, therefore, hold that there is no material on record as might justify the inference that a differential hostile treatment has been meted out in pending cases. The very basis of striking down the impugned provisions on the ground of being violative of article 14 would thus disappear.

Apart from the above, we are of the opinion that classification by treating decided cases as belonging to one category and pending cases

A as belonging to another category is reasonable and not per se offensive to article 14.

It is well-established that article 14 forbids class legislation but does not forbid classification. Permissible classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and the B differentia must have a rational relation to the object sought to be achieved by the statute in question. In permissible classification mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstances arising out of a peculiar situation some included in a class get an advantage over others, so long C as they are not singled out for special treatment. Taxation law is not an exception to this doctrine. But, in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the legislature in the matter of classification, so long as it adheres to the fundamental principles underlying the said doctrine. The power of the legislature to classify is of wide range and flexibility so that it can adjust its system D of taxation in all proper and reasonable ways (*see Ram Krishna Dalmia* v. *Shri Justice S. R. Tendolkar*(1) and *Khandige Shah Bhat* v. *Agriculutral Income-tax Officer, Kasaragod*(2). Keeping the above principles in view, we find no violation of article 14 in treating pending cases as a class different from decided cases. It cannot be disputed that so far as the pending cases covered by clause (i) are concerned, they have been all treated alike. In the case of *Rao Shiv Bahadur* E *Singh v. State of Vindhya Pradesh*(3) this Court observed :

> "But there is no reason why pending proceedings cannot be treated by the legislature as a class by themselves having regard to the exigencies of the situation which such pendency itself calls for. There can arise no question as to such a saving provision infringing article 14 so long as no scope is left for any further discrimination *inter se* as between persons F affected by such pending matters."

In *Hashising Manufacturing Co. Ltd.* v. *Union of India*(4) the constitutional validity of section 25FFF of the Industrial Disputes Act, 1947 was assailed. That section made a distinction between employers who had closed their undertakings on or before November 28, 1956 and those who closed their undertakings after that date. It was urged that G the above provision was violative of article 14 of the Constitution. The above contention was rejected and it was observed :

> "When Parliament enacts a law imposing a liability as flowing from certain transactions prospectively, it evidently makes a distinction between those transactions which are covered by the Act and those which are not covered by the Act, because they were completed before the date on which

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(1) [1959] S.C.R. 279.
(2) [1963] 3 S.C.R. 809.
(3) [1953] S.C.R. 1188, 1197.
(4) [1960] 3 S.C.R. 528.

the Act was enacted. This differentiation, however, does not amount to discrimination which is liable to be struck down under article 14. The power of the legislature to impose civil liability in respect of transactions completed even before the date on which the Act is enacted does not appear to be restricted. If, as is conceded—and in our judgment rightly —by a statute imposing civil liability in respect of post-enactment transactions, no discrimination is practised, by a statute which imposes liability in respect of transctions which have taken place after a date fixed by the statute, but before its enactment, it cannot be said that discrimination is practised."

In the case of *Jain Bros. & Ors.* v. *The Union of India & Ors.*(1) it was urged on behalf of the appellants that clause (g) of section 297(2) of the Income-tax Act, 1961 was violative of article 14 inasmuch as in the matter of imposition of penalty, it discriminated between two sets of assessees with reference to a particular date, namely, those whose assessment had been completed before 1st day of April, 1962 and others whose assessment was completed on or after that date. While upholding the validity of the above provision, this Court observed :

"Now the Act of 1961 came into force on first April 1962. It repealed the prior Act of 1922. Whenever a prior enactment is repealed and new provisions are enacted the legislature invariably lays down under which enactment pending proceedings shall be continued and concluded. Section 6 of the General Clauses Act 1897 deals with the effect of repeal of an enactment and its provisions apply unless a different intention appears in the statute. It is for the legislature to decide from which date a particular law should come into operation. It is not disputed that no reason has been suggested why pending proceedings cannot be treated by the legislature as a class for the purpose of Art. 14. The date first April 1962 which has been selected by the legislature for the purpose of cls. (f) and (g) of s. 297(2) cannot be characterised as arbitrary or fanciful."

We would, therefore, hold that clause (i) of section 2(1A) is constitutionally valid and not violative of article 14 in respect of all the years to which it has been made applicable.

Learned Additional Solicitor-General and Mr. Vakil on behalf of the Corporation have assailed the finding of the High Court in so far as it has held the resolutions passed by the Corporation for the four years from 1967-68 to 1970-71 fixing the rate of conservancy tax at 9 per cent in respect of textile mills, factories and other large premises instead of the general rate of 3 per cent to be ultra vires the proviso to section 129(b). We may in this context set out the material part of the impugned resolution for the assessment year 1971-72 taking it to be a specimen for the four years in question :

(1) [1970] 3 S.C.R. 253.

A "(c) Conservancy tax at 3% of the rateable value of the premises liable to tax under provisions of section 131 of the Act, subject, however, to the proviso that the minimum amount to such tax to be levied in respect of any one separate holding of land or of any one portion of a building which is let as a separate holding shall be eight annas per month, and that the amount of such tax to be levied in
B respect of any hotel, club, stable or other large premises may be specially fixed under section 137.

(d) As per the provisions of section 137, hotel, club, stables, theatres or cinemas or other large premises including mills and factories registered under the Factories Act, and where 50 or more workmen are employed in manufacture in
C all the shifts, shall be subject to a conservancy tax at 9% of the rateable value."

The High Court in striking down the four resolutions in so far as the rate of conservancy tax in respect of the large premises had been fixed at 9 per cent instead of 3 per cent, observed that the power to fix different rates of conservancy tax for different classes of properties
D is limited by the actual cost element and the differential rate of conservancy tax fixed for a particular class of properties must be related to the actual cost involved in supplying conservancy service to that class. The High Court agreed that large premises could be treated as a class and given differential treatment in the matter of fixation of conservancy tax. On the question, however, as to what rate of conservancy tax should be fixed for large premises, the High Court
E observed that there was nothing in the affidavits filed on behalf of the Corporation which might show that the Corporation was guided by the actual cost of conservancy service supplied to each class.

We may at this stage advert to the scheme of the Corporation Act in the matter of levy of conservancy tax. Clause (b) of section 129 states that the rate of conservancy tax shall be such percentage of rate-
F able value as will in the opinion of the Corporation suffice to provide the collection, removal and disposal, by municipal agency, of all excrementitious and polluted matter from privies, urinals and cess-pools and for efficiently maintaining and repairing the municipal drains constructed or used for the receiption or conveyance of such matter. It is further provided that the minimum amount of such tax to be levied in respect of any one separate holding of land or of any one building or
G of any one portion of a building which is let as a separate holding shall be eight annas per mensem and that the amount of such tax to be levied in respect of any hotel, club or other large premises may be specially fixed under section 137. Sub-section (1) of section 137 provides that the Commissioner may, whenever he thinks fit, fix the conservancy tax to be paid in respect of any hotel, club, stable or other large premises at such special rate as shall be generally approved by
H the Standing Committee in this behalf, whether the service in respect of which such tax is leviable be performed by human labour or by substituted means or appliances Sub-section (2) of section 137 directs the Commissioner to fix a special rate of conservancy tax in the case

of premises used solely for public purposes and not used or intended to be used for purposes of profit or for residential or charitable or religious purposes in respect of which the conservancy tax is payable by the Government. According to sub-section (3) of section 137, in any such case the conservancy tax shall be fixed with reference to the cost or probable cost of the collection, removal and disposal, by the agency of municipal conservancy staff, of excrementitious and polluted matter from the premises.

One of the questions which has been agitated before us is as to whether sub-section (3) of section 137 deals only with cases mentioned in sub-section (2) or whether it applies to cases covered both by sub-section (1) as well as sub-section (2) of section 137. Put differently, the question is as to what is the significance of the opening words "In any such case" in sub-section (3).

After giving the matter our consideration, we are of the view that sub-section (3) deals only with cases mentioned in sub-section (2) of section 137 and is not attracted in cases mentioned in sub-section (1).

Sub-section (3) provides for a concessional rate of conservancy tax because the amount of such conservancy tax has to be fixed with reference to the cost or probable cost of the collection, removal and disposal, by the agency of municipal conservancy staff, of excrementitious and polluted matter from the premises. The rate of conservancy tax covered by section 137(3) would be lower compared to the general rate of conservancy tax under clause (b) of section 129 which would be fixed after taking into account not only the cost or probable cost referred to in section 137(3) but also the expenses for efficiently maintaining and repairing the municipal drains constructed or used for the receiption or conveyance of excrementitious and polluted matter. The scheme of the Corporations Act appears to be that in the case of premises used solely for public purposes and not intended to be used for purposes of profit or in the case of premises intended to be used for residential or charitable or religious purposes in respect of which conservancy tax is payable by the Government, the rate of conservancy tax should be lower compared to the rate of general conservancy tax. Sub-section (1) deals with large premises like hotels, clubs and stables which in the very nature of things require greater conservancy service, and it hardly stands to reason that the Legislature would contemplate the fixing of lower concessional rate of conservancy tax in the case of such premises. The opening words of sub-section (3) of section 137, viz. "In any such case" make it clear that its concessional provisions apply only to the immediately preceding clause, namely, section 137(2).

Act 5 of 1970 added a proviso to clause (b) of section 129. According to that proviso, when determining under section 99 or section 150 the rate at which conservancy tax shall be levied for any official year or part of an official year, the Corporation may determine different rates for different classes of propeties. A proviso was also added to section 137(1) by the said Act that if the Corporation shall have determined for any official year any different rate of conservancy tax for any class of properties to which any of the properties referred to in

A this subsection belongs, the Commissioner shall not, without the previous approval of the Corporation, fix, for such official year or part thereof, the conservancy tax to be paid in respect of any property belonging to such class for which such different rate may have been determined by the Corporation.

B Perusal of the different provisions shows that the rate of conservancy tax can be fixed under the following three provisions :

(1) A rate of conservancy tax (which for the sake of convenience may be described as general rate of conservancy tax) to be fixed by the Corporation under clause (b) of section 129. This is, however, subject to the proviso that it would be open to the Corporation to determine different rates for different classes of properties.

C (2) A special rate of conservancy tax to be fixed by the Commissioner in respect of certain large premises under sub-section (1) of section 137. Such rate shall not without the previous approval of the Corporation be different from the rate of conservancy tax for that class of properties in case the Corporation has determined the rate of conservancy tax for that class.

D (3) A special rate of conservancy tax in respect of premises mentioned in section 137(2) to be fixed by the Commissioner.

The following affidavit was filed on behalf of the Corporation in justification of the higher rate of conservancy tax of 9 per cent for large premises mentioned in the resolution :

> "I submit that the properties in respect of which the Corporation has determined the rate of conservancy tax at 9 per cent are properties belonging to a class the cost of providing conservancy services to which is proportionately higher than corresponding cost in respect of other properties. .... I state that it is not necessary for the purpose of determining such higher rate that the Corporation or the Commissioner should separately work out the expenditure involved in dealing with these properties. I deny that there is no valid justification for providing a higher rate of conservancy tax in respect of such properties. I submit that it is competent to the Corporation to take notice of the higher cost of conservancy services required to be incurred in respect of these properties and to form an opinion on general facts—that the cost of providing conservancy services to these properties would be higher and to what extent. I submit that matters of this type do not demand an arithmetical accuracy and broad compliance in matters of this type is sufficient for compliance with law. I submit that according to the estimate of the Municipal Corporation, to meet the total expenditure of conservancy services, if a unit rate of conservancy tax was to be provided, it was necessary to determine the rate of conservancy tax at 4½ per cent of the rateable value. The Corporation has, however, sought to distribute the incidence of conservancy tax equitably among all the lands and buildings, determine the general rate of conservancy tax at 3 per cent

and determine a higher rate of conservancy tax at 9 per cent in respect of industrial premises and other properties as provided in the said resolution. I submit that the use of the premises has a material relation to the cost of providing conservancy services and to the maintenance and repairs thereof I submit that the hotels, clubs, industrial premises and other large premises referred to in section 129(b) as well as in section 137 are premises which need relatively larger conservancy services."

The question with which we are concerned in the present cases is whether it is sufficient, as has been argued on behalf of the Corporation, to find out the total expense to be incurred for conservancy service and thereafter to fix different rates for different categories of properties so that the tax raised is sufficient to meet the total expense, or whether, as has been held by the High Court, the different rate of conservancy tax fixed for a particular class of property under the proviso to clause (b) of section 129 must be related to the actual cost involved in supplying conservancy service to that class. In other words the question is whether the Corporation in determining the rates of conservancy tax has to find out the total expense it would have to incur for the various purposes mentioned in section 129(b) in connection with the conservancy service and thereafter to raise that amount by fixing different rates of conservancy tax for various categories of properties or whether the Corporation would have to find out separately the expense required in respect of conservancy service for each category of property and thereafter to fix such rate of conservancy tax for a category of property as would be sufficient to meet the expense on the conservancy service for that particular category. To put it differently is the rate of conservancy tax for a class of property to be determined by taking into account the total expense which the Corporation has to meet for conservancy service in an official year or is it to be determined by taking into account the expense which the Corporation has to meet for conservancy service for that particular class of property?

After giving the matter our consideration, we are of the view that what is required by section 129 is that before determining the rates of conservancy tax for different categories of properties the Corporation should find out the total expense it would have to incur for the various purposes mentioned in clause (b) of that section. After having ascertained the total expense it would be permissible to the Corporation to fix different rates of conservancy tax for various categories of properties. It is not essential, except in cases mentioned in sub-sections (2) and (3) of section 137 that the rate of conservancy tax for a particular category of properties should be such as would be related only to the expense for conservancy service for that particular category of properties. According to the proviso which has been added to clause (b) of section 129 of the Corporations Act by Act 5 of 1970, when determining under section 99 or section 150 the rate at which conservancy tax shall be levied for any official year or part of an official year, the Corporation may determine different rates for different classes of properties. There is nothing in the above proviso which makes it obligatory

A for the Corporation to take into account separately the cost of conservancy service for each class of property for which conservancy tax is fixed. Apart from the fact that there is no statutory obligation for the Corporation to have separate estimates of the costs of conservancy service for various classes of properties referred to in the above proviso with a view to allocate the cost amongst different classes of properties, it would not even be feasible to do so for there would not be separate B municipal drains for different classes of properties. As already mentioned clause (b), of section 129 also takes into account the expense required for efficiently maintaining and repairing the municipal drains for finding out the total expenditure for conservancy service. The High Court, in our opinion, was in error in striking down the resolutions passed by the Corporation for the official years 1967-68, 1968-69, 1969-70 and 1970-71 to the extent to which they fixed the rate of C conservancy tax at 9 per cent in respect of textile mills and factories because of the absence of sufficient data to show as to what would be the cost of conservancy service for that particular category of properties. The affidavit filed on behalf of the Corporation, extract from which has been reproduced above, shows that the rates of conservancy tax for the different category of properties have been fixed after taking into account the total expense for the conservancy service. It is not D possible to insist upon arithmetical accuracy in such matters. A broad and general estimate of the cost of conservancy service and the tax receipts after taking into account the relevant factors would satisfy the requirement of law.

We are unable to accede to the submission of Mr. Tarkunde that in view of the construction which we are placing upon the proviso to E section 129(b), the proviso would be violative of article 14 of the Constitution on account of excessive delegation of legislative power. As already mentioned, the Corporation must keep in view the total expense it would have to incur for the conservancy service before fixing the various rates of conservancy tax. The different rates of conservancy tax have thus to be related to the total cost of conservancy service to be borne by the Corporation. The "opinion of the Corporation" mentioned in clause (b) of section 129 is formed after budget estimates F are prepared in accordance with sections 95, 96 and 100 of the Corporations Act. According to the above provisions the Commissioner is to make a statement of proposals as to the taxation which would in his opinion be necessary or expedient to impose under the provisions of the Act in the Annual Budget estimate of the next official year. The Standing Committee then considers the estimates and proposals of the G Commissioner, and after having obtained from the Commissioner further details and information as they think fit, the Committee frames the budget estimates. The budget estimates contain proposals of rates and extents of municipal taxes. The budget estimates are then printed and the printed copies are sent to each municipal councillor. The budget estimates are thereafter laid before the Corporation which then considers the same. In considering the budget estimates the Corporation H is entitled to refer them back to the Standing Committee for further consideration or to adopt them as they stand or subject to alterations. The entire procedure provides built-in safeguards and lays down adequate guidelines in the matter of taxation. It therefore cannot be said

that the legislature has not prescribed any guiding principle for the Corporation for determining the rates of conservancy tax. We agree with the High Court that the proviso to clause (b) of section 129 does not suffer from the vice of excessive delegation of legislative power.

Mr. Bhandare on behalf of the State of Gujarat has assailed the finding of the High Court that section 406(2)(e) and section 411(bb) are violative of article 14 and that rule 42 of the Taxation Rules is void in so far as it has provided that if an appeal is preferred or entertained against the tax, warrant shall not be issued for the recovery of the amount of tax. The High Court in striking down section 406(2)-(e) and section 411(bb) relied upon its earlier judgment dated October 27, 1969 which had been given before the addition of the proviso to section 406(2)(e) of by Act 5 of 1970. According to the earlier judgment, clause (e) of sub-section (2) of section 406 classified the appellant filing appeals against tax and rateable value into two clauses: (1) those who deposited the amount of tax assessed by the Commissioner; and (2) those who did not. It was held that the above classification had no rational nexus with the object of the provision for appeal and that there was no reasonable justification for giving a right of appeal to one class and denying it to the other. After referring to the observations in the earlier judgment, the High Court expressed the opinion in the judgment under appeal that the addition of the proviso to section 406(2)(e) by Act 5 of 1970 did not make any material difference as far as the constitutional validity of the above provision was concerned. According to the High Court, the proviso merely carves out an exception from the main provision in section 406 (2)(e) and limits the applicability of the main provision to appellants who can deposit the amount of tax without undue hardship. The result, in the opinion of the High Court, was that the discrimination between the appellants who deposited the amount of tax and the appellant who did not, which is the necessary consequence of the condition requiring deposit of the amount of tax, still persits, though it is now limited to the class of appellants who can deposit the amount of tax without undue hardship.

After hearing the learned counsel for the parties, we are unable to subscribe to the view taken by the High Court. Section 406(2)(e) as amended states that no appeal against a rateable value or tax fixed or charged under the Act shall be entertained by the Judge in the case of an appeal against a tax or in the case of an appeal made against a rateable value after a bill for any property tax assessed upon such value has been presented to the appellant unless the amount claimed from the appellant has been deposited by him with the Commissioner. According to the proviso to the above clause, where in any particular case the Judge is of opinion that the deposit of the amount by the appellant will cause undue hardship to him, the Judge may in his discretion dispense with such deposit or part thereof, either unconditionally or subject to such conditions as he may deem fit. The object of the above provision apparently is to ensure the

A deposit of the amount claimed from an appellant in case he seeks to file an appeal against a tax or against a rateable value after a bill for any property tax assessed upon such value has been presented to him. Power at the same time is given to the appellate judge to relieve the appellant from the rigour of the above provision in case the judge is of the opinion that it would cause undue hardship to the B appellant. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal which seeks to challenge the imposition or the quantum of that tax, in our opinion, has not the effect of nullifying the right of appeal, especially when we keep in view the fact that discretion is vested in the appellate judge to dispense with the compliance of the above requirement. All that the statutory provision seeks to do is to regulate the exercise C of the right of appeal. The object of the above provision is to keep in balance the right of appeal, which is conferred upon a person who is aggrieved with the demand of tax made from him, and the right of the Corporation to speedy recovery of the tax. The impugned provision accordingly confers a right of appeal and at the same time prevents the delay in the payment of the tax. We find ourselves unable to accede to the argument that the impugned provision has D the effect of creating a discrimination as is offensive to the principle of equality enshrined in article 14 of the Constitution. It is significant that the right of appeal is conferred upon all persons who are aggrieved against the determination of tax or rateable value. The bar created by section 406(2)(e) to the entertainment of the appeal by a person who has not deposited the amount of tax due from him and who is not able to show to the appellate judge that the deposit E of the amount would cause him undue hardship arises out of his own omission and default. The above provision, in our opinion, has not the effect of making invidious distinction or creating two classes with the object of meting out differential treatment to them; it only spells out the consequences flowing from the omission and default of a person who despite the fact that the deposit of the amount found due from him would cause him no hardship, declines of his own volition F to deposit that amount. The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to understand as to why the legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional G impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book in H section 30 of the Indian Income-tax Act, 1922. The proviso to that section provided that "..... no appeal shall lie against an order under sub-section (1) of section 46 unless the tax had been paid". Such conditions merely regulate the exercise of the right of appeal so that

the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the legislature to impose an accompanying liability upon a party upon whom a legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of article 14 in it. A disability or disadvantage arising out of a party's own default or omission cannot be taken to be tantamount to the creation of two classes offensive to article 14 of the Constitution, especially when that disability or disadvantage operates upon all persons who make the default or omission.

Observations in the case of *Hannach Cohen, Exrx. of Sol Cohen, Deceased. and David E. Cohen, Intervener, Petitioners & Anr.* vs. *Beneficial Industrial Loan Corporation & Ors.* (1) lend some support to the view we have taken. Headnote 10 which is based upon the observations in the body of the judgment reads as under :—

> "10. A State statute which requires that in a stockholder's derivative action a plaintiff who owns less than 5 per cent of the defendant corporation's outstanding shares, or shares having marked value not exceeding $ 50,000, give security for the reasonable expenses, including counsel fees, incurred by the corporation and by other parties defendant, and which makes the plaintiff liable for such expenses if he does not make good his claims, and subjects the amount of security to increase if the progress of the litigation reveals that it is inadequate or to decrease if it is proved to be excessive, does not violate the contract clause, or the due process clause, or the equal protection clause of the Federal Constitution."

So far as the constitutional validity of section 411(bb) and rule 42 is concerned, it is the common case of the parties that it hinges upon the validity of section 406(2)(e) and that in case we uphold the validity of the last mentioned provision, the validity of the other two provisions would have to be upheld. We accordingly uphold the constitutional validity of all the three provisions.

The Ahmedabad Electricity Co. Ltd. petitioner in writ petition No. 74 of 1972 is a licensee under the Indian Electricity Act, 1910. It has laid underground supply lines under most of the roads and public streets in the city of Ahmedabad. The Corporation has in that connection assessed property tax and made the petitioner-company liable to pay that tax on the ground that the underground supply lines occupy space below the surface and that the said space constitutes land. Section 12 of the Indian Electricity Act confers a right upon a licensee to open and break up the soil and pavement of any street, railway or tramway for laying down and placing electric supply lines

(1) 337 U.S. 539.

A and other works. Although the roads and public streets under which the petitioner-company has laid down underground supply lines vest in the Corporation under section 202 of the Corporation Act, the liability to pay property tax in respect of the space in which supply lines are laid is sought to be fastened upon the petitioner-company in view of the provisions of section 139(1) of the Corporations Act. According to section 139(1), subject to the provisions of sub-section (2), with which we are not concerned, property taxes assessed upon any premises shall be primarily leviable if the premises are held immediately from the Government or from the Corporation, from the actual occupier thereof. The word "premises" as defined in section 2(46) includes land. The case of the Corporation as set out in the affidavit of Shri Narendra R. Desai, Town Development Officer of the Corporation is that only such area of the land as is occupied by the underground supply lines that is valued for the purposes of assessing property taxes. It is stated that for the purpose of laying supply lines, the petitioner digs trenches and lays down bricks to serve as bedding for the supply lines. The petitioner-company, it is urged, occupies by means of the supply lines that area of land which is occupied by the bedding prepared for laying down the supply lines.

Mr. Tarkunde on behalf of the petitioner-company has urged that under entry 49 of the State List in the Seventh Schedule to the Constitution, the State Legislature is empowered to enact a law relating to taxes on lands and buildings. It is submitted that the State Legislature has no competence under the above entry to enact a law for levying tax in respect of the area occupied by the underground supply lines. The word "land", according to the learned counsel, denotes the surface of the land and not the underground strata. We are unable to accede to the above submission. Entry 49 of List II contemplates a levy of tax on lands and buildings or both as units. Such tax is directly imposed on lands and buildings and bears a definite relation to it. Section 129 makes provision for the levy of property tax on buildings and lands. Section 139 merely specifies the persons who would be primarily responsible for the payment of that tax. The word "land" includes not only the face of the earth, but everything under or over it, and has in its legal signification an indefinite extent upward and downward, giving rise to the maxim, Cujus est solum ejus est usque ad coelum (*see* p. 263 72 Corpus Juris Secondum). According to Broom's Legal Maxims, 10th ed., p. 259, not only has land in its legal signification an indefinite extent upwards, but in law it extends also downwards, so that whatever is in a direct line between the surface and the centre of the earth by the common law belongs to the owner of the surface (not merely the surface, but all the land down to the centre of the earth and up to the heavens) and hence the word "land" which is *nomen generalissimum*, includes, not only the face of the earth, but everything under it or over it.

In Rade on Rating, 11th ed., it is stated on page 14 :

> "By far the largest number of persons rated are as 'occupiers of land or houses'. The word 'land' as used in the

A

statute, must be understood in the widest possible sense : it includes not only the surface of the earth, but everything under it, or over it. *In Electric Telegraph Co.* v. *Salford Overseers*(1). Pollock, C. B. said :

> 'There is no distinction between the occupying land, by passing through a fixed point of space in the air to another fixed point, or by passing in the same manner through land or water. Land extends upwards as well as downward. ....'

B

In the case of Mayor, Aldermen and Councillors of the City of *Westminster & Ors.* v. *The Southern Railway Company, the Railway Assessment Authority and W. H. Smith & Son, Limited & Ors.*(2) Lord Russel of Killowen observed :

C

> "Subject to special enactments, people are rated as occupiers of land, land being understood as including not only the surface of the earth but all strata above or below."

There can, therefore, be no doubt that land in entry 49, of List II would include the underground strata.

D

It may be stated that the word "land" has also been defined in clause (30) of section 2 of the Corporations Act to include land which is being built upon or is built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over the street. The definition is of inclusive nature and does not exclude from its ambit the underground strata of the land.

E

It has been argued by Mr. Tarkunde that the right to lay down supply lines under section 12 of the Indian Electricity Act is in the nature of a statutory licence and is not a right in land. Hence the right does not constitute land within entry 49 and is not taxable by the State legislature. This submission is wholly misconceived because what is taxed under the Corporation Act is land. Section 139, as already mentioned earlier, merely fastens the liability and states that the person primarily liable to pay that tax would be the actual occupier. It is not the case of the Corporation that the right of the petitioner-company of laying and placing electric supply lines constitutes land and as such the petitioner-company is liable to pay property tax. On the contrary, the liability is sought to be fastened on the petitioner-company because of the company being in occupation of the land wherein electric supply lines have been laid and placed. Section 52 of the Indian Easement Act, 1882, to which reference has been made on behalf of the petitioner-company, merely defines "license" and has no bearing on the question with which we are concerned.

F

G

It cannot, in our opinion, be doubted that the petitioner-company is in occupation of the land wherein underground supply line is laid.

H

(1) (1855) 11 Ex. 181, at p. 186. (2) [1936] A.C. 511.

A In England also a similar view was taken. We may refer in this context to the case of *The Assessment Committee of the Holywell Union & Anr.* v. *The Halkyn District Mines Drainage Co.*(1). The Headnote of this case which was decided by the House of Lords, reads as under :

> "Land may be occupied for the purpose of and in con-
> B nection with the enjoyment of an easement in such a manner as to make the person so occupying rateable to the relief of the poor. Such a person may be rateable, though his occupation is exclusive only for certain purposes, and though the owner of the soil has reserved to himself rights of possession subordinate to the paramount right granted to the other. The test of rateability is not whether the rights granted are
> C corporeal or incorporeal, but whether there is an occupation—which is a question of fact.
>
> Where in pursuance of a statute the owner of land granted to a drainage company the exclusive right of drainage through a tunnel and water-course in his land, with the right of placing works in the tunnel and water-course,
> D and of making other tunnels in connection therewith, reserving to himself mineral and other rights :—
>
> *Held,* reversing the decision of the Court of Appeal, that the statute and grant gave the company not merely an easement but possession of the tunnels and water-course, that the right reserved to the owner were subordinate to the rights granted to the company, and that the company were de facto
> E in occupation of the tunnels and water-course and rateable to the poor in respect thereof."

Lord Herschell L.C. in that case observed :

> "Along the tunnel for a considerable distance the company have placed iron tubbing; in parts they have placed
> F brick arches; it seems to me that in these parts they occupy land precisely in the same sense as a water company does by its pipes or a tramway company by its rails, or a telephone company by the supports for its wires."

It was further observed :

> G "The question whether a person is an occupier or not within the rating law is a question of fact, and does not depend upon legal title. The person legally possessed may not occupy. On the other hand, a person may be occupier either with or without the consent of the owner."

Lord Herschell also relied upon the case of *Rex* v. *Chelsea Water-*
H *works Company*(2) wherein a water company to whom the Crown granted the right to lay down its pipes was held by the Court of King's

(1) [1895] A.C. 117.
(2) 5 B. & Ad. 156.

Bench to be occupier of land and liable to be rated. Lord Macnaghteo in the above case observed : A

> "Now, putting aside for a moment the reservations contained in the deed of grant, can there be any doubt as to the position of the company for rating purposes as regards their authorized works? The numerous cases relating to gas companies, water companies, and tramways, place the matter beyond question." B

Lord Davey observed in the above case :

> "My Lords, I agree with the learned judges in the Court of Appeal that the drainage company are not owners of the soil of the tunnels of water-course. But that does not seem to me conclusive on the question of their rateability in respect of their occupation. The right of the company may be an easement or incorporeal right; but the easement may be of such a character as requires the occupation of land for its exercise, and confers upon the company a right to occupy land during its continuance. According to a long course of authority, the occupation of land under such circumstances is sufficient for rating purposes, though unaccompanied by ownership of any portion of the soil. The law was thus stated by Wightman J. in *Reg.* v. *West Middlesex Waterworks*(1) : In this case', says the learned Judge, 'the first question is whether the company are rateable for their mains, which are laid under the surface of the highway, without any freehold or leasehold interest in the soil thereof being vested in the company. We think they are. These mains are fixed capital vested in land. The company is in possession, of the mains burred in the soil, and so is de facto in possession of that space in the soil which the mains fill, for a purpose beneficial to itself. The decisions are uniform in holding gas companies to be rateable in respect of their mains, although the occupation of such mains may be de facto merely, and without any legal or equitable estate in the land where the mains lie, by force of some statute." C D E F

Nothing cogent has been argued before us as may induce us to take a view different from that we have arrived at and which is also in accord with the view of the House of Lords. We would, therefore, hold that the petitioner-company is in occupation of the underground strata of the land through which their electric supply lines had been laid. G

It has been argued by Mr. Tarkunde that even if the petitioner electricity company may be held to be actual occupier of the underground space on which its supply line has been laid the petitioner-company does not hold the said space from the Corporation. It is urged that the petitioner-company is in occupation of that space under a statute and not from the Corporation. In order to hold that space from the Corporation, it was essential, according to the learned counsel, H

(1) 1 E. & E. at p. 720.

A that there should have been some agreement between the petitioner-company and the Corporation or that the Corporation should have given its consent for that purpose. We are unable to accede to the above submission. Clause (a) of section 139(1) of the Corporations Act fastens the liability for payment of property tax on the actual occupier of the premises held immediately from the Government or from the Corporation. In order to attract the liability under the above B clause, it is not essential that there should have been an agreement between the actual occupier and the Government or the Corporation for the holding of the premises or that the holding must be with the consent of the Government or the Corporation. The liability would accrue even if the premises vesting in the Government or the Corporation are occupied in pursuance of a statutory provision. The words "held immediately from the Government or from the Corporation C signify only the party in whom the premises vest which are held by the actual occupier thereof.

Contention has also been advanced by Mr. Tarkunde regarding the quantum of tax levied on and the extent of the land alleged to have been occupied by the petitioner-company for the underground supply lines. This is essentially a question of fact and would have to be D agitated before the authorities concerned, including the appellate authority.

As a result of the above, we dismiss writ petitions Nos. 51, 60 to 74, 87 to 91 157, 492 to 503, 533, 534 and 583 of 1972 as also writ petitions Nos. 1866 to 1877 and 2046 of 1973 with costs. One hearing fee. We also dismiss civil appeals Nos. 489 to 513 and 752 to 755 of 1973. We accept civil appeals Nos. 643 to 684 of 1973 E and civil appeals Nos. 389 to 430 of 1974 and set aside the judgment of the High Court in so far as it has struck down section 2(1A)(i), section 406(2)(e), section 411(bb) and rule 42 of the Taxation Rules in Schedule A to the Corporations Act. We also set aside the judgment of the High Court to the extent it has struck down resolutions passed by the Corporation for official years 1967-68, 1968-69, 1969-70 and 1970-71 fixing the rate of conservancy tax at 9 per cent in F respect of textile mills and factories. The writ petitions which were filed in the High Court by the respondents concerned are dismissed. The appellants shall be entitled to their costs in these two sets of appeals. One hearing fee.

V. M. K.